



Agenda Item Cover Sheet

Agenda Item N^o: _____

Meeting Date: August 13, 2024

Consent Section

Regular Section

Public Hearing

Requires Chair Signature? Yes No

Includes a Technology Component? Yes No

Subject: Authorize the County Attorney's Office to file a petition for writ of certiorari with the Second District Court of Appeal in the matter of G.L. Acquisitions Corporation, Inc. v. Hillsborough County, which arose from Board's denial of RZ-PD 23-0132.

Department Name: County Attorney's Office

Contact Person: Cameron Clark

Contact Phone: (813) 272-5670

Sign-Off Approvals:

Assistant County Administrator _____ Date _____

Department Director _____ Date _____

Management and Budget – Approved as to Financial Impact Accuracy _____ Date _____

County Attorney – Approved as to Legal Sufficiency _____ Date _____

Staff's Recommended Board Motion:

Authorize the County Attorney's Office to file a petition for writ of certiorari with the Second District Court of Appeal in the matter of G.L. Acquisitions Corporation, Inc. v. Hillsborough County, which arose from Board's denial of RZ-PD 23-0132. This action will not have a financial impact on the County beyond the filing fee; funding for this fee is included in the County Attorney's budget.

Financial Impact Statement:

This action will not have a financial impact upon the County beyond the filing fee; funding for this fee is included in the County Attorney's budget.

Background:

G.L. Acquisitions Corporation, Inc. ("GLA") filed rezoning application MM 23-0132, seeking to rezone the Pebble Creek Golf Course in order to develop 251 single family homes on the approximately 150-acre site. The Pebble Creek Golf Course is located within the Pebble Creek community, east of Bruce B. Downs Boulevard and south of the Pasco/Hillsborough County line. On July 18, 2023, the Board of County Commissioners ("Board") denied GLA's rezoning application by a vote of 5 to 2, finding that the rezoning application was not consistent with the Comprehensive Plan and not compatible with the existing neighborhood. GLA challenged the rezoning denial in circuit court. On June 19, 2024, the court issued an order granting GLA's petition for writ of certiorari and quashing the Board's denial of the rezoning application. The County filed a Motion for Rehearing on July 3, 2024, which the court denied on July 19, 2024.

This agenda item seeks Board authorization to appeal the circuit court's order by filing a second-tier petition for writ of certiorari with the Second District Court of Appeal.

List Attachments: Order Granting Petition for Writ of Certiorari

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR THE STATE OF FLORIDA
CIVIL DIVISION

G.L. ACQUISITIONS
CORPORATION, INC.,

Case No. 23-CA-015824

Division: I

Petitioner,

v.

HILLSBOROUGH COUNTY
BOARD OF COUNTY
COMMISSIONERS,

Respondent.

_____ /

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

This case is before the Court on Petitioner G.L. Acquisitions Corporation, Inc.’s (G.L.) petition for writ of certiorari filed on October 11, 2023, seeking to review the Hillsborough County Board of County Commissioners’ denial of its application to rezone a property it has contracted to purchase. The petition alleges that the Board failed to follow the essential requirements of the law and that its denial is not supported by competent substantial evidence. Because the Court agrees that the record lacks any evidentiary support for the Board’s determination, the petition must be granted.

The 150-acres of property (“the Property”) at issue, Pebble Creek Golf Course, opened in 1967 and was zoned specifically as a golf course. The surrounding Pebble Creek neighborhood was zoned and developed as a mixed-use community in 1972, five years after the golf course opened. In 2021, the property owner, Ace Golf, Inc., determined that the golf course was no longer financially viable as a business due to consistently low membership and related financial difficulties. Ace Golf first offered to sell the golf course to the Pebble Creek Homeowners

Association. When that offer was rejected, Ace Golf sought other potential purchasers, including Hillsborough County, and ultimately entered into a contract with G.L..

In 2023, G.L. filed an application to rezone the Property from its current classification as a golf course to residential. G.L. sought to develop single family homes at the center of what was once the golf course while maintaining a ring of buffer areas between the existing neighborhood and the new homes. G.L. received conditional approvals from the County Planning Commission and the County Development Services Department, despite proposing less than the minimum density required by the Comprehensive Plan. On May 15, 2023, the Zoning Hearing Master (ZHM) held a duly noticed evidentiary hearing on G.L.'s application. Multiple witnesses testified at the hearing, including county staff, experts, and residents. The ZHM concluded that G.L.'s rezoning request was consistent with the Comprehensive Plan and recommended approval with certain conditions to which G.L. agreed. Specifically, the ZHM found that "[t]he proposed parks and site plan design that includes developing the single-family homes internal to the site and providing a ring of stormwater ponds and significant open space along the perimeter serves to increase compatibility with the neighboring residential homes."

