

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

BELVEDERE TERMINALS
COMPANY, LLC, a Delaware
limited liability company,

Plaintiff,

Case No.: 2024-10007-CICI

v.

VOLUSIA COUNTY, a political
subdivision of the State of Florida

Defendant.

_____ /

VOLUSIA COUNTY'S ANSWER, AFFIRMATIVE DEFENSES,
and MOTION TO DISMISS

Defendant, VOLUSIA COUNTY, responds to Plaintiff's Complaint and
states:

JURISDICTION AND VENUE

1. Defendant denies that Plaintiff is entitled to its requested relief, but does
not dispute jurisdiction of this matter.

2. Defendant denies that Plaintiff is entitled to its requested relief, but does
not dispute jurisdiction of this matter.

3. Admit.

4. Defendant admits there are no conditions precedent to the initiation of
the state court actions brought in this complaint. Otherwise denied.

PARTIES

5. Without knowledge, therefore denied.
6. Admit.
7. Admit.

GENERAL ALLEGATIONS

8. Denied.
9. Denied as phrased.

A. The Previously Approved Use for the Property

10. Admit that the prior owner submitted an application to rezone the Property and a conceptual site plan was submitted for a concrete facility. Otherwise without knowledge, therefore denied.

11. Admit that in January of 2006, Volusia County staff recommended rezoning part of the Property to I-2. Otherwise denied.

12. Admit.
13. Admit.
14. Denied.
15. Without knowledge, therefore denied.
16. Without knowledge, therefore denied.

17. Admit that part of the future land use for the Property is Industrial. Otherwise denied.

18. Admit that part of the zoning for the Property is I-2 Heavy Industrial.

Otherwise denied.

19. Admit.

20. Admit.

21. Denied as phrased.

22. Without knowledge, therefore denied.

23. Without knowledge, therefore denied.

24. Without knowledge, therefore denied.

25. Without knowledge, therefore denied.

26. Without knowledge, therefore denied.

27. Admit.

28. Admit.

29. Admit.

30. Denied as phrased.

31. Denied as phrased.

32. Without knowledge, therefore denied.

33. Without knowledge, therefore denied.

34. Admit.

35. Admit.

36. Denied as phrased.

37. Denied as phrased.

B. The August 15, 2023, County Council Meeting

38. Admit.

39. Admit.

40. Admit.

41. Admit that Plaintiff had no applications pending and Chairman Brower made the statement. Otherwise denied.

42. Admit.

43. Admit.

44. Denied.

45. Admit that Councilman Kent made a statement about a message from the mayor of Ormond Beach. Otherwise denied.

46. Denied.

47. Admit that Plaintiff had not submitted any application to the County and that Councilman Kent called for the special meeting. Otherwise denied.

48. Admit.

C. The August 23, 2023, County Special Meeting

49. Admit.

50. Admit.

51. Admit that Plaintiff had not submitted any land use, site plan, or any other development applications. Otherwise denied.

52. Admit that the memorandum was included in the agenda item. Otherwise denied as phrased.

53. Admit.

54. Admit.

55. Admit.

56. Admit that the statement was made by Chairman Brower. Otherwise denied.

57. Denied.

58. Admit that the six letters expressing concern are posted on Defendant's website. Otherwise denied as phrased.

59. Admit that the letter to State Representative Tom Leek dated September 1, 2023, is posted on Defendant's website. Otherwise denied as phrased.

60. Admit that the letter to State Representative Tom Leek dated September 1, 2023, is posted on Defendant's website. Otherwise denied as phrased.

61. Admit.

D. The September 5, 2023, County Council Meeting

62. Denied.

63. Admit.

64. Admit.

65. Admit.

66. Admit that SB 250 prevented the County from amending its zoning ordinance. Otherwise denied as phrased.

67. Admit.

68. Admit.

69. Admit.

70. Denied.

71. Denied.

E. The September 19, 2023, County Council Meeting

72. Admit.

73. Admit.

74. Admit.

75. Admit that Plaintiff had no pending applications. Otherwise denied.

76. Admit.

77. Admit.

78. Admit.

79. Admit.

80. Admit.

81. Admit.

82. Admit that the FDEP permit was determined to be sufficient.
Otherwise denied as phrased.

83. Denied.

84. Denied.

85. Admit that the statement was made by Councilman Santiago.
Otherwise denied.

86. Admit.

87. Admit.

88. Admit.

89. Admit that the motion was passed by the Ormond Beach City
Commission the day after the County Council meeting. Otherwise denied.

90. Admit.

91. Denied.

F. The October 17, 2023, County Council Meeting

92. Admit.

93. Admit.

94. Denied.

95. Admit that the motion was made by Councilman Santiago. Otherwise
denied.

96. Denied.

97. Admit.

98. Admit that the provision previously applied to Volusia County.

Otherwise denied.

