THE SARASOTA
News Leader

Judge presiding over Siesta hotel litigation asks for complete copies of two county ordinances at heart of arguments in Ramirez case

August 17, 2023 by Rachel Brown Hackney, Editor & Publisher

Request comes a week after oral arguments in July

Circuit Judge Hunter Carroll. Image from the 12th Judicial Circuit website

On July 14, just a week after he conducted a hearing on the first case filed, in 2021, to challenge high-rise hotel development on Siesta Key, the 12th Judicial Circuit Court judge presiding over that case directed the Office of the Sarasota County Attorney to file the full text of two county ordinances that have been one focus in the litigation, *The Sarasota News Leader* has learned.

Circuit Judge Hunter Carroll wrote in his order, "As part of the analysis of the intensity and density of hotel development on the barrier islands allowed by zoning ordinances and regulations existing as of March 13, 1989, the Court finds it appropriate to review the complete text of Sarasota County Ordinance No. 75-38 … and the complete text of Sarasota County Ordinance No. 82-54 … Currently, only excerpts of Ordinance No. 75-38 are in the record and Ordinance No. 82-54 is not in the record."

The attorneys representing Siesta resident Lourdes Ramirez, who filed her suit in Circuit Court in November 2021, have maintained that the county's Comprehensive Plan — which guides growth — called for special protections of the barrier islands.

In Ramirez's complaint, one of her attorneys — Martha Collins of the Collins Law Group in Tampa — wrote, "A chapter in Volume 2 of [the Comprehensive Plan] states that "Barrier Islands are recognized as a unique land use category." Collins then quoted from the plan:

"Development on the Barrier Islands is of special concern due to problems associated with hurricane evacuation, potential for storm damage, and the sensitive nature of coastal habitats …"

Moreover, Collins pointed out, that chapter says, "The future distribution, extent and location of generalized land uses are not portrayed for the Barrier Islands, because **it is the continued policy of Sarasota County that the intensity and density of future development not exceed that allowed by existing zoning**." The emphasis is in the complaint.

Conversely, Assistant County Attorney David Pearce, plus the Tampa attorneys representing the Intervenors — the owners of the property and the developer of the planned 170-room, eight-story hotel on Calle Miramar, on the edge of Siesta Village — have contended that subsequent ordinances that amended the Comprehensive Plan made hotel development possible on the barrier islands without concerns regarding residential density.

In his July 14 order, Carroll also wrote that he recognized that calling for the supplements to the record "may prompt additional argument from the parties." Therefore, he continued, within 10 days of the filing of the complete ordinances, "[A]ny party may file and serve any supplemental argument prompted by such filings."

Pearce filed both ordinances with the court on July 21, the docket shows. Then, on July 31, both Ramirez and the Intervenors submitted briefs with supplemental arguments, the docket notes.

Originally, Circuit Judge Stephen Walker was assigned to the Ramirez case and the second hotel complaint — also filed in November 2021 — which challenged both the Calle Miramar hotel and the County Commission's approval of a seven-story, 120-room hotel planned at the intersection of Old Stickney Point Road and Peacock Road, in what is known as the South Village area of the Key. However, an attorney who has represented the developer of the second hotel — Siesta businessman Gary Kompothecras — filed notice with the court earlier this year that he would be joining the litigation. Because of Walker's association with that attorney, Charles D. Bailey III of the Williams Parker firm, Walker filed an order in which he recused himself from the litigation. Then Carroll was assigned to both cases.

This graphic shows the property, outlined in red, where the Calle Miramar hotel would stand. Image courtesy Sarasota County Property Appraiser

After Carroll took over from Walker, he first won agreement from all parties that the cases could be consolidated, and he tentatively set a trial date for a court civil proceedings period that begins in November.

The July 7 oral arguments focused only on summary judgment arguments in Ramirez's case. At its conclusion, Carroll told the parties that, given the complexities of the case, it likely would take him weeks to issue a ruling.

Walker had conducted summary judgment arguments in early January.

"Summary judgment" refers to the ability of a judge to issue a decision in litigation without a trial. In this situation, Carroll could agree with Ramirez's arguments or those of the county and the Intervenors, eliminating the necessity of a trial.

During both the Jan. 6 oral arguments and the July 7 proceedings, Assistant County Attorney Pearce figuratively walked the judges through sections of multiple county ordinances to try to persuade them that the County Commission did not violate a Future Land Use policy when it approved the Calle Miramar hotel, as Ramirez asserts.

