IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

MARC RIPPS, et al.,

Petitioners,

v. **CASE NO. 11-004782 (19)**

CITY OF COCONUT CREEK and SEMINOLE TRIBE OF FLORIDA, et al.,

Respondents.
_____/

FINAL ORDER

This cause comes before the Court on a Petition filed by Marc Ripps, Sherry Lieberman and Arthur Lieberman seeking a writ of certiorari quashing Ordinances 2011-005 and 2011-006 adopted by the City of Coconut Creek ("City"). The Seminole Tribe of Florida, Seminole Properties II, Inc., and S.T.O.F. Holdings ("Seminole") joined in this writ proceeding as party respondents.

FINDINGS OF FACT

In April 2005, the Seminole Tribe of Florida ("Seminole") filed an application to rezone 45 acres of land in the City to a planned MainStreet Development District ("PMDD"). The application process took years to complete. After two quasi-judicial public hearings on January 13, 2011, and January 27, 2011, the City Commission adopted Ordinance 2011-005, which approved Seminole's request for rezoning and Ordinance 2011-006, which approved a site plan for one phase of the PMDD - a 7-story, 2,400 space parking garage.

Ordinance 2011-005 permitted two parking garages exceeding 4,000 parking spaces; up to 150,000 square feet of retail use; pedestrian plazas; lakes and open space; and a proposed hotel containing a maximum of 1,000 hotel rooms and reaching a maximum height of 275 feet. The development will be integrated into the Seminole's existing casino. The casino is located on five acres of land held in trust by the federal government which is not part of the rezoning as it lies outside the City's jurisdiction.

The rezoned property is located within the Commerce Center of Coconut Creek Development of Regional Impact ("DRI"). The DRI was previously amended through a Notice of Proposed Change in 2001 to allow development of any mix of commercial, office and industrial uses so long as the cumulative development within the DRI does not generate more than 2,107 p.m. peak hour trips, pursuant to a trip/use conversion matrix approved as part of the DRI. The DRI was amended again in 2007 to delete "industrial" and add "hotel" as a new permitted use in the DRI. The rezoned property is also located within the City's MainStreet District, and is therefore subject to both the rezoning criteria in § 13-36 of the City Code and the MainStreet Design Standards ("MSDS").

In 2006, while the City was processing Seminole's PMDD rezoning application, Seminole filed an application with the Bureau of Indian Affairs to place the same property in trust with the federal government. If placed in trust, the

City would potentially lose all regulatory and taxing authority over the property in which case rezoning would be unnecessary.

The City argued to the Bureau of Indian Affairs that sufficient *mitigation* was necessary to offset municipal costs and land use issues associated with taking the land into trust and expanding the development outside of the City's jurisdiction. The City and Seminoles negotiated the terms of a Fee-to-Trust Mitigation Agreement ("Agreement") to address the City's objections. On January 27, 2011, following adoption of the Ordinances, the City Commission adopted Resolution 2011-009 authorizing the City Manager to finalize and execute the Agreement with Seminoles. Final execution of the agreement took place on February 11, 2011.

CONCLUSIONS OF LAW

The Petition alleges the two disputed Ordinances must be quashed because: (1) the City failed to apply appropriate statutory criteria for the proposed change to the DRI and rezoning application; (2) the rezoning conflicts with the MSDS; (3) the proposed hotel and parking garage are incompatible with the surrounding areas; (4) the Ordinances confer "special privileges" on the Seminoles by granting the rezoning in exchange for execution of a *mitigation* Agreement; and (5) the City failed to notify adjacent jurisdictions of the rezoning.

In determining the propriety of the City's quasi-judicial action, Courts look at: (1) whether procedural due process was accorded, (2) whether essential requirements of law have been observed, and (3) whether the City's findings and judgment with respect to the Ordinances are supported by competent and substantial evidence. *City of Deerfield Beach v. Valliant*, 419 So. 2d 624, 626 (Fla. 1982). The Court's review in these proceedings is limited to the record below, and this Court may not conduct a trial *de novo*. *Battaglia Fruit Co. v. City of Maitland*, 530 So. 2d 940, 943 (Fla. 5th DCA 1988).

