

IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CITY OF RIVIERA BEACH,

Plaintiff,

CIVIL DIVISION

CASE NO.: 50 2006 CA 014100

vs.

DAWN PARDO; DIANA DIMEO; KATHY
GROOVER; DRAGA M. LINDBLOM; and
GORDON ROWSE,

Defendants.

COMPLAINT

Plaintiff, City of Riviera Beach ("City"), by and through its undersigned counsel, files this Complaint against Defendants, Dawn Pardo, Diana DiMeo, Kathy Groover, Draga M. Lindblom, and Gordon Rowse, and states as follows:

1. This is an action for declaratory judgment and ancillary relief under Chapter 86, Fla. Stat.
2. Plaintiff, City of Riviera Beach ("City"), is a Florida municipality located in Palm Beach County, Florida.
3. Defendants Pardo, DiMeo, Groover, Lindblom, and Rowse are each residents and "qualified voters" of the City, are therefore residents of Palm Beach County, Florida, and are otherwise *sui juris*.
4. For some time prior to the commencement of this action, City has been engaged in the process of redeveloping certain city-owned property known informally in the community as the Ocean Mall.

5. In connection with its Ocean Mall redevelopment effort, City has been negotiating with an independent third party developer to construct a mixed use project including a hotel/condominium with retail shops and restaurants to replace the existing structures located on the Ocean Mall property.

6. As part of the Ocean Mall redevelopment effort, the City Council properly passed and adopted Ordinance No. 3016 on October 4, 2006. Ordinance No. 3016 amended Article XIII, Section 3 of City's Charter to extend the maximum term of a Lease for City-Owner Property from 50 to 99 years.

7. The City has also agreed to a height limit for the proposed Ocean Mall redevelopment of 34 stories. This height limit is permitted under existing City Zoning and Land Use Regulations.

8. Defendants, as qualified voters of the City, formed a committee to initiate a Petition for Referendum to repeal Ordinance No. 3016 and two Initiative Petitions that, respectively, seek (a) amendment of the City Charter to provide for a maximum lease term of 50 years for the City-owned Ocean Mall property, and (b) amendment of the City Charter to provide for a maximum height limit of 5 stories for buildings or other structures on the Ocean Mall property. The Petition for Referendum and Initiative Petitions are attached, respectively, as Exhibits "A", "B" and "C".

9. The Initiative and Referendum process in the City of Riviera Beach is controlled by Article X of the City Charter, a copy of which is attached as Exhibit "D".

(a) Article X, §1, entitled "General authority" Provides:

(a) *Initiative*. The qualified voters of the city shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed, the

qualified voters of the city shall have a right to adopt or reject it at a city election...

(b) *Referendum.* The qualified voters of the city shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, the qualified voters of the city shall have a right to approve or reject it at a city election...

(b) Article X, §2, titled "Commencement of Proceedings; Petitioner's Committee; Affidavit" provides:

Any five qualified voters may commence initiative or referendum proceedings by filing with the city clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petitions and filing it in proper form... (Emphasis added).

(c) Article X, §3, entitled "Petitions" provides:

(a) *Number of signatures.* Initiative and referendum petitions must be signed by qualified voters of the city equal in number to at least 15 percent of the total number of qualified voters registered to vote at the last regular election.

...

(c) *Affidavit of circulator.* Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in this presence, that he believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered. (Emphasis added).

(d) *Time for filing referendum and initiative petitions.* Referendum petitions must be filed within 30 days after adoption by the council of the ordinance sought to be reconsidered. Initiative petitions must be filed within 30 days after refusal or rejection of the council to pass a proposed ordinance.

(d) Article X, §4, entitled "Procedure after filing" provides:

(a) *Certificate of clerk, amendment.* Within 20 days after the petition is filed the city clerk shall complete a certificate as to its sufficiency, specifying if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within two days after receiving the copy of [the clerk's]certificate...

(b) *Council review.* If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it... the committee may, within two days after receiving the copy of such certificate, file a request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve it or disapprove it, and the council's determination shall then be a final determination as to the sufficiency of the petition.

(c) *Court review; new petition.* A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

10. On October 4, 2006, the City Council adopted Ordinance No. 3016.

11. On October 6, 2006, Defendants filed their affidavit under Article X, §2 of the City Charter establishing themselves as the petitioners' committee for the Referendum and Initiative Petitions described above.

