

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY FLORIDA

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 502017CA006914XXXXMB

THE WATERVIEW TOWERS CONDOMINIUM ASSOCIATION, INC.,  
GERALD WALDMAN, and CHARLES KLEIN,  
Petitioners,

v.

THE CITY OF WEST PALM BEACH, and  
PALM HARBOR HOTEL, LLC  
Respondents.

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Opinion filed: JUN 08 2018

Petition for Writ of Certiorari from the City Commission of West Palm Beach.

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PER CURIAM.

We grant Appellee's motion for rehearing, withdraw our previous opinion, and replace it with the following.

This case stems from the proposed development of a parcel of land on Flagler Drive in downtown West Palm Beach. Palm Harbor Hotel, LLC, seeks to build a hotel on the parcel that is subject to a Declaration of Condominium that has been divided and permitted to be developed

into a separate commercial property. Petitioners opposed the development project, arguing it was contrary to certain lease documents and City Ordinances. After reviewing the application and holding a public hearing, the City Commission unanimously approved the development. Petitioners filed a Petition for Writ of Certiorari, requesting that this Court quash the City Commission's approval of the development.

This Court initially denied the Petition for Writ of Certiorari on March 5, 2018. Following this opinion, Petitioner filed a Motion for Rehearing, Clarification, and for a Written Opinion on March 30, 2018. In the Motion for Rehearing, Petitioners claim that the recent Fourth District Court of Appeal opinion regarding the proposed development plan is controlling law. *Waterview Towers Condominium Association v. City of West Palm Beach*, 232 So. 3d 401 (Fla. 4th DCA 2017). Specifically, this opinion found that portions of the Lease and Condominium Documents impose stricter requirements on building height and number of stories than previously argued. The opinion points to Article XXXVI of the Lease, which restricts the height of the commercial building to four (4) stories and to Site Plan 7, added to the Lease in 1979, which limits the commercial building to 20,000 square feet. Petitioners argue that this Court is bound by the Fourth District's opinion and thus must grant the Motion for Rehearing and Petition for Writ of Certiorari.

The Fourth District's opinion is an appeal from a declaratory action (case number 2014CA005009), in which plaintiffs, including Waterview Towers, asked the circuit court to declare that the hotel development plan "violated development plans in various documents." *Id.* at 404. The circuit court ruled, among other things, "Plaintiffs' standing to enforce the Declaration against the Commercial Portion is limited to provisions regarding the height and width of the commercial building," and "[d]evelopment of the C-2 Commercial Unit is not limited to a single four (4) story office building containing a maximum of 20,000 square feet." *Id.* at 407. In

reversing the circuit court's amended final judgment, the Fourth District held that the trial court erred in finding that the C-2 unit is not limited to a four-story building containing a maximum of 20,000 square feet; the number of stories and square footage restrictions are enforceable and limit the future development of C-2. *Id.* at 413.

In the Motion for Rehearing, Petitioners argue that the four-story, 20,000 square foot maximum for the commercial building does not comport with the proposed development plan's eight-story, 120,597 square foot building, and the Petition for Writ of Certiorari should be granted on this basis. Established law "can derive from a variety of legal sources, *including recent controlling case law*, rules of court, statutes, and constitutional law. *Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 890 (Fla. 2003) (emphasis added). Florida courts have recognized that when zoning ordinances vary from restrictive covenants in leases or deeds, "the most restrictive or that imposing the higher standards, shall govern." *Wood v. Dozier*, 464 So. 2d 1168, 1169 (Fla. 1985). "[R]estrictive covenants are enforced so long as they are not contrary to public policy, do not contravene any statutory or constitutional provisions, and so long as the intention is clear and the restraint is within reasonable bounds." *Hagan v. Sabal Palms, Inc.*, 186 So. 2d 302, 208-09 (Fla. 2d DCA 1966).

This Court finds that the Fourth District's opinion interpreting the same Lease and related documents at issue here constitutes the essential requirements of the law that the City must now follow. The development plan far exceeds the height and width restrictions in the Condominium Declaration, therefore the Petition for Writ of Certiorari is GRANTED and the City Commission's approval of the plan is QUASHED.

SMALL, ARTAU, and BOORAS, JJ., concur.

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Petition for Writ of Certiorari from  
City Commission of West Palm Beach;

THE CITY OF WEST PALM  
BEACH and PALM HARBOR  
HOTEL, LLC,  
Respondent(s).

Petition filed: June 21, 2017

DATE OF PANEL: JANUARY 23, 2018

PANEL JUDGES: SMALL, ARTAU, BOORAS

GRANTED/DENIED/OTHER: PETITION GRANTED

DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
	)	With/Without Opinion	)	With/Without Opinion	)
<i>Charles R. Artau 6/5/18</i>	)		)		)
DATE: J.	)		)		)
<i>Small 6/16/18</i>	)		)		)
DATE: J.	)		)		)
<i>WJ 6-7-18</i>	)		)		)
DATE: J.	)		)		)