

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL ACTION

LUPER ENTERPRISES, INC., and
COASTAL SOUND INVESTMENTS, LLC,
Plaintiffs,

vs.

CASE NO. 2025-CA-00844AX

CITY OF BRADENTON BEACH,
Defendant.

/

MOTION TO DISMISS COMPLAINT

Defendant City of Bradenton Beach (“City”), by and through undersigned counsel and pursuant to Fla. R. Civ. P. 1.140(b), moves to dismiss the Complaint [DIN 8(11)] filed by Plaintiffs Luper Enterprises, Inc. (“Luper”) and Coastal Sound Investments, LLC (“Coastal”) (collectively, “Luper”) for lack of subject matter jurisdiction and in support thereof states:

SUMMARY

Luper improperly seeks declaratory and injunctive relief to attack a quasi-judicial action and decision of the City Commission approving her application for a Temporary Use Permit to allow parking on her demolished resort property subject to conditions. Luper attacks both the City Commission’s process and decision following its April 17, 2025, hearing on Luper’s request for a Temporary Use Permit for parking. Luper alleges the City Commission violated her due process rights and violated her parking rights.

As a matter of law, the City Commission's April 17, 2025, hearing and decision on Luper's permit application were quasi-judicial. Luper's sole remedy for attacking the City Commission's quasi-judicial decision is a petition for writ of certiorari pursuant to Fla. R. App. P. 9.030 (C), 9.100, and 9.190. This Court may not grant either declaratory or injunctive relief, and therefore, must dismiss Counts I and II with prejudice for lack of subject matter jurisdiction.

Undisputed Facts Taken from the Complaint

1. Luper marketed, operated, and managed a "Resort" called the "Bungalow Beach Resort" located on three sets of parcels in Bradenton Beach: (1) the "Razed Parcels" at 2000 and 2104 Gulf Drive, (2) the "Duplex Parcel" at 2103 Avenue C, and (3) "the Single-Family Parcel" at 2108 Gulf Drive North. *Complaint*, ¶¶ 6, 8 and FN 1-3.

2. The October 2024 hurricanes damaged beyond repair the cottages located on the "Razed Parcels." *Complaint*, ¶ 11; Exhibit B. By January 2025, Luper had demolished all of the cottages, leaving only a small shade structure. *Complaint*, ¶ 14, Exhibit E. Under the City of Bradenton Beach Zoning Code, no hotel structures or use remained on the Razed Parcels after their demolition. *Complaint*, Exhibit E.

3. City Staff told Luper that redevelopment of the Razed Parcels required a Major Development Plan Approval. *Complaint*, ¶¶ 15, 17. City Staff also told Luper she needed a temporary use permit for any interim use of the

Razed Parcels for parking or other uses, including parking for the other parcels that make up the “Resort.” *Complaint*, ¶¶ 14, 19, 20.

4. Luper constructed a new parking lot on the Razed Parcels without obtaining approval from the City. *Complaint*, ¶¶ 14, 16; Exhibit E. Luper developed the new parking lot on top of areas that previously contained buildings. Luper also created 29 parking spaces even though the prior hotel use permitted only 17 parking spaces. *Complaint*, Exhibits D, E, F. Luper then opened the new parking lot to paid public parking. *Complaint*, ¶ 14. The City’s Code Enforcement officer directed Luper to stop parking on the new unpermitted parking lot until or unless she obtained a temporary use permit. *Complaint*, ¶¶ 19, 20.

5. Luper applied for a temporary use permit. *Complaint*, ¶ 20. Pursuant to the City’s Zoning Code, the City Commission conducted a hearing on Luper’s temporary use permit application on April 17, 2025. *Complaint*, ¶ 20. The City Commission approved the temporary use permit for parking subject to conditions (referred to by Luper as the “Parking Restrictions”). *Id.*

6. Luper’s Complaint attempts to attack the City Commission’s conduct of the hearing and objects to the Parking Restrictions. *Complaint*, ¶¶ 23, 25, 26, 32, and 4.

Legal Analysis/Memorandum of Law

The defense of lack of subject matter jurisdiction may be raised in a motion to dismiss pursuant to Fla. R. Civ. P. 1.140(b), or at any time pursuant to Fla. R. Civ. P. 1.140(h)(2).