12. On November 3, 2006, Defendants submitted their Referendum and Initiative Petitions to the City Clerk. City Clerk had previously verified to the Palm Beach County Supervisor of Elections that for purposes of the Referendum and Initiative Petitions being circulated by Defendants, there was a total of 19,617 qualified voters registered to vote at the last

regular election and, as a result, 15% of that number amounted to 2,943 voters. A copy of the Clerk's Certification in this regard is attached as Exhibit "E".

13. On November 3, 2006, Defendants submitted the Referendum and Initiative Petitions to the City Clerk. The Petitions were accompanied by the Affidavits of 114 alleged circulators. The City Clerk transmitted the Petitions to the Palm Beach County Supervisor of Elections for signature and voter verification.

14. The Supervisor of Elections thereafter certified that, (a) with regard to the Referendum for Reconsideration of Ordinance No. 3016, it had processed 3,687 signatures with 2,944 of those signatures being those of qualified electors of the City; (b) with regard to the Initiative Petition for Charter Amendment limiting the number of years on a lease of the Ocean Mall property, it had processed 3,192 signatures finding 2,646 signatures being those of qualified electors of the City; (c) with regard to the Initiative Petition for Charter Amendment establishing a 5-story height limit for the Ocean Mall property, a total of 3,231 signatures were processed with 2,682 of those being found to be signatures of qualified electors of the City.

15. After receipt of the Certification from the Palm Beach County Supervisor of Elections, the City Clerk certified to Defendants that all three of the Petitions were insufficient.

16. Two days after the City Clerk's certification of insufficiency of all three Petitions, Defendants, through counsel, timely demanded that the City Council review the City Clerk's finding of insufficiency.

17. On December 20, 2006, the City Council affirmed the Clerk's finding of insufficiency. Under Article X, §4(b) of the City Charter, the Council's determination of insufficiency is a final determination that, pursuant to Article X, §4(c), is subject to court review.

18. The City Council's finding that the three Petitions were insufficient was based upon the following:

(a) A finding that circulators left petitions available for signature but unattended and that some petitions were also circulated by telefax and e-mail with the result that any number of the petitions were accompanied by an affidavit executed by a circulator that did not personally circulate the paper, could not verify that all signatures were affixed in his or her presence and could not attest to the fact that each signor had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered. As a result of the actions of the circulators, some or all of the circulator affidavits and any qualified voter signatures contained in the Petition to which such affidavits are attached are void as a matter of law for the negligent and fraudulent conduct of the circulators and the false attestation contained in the circulator affidavits.

(b) The Petitions for Charter Amendment were signed by less than 15% of the total number of qualified voters registered to vote in the last regular election.

(c) The request for a City election on the Referendum Petition, seeking a repeal of Ordinance No. 3016's change in the limit on the term of a lease of municipal property from 50 to 99 years, and an Initiative Petition requesting a Charter Amendment to amend the Charter to require a term limit on a lease of the Ocean Mall property of 50 years were internally confusing and should not be placed on the same ballot.

(d) The Petitions were circulated by 114 people, far more people than the Petition Committee who, pursuant to Article X, §2 of the City Charter are to "be responsible for circulating the Petition...". (Emphasis added).

19. Defendants dispute each and every basis for the City Council's finding that the three Petitions are insufficient and City's conclusion that they may not legally be acted upon. As a result of their disputes with the City Council's position, Defendants have threatened litigation if their Petitions are not placed upon the ballot at the next municipal election.

20. The above-referenced disputes between Plaintiff and Defendants are immediate, concern matters of great public importance and are otherwise bona fide.

21. The court's declaration of the respective rights of the parties is required as a matter of law.

WHEREFORE, the Plaintiff, City of Riviera Beach, prays that this Court enter judgment in favor of the City and against Defendants declaring that Defendants' three Petitions are insufficient under the requirements of Article X of the City Charter of the City of Riviera Beach, and directing that none of the Petitions be set for consideration at the next municipal election.

Respectfully submitted, this 21st day of December, 2006.

CASEY CIKLIN LUBITZ
MARTENS & O'CONNELL
515 North Flagler Drive, Ste 1800
West Palm Beach, FL 33401-4626
(561) 832-5900; Fax (561) 833-4209

181

By: _____
BRIAN B. JOSLYN
Florida Bar No.: 332496