The Court finds that the City did not depart from the essential requirements of law regarding the DRIs. An adopted DRI is amended through the "proposed change" procedure pursuant to § 380.06, Fla. Stat., during which the City must determine if the proposed change to the DRI constitutes a substantial deviation. This process had been performed with respect to the subject DRI in 2001 and again in 2006.

Rezoning is separate from a proposed change to a DRI. The existing DRI already permits a mix of hotel, commercial and office use provided traffic from the development remains below a threshold of 2,107 peak hour trips. Competent substantial evidence demonstrated the rezoning would remain below the trip cap, and therefore, the Ordinances are consistent with the existing DRI.

Competent substantial evidence was presented to support the City's determination that the criteria for rezoning and site plan approval in §§ 13-36 and 13-37 of the City Code and the MSDS were met. Testimony at the quasi-judicial hearings and the MSDS establish the MSDS standards are flexible and may be deviated from on a project-by-project basis where alternative design solutions are provided and where the project remains consistent with the overall objectives of the MSDS.

As to the height of the hotel, MSDS § 8.1.4 specifically permits buildings to exceed the 120-foot height limit in the location of this project. The City's interpretation of its own zoning code and ordinances is entitled to deference and should not be disturbed unless shown to be clearly erroneous. *Las Olas Tower Co. v. City of Fort Lauderdale*, 742 So. 2d 308, 312 (Fla. 4th DCA 1999). The Court finds the City's interpretation of its zoning code, site plan criteria and MSDS as applied to this project to be reasonable and supported by competent substantial evidence, including the City's determination regarding the consistency of the hotel's height and LEED certification status.

The Court finds competent substantial evidence was presented at the quasi-judicial hearings to support the City's finding the proposed rezoning, including the hotel, and garage site plan are compatible with the surrounding areas. Testimony and documentary evidence were submitted by City staff and consultants hired by

the Seminole's demonstrating the area surrounding the Seminole's property currently exists with dense commercial uses. The evidence also showed the surrounding area is envisioned by the City's comprehensive plan and MSDS to become even more intensely developed.

The Court finds that the City did not grant Seminole a special privilege or engage in contract zoning. Contract zoning refers to an agreement where a property owner contractually agrees to certain conditions in return for the government's rezoning or an enforceable promise to rezone. *Chung v. Sarasota County*, 686 So. 2d 1358, 1359 (Fla. 2d DCA 1996). A municipality must contractually bind itself to enact the requested ordinance, or a rezoning must be conditioned on collateral contracts between the municipality and the owner. *Harnett v. Austin*, 93, So. 2d 86, 89 (Fla. 1956); *Chung*, 686 So. 2d at 1360.

The Court finds no enforceable contract to rezone, and the rezoning was not conditioned on any collateral contract. The Ordinances were approved by the City after two quasi-judicial hearings as required by law. The Agreement was approved after the rezoning and executed weeks later. The City expressly advised Seminole that the Ordinances would be considered on their own merit irrespective of the Agreement. Finally, the Agreement, by its terms, only applies if Seminole's property is taken into trust, at which point the rezoning would have no further

effect. By contrast, if the property is never taken into trust, the rezoning remains in effect and the Agreement becomes a nullity.

Lastly, the Court finds Petitioners failed to raise and preserve claims relating to notice to adjourning jurisdictions. Plaintiff's did not raise this argument during either of the quasi-judicial hearings, and they are therefore barred from asserting theses claims at this late date. *First City Savings Corp. of Texas v. S & B Partners*, 548 So. 2d 1156, 1158 (Fla. 5th DCA 1989).

Accordingly, it is **AJDUDGED** the Petition for Writ of Certiorari against the City of Coconut Creek and the Seminole's is **DENIED.**

DONE and **ORDERED** in Chambers in Ft. Lauderdale, Florida on this 9th day of August, 2012.

Jack Tuter
AUG 09 2012
A True Copy

Jack Tuter
Circuit Judge

Copies furnished:

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