On July 18, 2023, the Board held a duly noticed hearing on G.L.'s application. The Board heard presentations and arguments from county staff, G.L.'s attorney, G.L.'s expert planner, and multiple residents. The residents opposed to the application gave lay comment, primarily focused on unsubstantiated environmental concerns, the loss of green space in the neighborhood, and the alleged bad actions of the current landowner, Ace Golf. The Board proceeded to open the matter for discussion on record.

Multiple commissioners voiced opinions, expressing sympathy for the residents, discussing the Ace Golf's president's conduct, and speculating about alternative uses if the present application

were to be denied. The Board denied G.L.'s application on a 5-2 vote. On September 14, 2023, the Board rendered a Resolution, finding that the application was not consistent with the existing land uses, not compatible with the zoning districts of the surrounding land, inconsistent with the Comprehensive Plan, and that the "record evidence supports that the retention of the existing PD zoning accomplishes a legitimate public purpose." The Board was primarily concerned with the removal of the "open space" around which the neighborhood had been designed and built.

Under Florida law, the scope of issues that are reviewable under first-tier certiorari review of quasi-judicial rezoning decisions is strictly limited as to whether: (1) the local government afforded G.L. due process; (2) the local government observed the essential requirements of law; and (3) the decision is supported by competent and substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). The Florida Supreme Court has set forth a framework that requires rezoning applicants to prove that their proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. *Snyder*, 627 So. 2d at 476 (Fla. 1993). If the proposal complies with the comprehensive plan, the Board may still deny the application to accomplish "a legitimate public purpose," at which point the Board has "the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable." *Id.* The Court is thus tasked with reviewing whether there is any competent, substantial evidence to establish: (1) the application is inconsistent with the comprehensive plan or with the applicable zoning ordinance's procedural requirements; or, if found consistent, (2) there is a legitimate public purpose behind maintaining the existing zoning classification. *Id.*

G.L. asserts that its proposal complied with the Comprehensive Plan, based in large part on the testimony and reports of hired experts and County Staff, who found that the proposed single family residential homes are compatible with the surrounding residential homes and that the

proposed ponds and open spaces would serve as a sufficient buffer between the old and the proposed, new neighborhoods. There is nothing in the record to indicate that the proposal does not in fact comply with the Comprehensive Plan, meaning that the burden shifted to the Board to demonstrate a legitimate public purpose in maintaining the existing classification.

The Board argues logically that because the neighborhood was designed and built around the golf course, the land acts as a fundamental “centerpiece.” It is key to note here that the land is specifically zoned as a “golf course,” which is distinct from other types of parks or recreational areas. At present, the land is not a functioning golf course. Rather, it is an unkempt space that has reverted back to a natural Florida look. The golf course buildings are in disrepair. There is no competent, substantial evidence in the record to indicate that the land could be used as a golf course in the future, meaning there is no competent, substantial evidence to support the alleged legitimate purpose of maintaining the golf course zoning designation.

The Board’s decision was based, in part, on the belief that the president of Ace Golf lacks good sense and common decency. Some residents speculated that the current owner’s past behavior was the root cause of the golf course no longer being a viable business. Although this may be the case, the Board is not permitted to make arbitrary, discriminatory, or unreasonable decisions. If the president of Ace Golf was the kind of person who delivered flowers to the residents weekly and birthday presents annually, would the Board have voted differently? Certainly such a rhetorical question highlights the arbitrariness of the reasoning at issue.

The Board’s decision was also based on the number of residents who gave testimony and wrote letters opposed to the change in zoning. Fact-based testimony of homeowners opposing the proposed rezoning may be considered by the Board and reviewing courts. *See Marion Cnty. v. Priest*, 786 So. 2d 623, 626-27 (Fla. 5th DCA 2001). Conversely, unsupported, conclusory

statements do not constitute competent evidence. *BML Invs. v. City of Casselberry*, 476 So. 2d 713, 715 (Fla. 5th DCA 1985) (citing *Conetta v. City of Sarasota*, 400 So. 2d 1051 (Fla. 2d DCA 1981)). The residents opposed to the change gave lay testimony speculating about future problems, including excessive noise and environmental hazards, but did not provide any fact-based testimony upon which the Board could base its decision. Thus, after examining the record in full, the Court cannot find that the Board relied on competent, substantial evidence when it denied G.L.'s proposal.

Because the record contains no competent, substantial evidence for the determination that denial of the proposed rezoning advances a legitimate public purpose, the Petition is hereby GRANTED and the resolution is QUASHED.

ORDERED on the date imprinted with the Judge's signature:

Electronically Conformed 6/19/2024
Paul Huey

PAUL L. HUEY, CIRCUIT JUDGE

COPIES TO:

Petitioner

Respondent