Ramirez's supplemental arguments

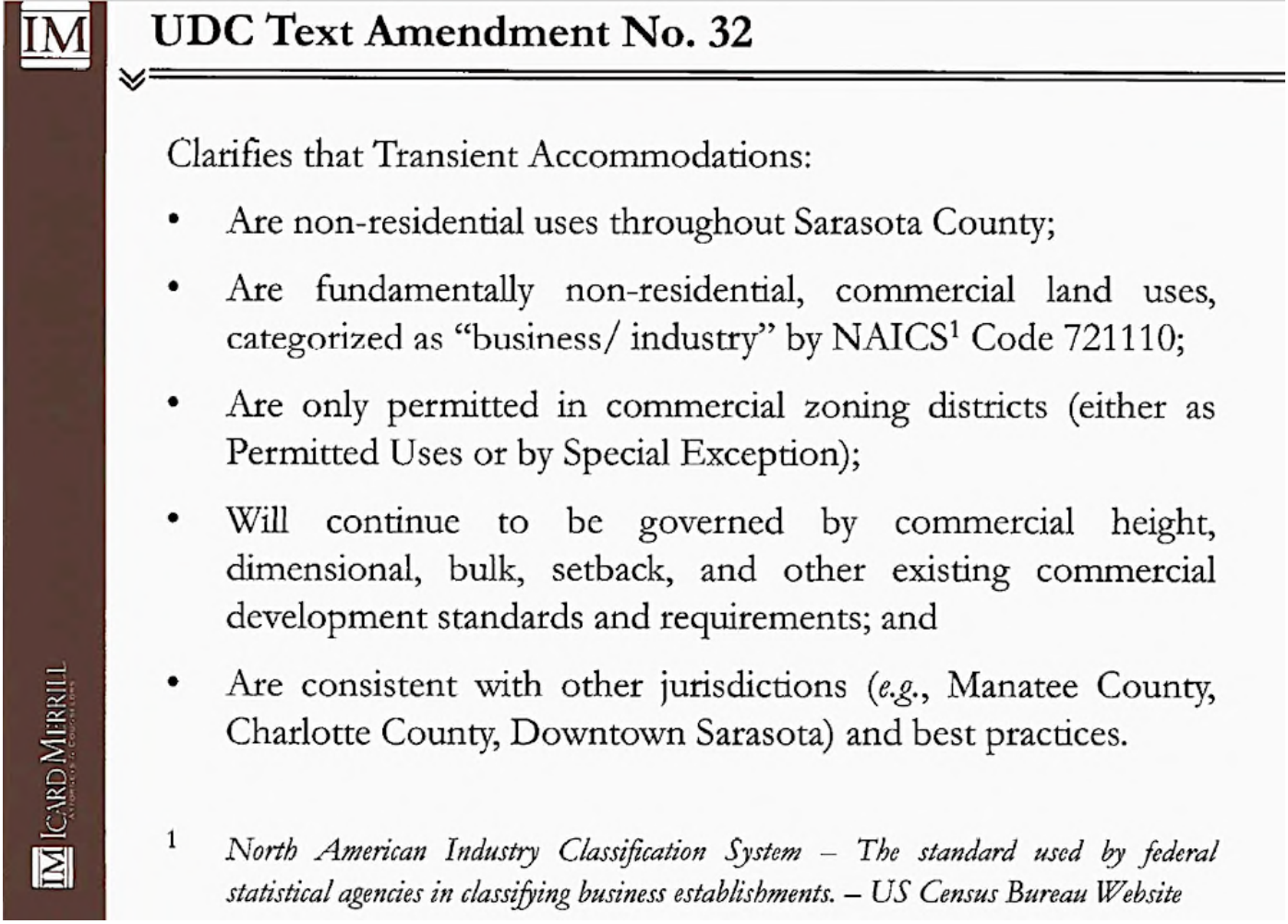
The policy that has been a major focus of Ramirez's complaint is Future Land Use Policy 2.9.1 in the Comprehensive Plan. It says, in part, "The intensity and density of future development on the Barrier Islands of Sarasota shall not exceed that allowed by zoning ordinances and regulations existing as of March 13, 1989."

In Ramirez's complaint, her attorneys contended that the approval of the hotel "will materially increase the density and intensity of the Subject Property over that allowed by the Sarasota County zoning ordinances and regulations existing as of March 13, 1989, because under those regulations the Subject Property could be developed as a hotel with a maximum of 25 transient residential units (26 units per acre x .96 acre size) and up to 25 parking spaces, whereas under the Development Order the Subject Property can be developed as an eight-story, 80-foot-high hotel with 170 rooms (transient residential units), a restaurant/bar, retail shops, and 223 public and private parking spaces."

"Development Order" refers to the County Commission's vote in favor of the project.