The Court lacks subject matter jurisdiction over Luper's claims for declaratory and injunctive relief because “[q]uasi-judicial decisions of municipal ‘agencies, boards, and commissions,’ are reviewable by petitions for writ of certiorari to the appellate division of the circuit court.” *Miami-Dade County v. City of Miami*, 315 So. 3d 115, 119 (Fla. 3d DCA 2020); *citing Teston v. City of Tampa*, 143 So. 2d 473, 476 (Fla. 1962); *Hirt v. Polk County Bd. of County Comm'rs*, 578 So. 2d 415, 416 (Fla. 2d DCA 1991) (“Certiorari is the proper method to review the quasi-judicial actions of a Board of County Commissioners, whereas injunctive and declaratory suits are the proper way to attack a Board's legislative actions.”). In *Grace v. Town of Palm Beach*, 656 So. 2d 945, 945 (Fla. 4th DCA 1995), the trial court correctly determined it lacked jurisdiction to review de novo a quasi-judicial decision by the City Commission because the “commission's decision was reviewable **only** by a petition for writ of certiorari filed within 30 days of the action.” (emphasis added).

Courts must dismiss claims for de novo relief filed under the Rules of Civil Procedure where certiorari is the proper avenue for obtaining relief. *Dabbs v. Tampa*, 613 So. 2d 1378, 1379 (Fla. 2d DCA 1993) (affirming dismissal of claims for declaratory relief and breach of contract that attacked quasi-judicial decision); *Centex Homes Corp. v. Metro. Dade County.*, 318 So. 2d 149, 151 (Fla. 3d DCA 1975) (trial court correctly dismissed action for declaratory and injunctive relief challenging a quasi-judicial decision of the county commission); *Deen v. Tampa Port Auth.*, 201 So. 2d 755, 758 (Fla. 2d DCA 1967) (affirming

dismissal of a suit for declaratory and injunctive relief attacking a quasi-judicial decision of the Authority).

A hearing on a zoning permit or approval is quasi-judicial if it meets the definition set out in *Board of County Comm'rs v. Snyder*, 627 So. 2d 469 (Fla. 1993):

actions which have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of . . . quasi-judicial action

Snyder at 474; see also *Kahana v. City of Tampa*, 683 So. 2d 618, 620 (Fla. 2d DCA 1996) (reversing dismissal of petition for certiorari where decision was quasi-judicial, and holding that "The test is whether the city council's decision on the petition formulates a "general rule of policy" and, thus, will affect many people, or whether it merely applies an existing general rule of policy to a specific parcel.").

Here, the hearing conducted on Luper's Temporary Use Permit application at the City Meeting was quasi-judicial. Land Development Code (LDC) § 2.1.6 authorized the City Commission to approve, approve with modifications, or deny temporary use permits. Standards governing temporary use permits are contained in LDC § 418. Section 418.1 states, in part "the City Commission may grant or deny such a permit and may attach any reasonable condition, stipulation or safeguard necessary to protect the public interest." Section 418.1 further identifies a number of issues for which the Commission must obtain

assurances. Section 418.2 requires the Commission to limit the time and duration of temporary use permits.

The City Commission must - and did - conduct a hearing to consider Luper's application for a temporary use permit for the Razed Parcels. The City Commission was required to – and did - apply the standards set forth in LDC § 418 to Luper's application and the facts shown at the hearing. The City Commission's decision was quasi-judicial and Luper can attack that decision only through a petition for writ of certiorari.

WHEREFORE, Defendant City of Bradenton Beach requests the Court enter an order DISMISSING Counts I and II, and the entire action, with prejudice for lack of subject matter jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of Court using the Florida Courts E-filing Portal System, with e-service via the Portal sending a notice of electronic filing and copy to the following parties and counsel of record on this 21 day of May, 2025.

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| <p>JOHN A. ANTHONY, ESQ. <u>janthony@anthonyandpartners.com</u> CHARLES D. PRESTON, ESQ. <u>epreston@anthonyandpartners.com</u> Anthony & Partners, LLC 100 South Ashley Drive, Suite 1600 Tampa, Florida 33602 Telephone: 813.273.5616 Fax: 813.221.4113 <i>Attorneys for Plaintiffs</i></p> | |
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