99. Denied.

100. Admit.

101. Admit.

102. Admit.

103. Admit that the statement was made by Councilman Robins. Otherwise denied as phrased.

104. Admit that the statement was made by Councilman Kent. Otherwise denied.

105. Admit that the motions were approved. Otherwise denied.

G. The November 7, 2023, County Council Meeting

106. Admit.

107. Admit.

108. Admit.

109. Admit that the agenda item is attached as an exhibit to the complaint.
Otherwise denied.

110. Denied.

111. Admit that the mayor told the County that the City of Ormond Beach was not interested in expanding the ISBA. Otherwise without knowledge, therefore denied.

112. Denied.

113. Denied.

114. Without knowledge, therefore denied.

H. Legislative Amendment to Senate Bill 250

115. Admit.

116. Admit.

117. Admit.

118. Denied.

I. The November 21, 2023, County Council Meeting

119. Admit.

120. Admit.

121. Admit.

122. Denied as phrased.

123. Denied as phrased.

124. Admit that Council chambers were filled to capacity. Otherwise, without knowledge, therefore denied.

125. Denied.

126. Admit.

127. Denied.

128. Admit.

129. Admit that the statement was made by Councilman Kent. Otherwise without knowledge, therefore denied.

130. Denied.

131. Denied as phrased.

132. Denied.

133. Admit.

134. Admit.

135. Denied.

136. Denied.

137. Admit.

138. Denied.

139. Admit.

140. Denied.

141. Denied.

142. Denied.

J. Volusia County's Obligations Regarding Site Plan Application

143. Admit that on December 4, 2023, Defendant received Plaintiff's application for a conceptual site plan. Otherwise denied.

144. Admit that the email is attached as an exhibit to the complaint. Otherwise denied as phrased.

145. Denied.

146. Denied.

147. Denied.

148. Denied.

149. Denied.

150. Denied as phrased.

151. Denied.

152. Admit.

153. Denied as phrased.

154. Admit.

155. Denied as phrased.

156. Denied.

157. Denied.

158. Denied as phrased.

159. Denied.

160. Denied.

161. Without knowledge, therefore denied.
162. Denied.
163. Denied.
164. Denied.
165. Denied.
166. Admit.
167. Denied.
168. Denied.
169. Admit that the PLDRC recommended approval. Otherwise denied.
170. Denied.
171. Denied as phrased.
172. Admit.
173. Without knowledge, therefore denied.
174. Admit.
175. Admit.
176. Admit.
177. Admit.
178. Without knowledge, therefore denied.
179. Admit.
180. Denied.

181. Admit that the application was not accepted. Otherwise denied as phrased.

182. Denied.

183. Denied.

184. Admit that final site plans are processed pursuant to sections 72-503 and 72-504. Otherwise denied.

185. Admit.

186. Admit.

187. Admit.

188. Without knowledge, therefore denied.

189. Admit that the cited procedures govern the review of such applications except as otherwise provided in Chapter 72, Article III of the Code. Otherwise denied.

190. Denied as phrased.

191. Admit that the cited procedures govern the review of such applications except as otherwise provided in Chapter 72, Article III of the Code. Otherwise denied.

192. Without knowledge, therefore denied.

193. Denied as phrased.

194. Denied.

195. Denied.

196. Denied.

COUNT I
DECLARATORY RELIEF

197. Defendant repeats its responses to paragraphs 1 through 196.

198. Denied.

199. Admit.

200. Denied.

201. Denied.

202. Denied.

203. Admit.

204. Denied.

205. Denied.

206. Without knowledge, therefore denied.

207. Without knowledge, therefore denied.

208. Without knowledge, therefore denied.

WHEREFORE, Defendant requests this Honorable Court reject Plaintiff's requested declarations.

COUNT II
TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

209. Defendant repeats its responses to paragraphs 1 through 196.

210. Defendant denies that Plaintiff is entitled to its requested relief, but does not dispute jurisdiction of this matter.

211. Denied.

212. Denied.

213. Denied.

214. Denied.

215. Denied.

216. Denied.

217. Denied.

218. Denied.

219. Denied.

220. Denied.

221. Denied.

222. Denied.

223. Denied.

224. Denied.

225. Denied.

226. Denied.

227. Denied.

228. Denied.

229. Denied.

230. Denied.

231. Denied.

232. Denied.

233. Denied.

Plaintiff has an Equitable Right to Continued Processing of its Submissions

234. Denied.

235. Denied.

236. Denied.

237. Denied.

238. Denied.

239. Denied.

240. Denied.

241. Without knowledge, therefore denied.

242. Denied.

Vested Right—County's Bad Faith Gives Rise to a Vested Right

243. Denied.

244. Denied.

245. Denied.

246. Denied.

247. Denied.

248. Denied.

249. Denied.

250. Denied.

251. Denied.

WHEREFORE, Defendant requests this Honorable Court reject Plaintiff's requested relief.

MOTION TO DISMISS COUNT III PETITION FOR MANDAMUS

Defendant, VOLUSIA COUNTY, moves to dismiss Count III and requests this Honorable Court decline to issue an alternative writ. As grounds therefore, the County states:

1. Mandamus is only appropriate to enforce a clear legal obligation to perform a ministerial duty in a prescribed manor, and only if the petitioner has no other available legal remedies. *Milanick v. Town of Beverly Beach*, 820 So. 2d 317, 319 (Fla. 5th DCA 2001).

2. Mandamus may be used only to enforce a clear and certain right; it may not be used to *establish* such a right. *See Florida League of Cities v. Smith*, 607 So. 2d 397, 400–401 (Fla.1992).

3. Belvedere’s complaint and petition fails to establish that the County has a clear legal duty to “process[] and approv[e]” its site plan application. (Doc. 2 at 38.)

4. Belvedere’s complaint and petition fails to establish that processing and approving site plan applications are ministerial functions that require no discretion.

5. Belvedere’s complaint and petition belies any claim that mandamus relief is its only available remedy. *See Villa Bellini Ristorante & Lounge, Inc. v. Mancini*, 283 So. 3d 972, 980–81 (Fla. 2d DCA 2019) (noting that a mandamus is not available when the petitioner can seek declaratory relief and concluding “the circuit court erroneously crafted the legal remedy of a declaratory judgment from a mandamus action”).

6. The County reserves the right to provide additional facts and argument in its return and motion to quash any alternative writ.

AFFIRMATIVE DEFENSES

1. Defendant affirmatively states that Plaintiff fails to state a cause of action for declaratory relief and fails to establish a bona fide, actual, and present need for its requested declaration.

2. Defendant affirmatively states that Plaintiff’s claim for declaratory relief is subject to dismissal pursuant to the Court’s gatekeeper function. *See Ribaya v. Bd. of Trs. of City Pension Fund*, 162 So. 3d 348, 352 (Fla. 2d DCA 2015).

3. Defendant affirmatively states that Plaintiff's claim for injunctive relief is subject to dismissal because Plaintiff fails to show irreparable harm, a substantial likelihood of success on the merits, an inadequate remedy at law, and consideration of the public interest. *See DiChristopher v. Bd. of County Comm'rs*, 908 So. 2d 492 (Fla. 5th DCA 2005).

4. Defendant affirmatively states that Plaintiff has failed to establish the threshold issue of standing which must be addressed before the merits of the claims.

5. Defendant affirmatively states that any subsequent claim for damages should be barred or reduced due to Plaintiff's failure to mitigate.

6. Defendant affirmatively states that Plaintiff was aware of and assumed the risk of a potential zoning change.

7. Defendant affirmatively states the County can lawfully refuse to accept site plan applications pending changes to its I-2 zoning classification pursuant to the pending ordinance doctrine, also known as the zoning in progress rule. *See, e.g., Smith v. City of Clearwater*, 383 So. 2d 681, 689 (Fla. 2d DCA 1980); *Pompano Beach v. Yardarm Rest., Inc.*, 509 So. 2d 1295, 1297 (Fla. 4th DCA 1987); *Bailey v. Islamorada*, 874 So. 2d. 729 (Fla. 3d DCA 2004); and *WCI Communities, Inc. v. City of Coral Springs*, 885 So. 2d 912, 914 (Fla. 4th DCA 2004).

8. Defendant affirmatively states that it is a governmental entity entitled to sovereign immunity subject to the limited waiver provided by section 768.28, Fla. Stat. (2023).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been e-filed with the Clerk of Court using the Florida Courts E-filing portal which will serve notice and a copy to Nick Dancaescu, Esq., (Nick.dancaescu@gray-robinson.com) (Donna.flynn@gray-robinson.com) (Mariah.richardson@gray-robinson.com); Rachael M. Crews, Esq. (Rachael.crews@gray-robinson.com) (jamal.wilson@gray-robinson.com); and William T. Dove, Esq. (billy.dove@gray-robinson.com) on February 5, 2024.

/s/ W. Kevin Bledsoe
W. KEVIN BLEDSOE, ESQ.
Deputy County Attorney
Fla. Bar No.: 0029769
kbledsoe@volusia.org/ mefird@volusia.org
PAOLO S. SORIA, ESQ.
Senior Assistant County Attorney
Fla. Bar No.: 0085426
psoria@volusia.org / pquihuis@volusia.org
CHRISTOPHER D. RYAN, ESQ.
Assistant County Attorney
Fla. Bar No.: 0117931
cryan@volusia.org/ pquihuis@volusia.org
SARAH JONAS, ESQ.
Assistant County Attorney
Fla. Bar No.: 115989
sjonas@volusia.org/ mefird@volusia.org
123 W. Indiana Avenue
DeLand, Florida 32720
(386) 736-5950