Prior to approving the hotel application — on a 3-2 vote, on Oct. 27, 2021 — the majority of the county commissioners also voted 3-2 to amend the county's Unified Development Code (UDC), which contains all of the county's land-use and zoning regulations. That modification specified that hotel rooms no longer would be counted as residential units in most of the county.

Attorney William Merrill III of the Icard Merrill firm in Sarasota, who was part of the hotel project team, pointed out that national standards specify that hotel rooms are commercial in nature; therefore, the rooms should not count toward residential density.



This is information about the text of the Unified Development Code amendment that the County Commission approved on a 3-2 vote after the Calle Miramar hearing on Oct. 27, 2021. Image courtesy Sarasota County

In early 2022, Ramirez also filed a challenge of the County Commission action with the Florida Division of Administrative Hearings (DOAH), contending that the County Commission violated several policies in the Comprehensive Plan by approving the Calle Miramar hotel. The administrative law judge who presided over a hearing in the DOAH case, in November 2022, agreed with Ramirez's position and issued a final order to that effect in early April.

Administrative Law Judge Suzanne Van Wyk wrote that the County Commission violated both the Future Land Use Policy 2.9.1 and Coastal Policy 1.2.3. The latter reads, "Encourage hotel/motel development in the storm evacuation zones category C, D, and E, rather than evacuation zones A and B." Siesta Key, she pointed out, is in Zone A.

Both the county and the Intervenors have filed an appeal of that decision with Florida's First District Court of Appeal, in Tallahassee, where the DOAH is located.

In the supplemental argument in the Circuit Court case, Ramirez's attorneys — Richard Grosso of Plantation and Collins — continue to contend that the 1975 county ordinance, whose full text Judge Carroll requested, set a maximum density of hotel rooms in the Commercial General (CG) zoning district of either 36 or 26 per acre. The attorneys referenced "an ambiguity in [Ordinance] 75-38" in regard to that number.

This is a rendering of the hotel on Calle Miramar, as shown to the County Commission by the project team in October 2021. It is east of the Terrace East condominium complex on Ocean Boulevard. Image courtesy Sarasota County

The Calle Miramar hotel site is zoned Commercial General. County regulations allow a hotel on Commercial General parcels if the County Commission grants a Special Exception for that purpose.

"Ordinance 75-38 amended the county's 1975 Land Use plan, which had been adopted on March 13, 1975, and includes a notation stating 'This Element is prepared by the Long-Range Planning Division of the Sarasota County Planning Department **as part of the Sarasota Comprehensive Plan**,' " Grosso wrote with emphasis in the supplemental filing.

Then Grosso cited two policies in the 1975 Land Use Plan, one of which was to "discourage high-rise development and medium or higher density zoning ... on the keys." The other specifically discouraged "**multi-family and hotel-motel development on the Keys** [his emphasis again]."

Further, he pointed out that the 1975 plan stated, " '**[r]esidential densities and commercial land uses are minimized on the offshore barrier islands** due to their inherent environmental limitations and the difficulty of providing safe and efficient transportation and other community facilities [emphasis once more in the document].' "

Moreover, he noted that Ordinance 75-38 said that " '**each hotel ... unit shall be considered a dwelling unit**.' "

Then Grosso explained that Ordinance 82-54 amended Ordinance 75-38 "to create the Residential, Tourist Resort District, 'intended to provide for tourist and other transient accommodations and facilities. Permitted uses include hotels ...' " That ordinance, he added, also said, "It is generally intended to utilize these districts to implement the Comprehensive Plan ... within ... '*Designated Urban Areas*' on the Future Land Use Map."

"Barrier Islands," he pointed out, "were not in a 'Designated Urban Area.' "

Moreover, Grosso wrote, "Ordinance 82-54 was adopted under the 1981 Comprehensive Plan, which strengthened the 1975 Plan's discouragement of hotel density on the Keys by creating a separate Barrier Island land use category and mandating that the 'intensity of future development on the barrier islands ... shall not exceed that allowed by existing zoning' and that '[p]arcels which are undeveloped and zoned Commercial General (CG) uses are to be down zoned to a less intensive zoning district category.' Ordinance 82-54 established the Resort Tourist, Residential zoning category as the primary location for hotels, allowing hotels on CG lands only by 'special exception,' and maintaining the existing density limits on the number of hotel rooms or units."

Additionally, Grosso noted that the county and the Intervenors claim that Ordinance 83-08 deleted the clause in Ordinance 75-38 that said each hotel and motel room "shall be considered a dwelling unit" and replaced it with a clause stating the following: "A

transient accommodation [the county's term for hotel and motel rooms] means a dwelling unit ***or other accommodation used as a dwelling unit*** **or other place of human habitation with sleeping accommodations** … which is rented, leased or subleased for less than monthly periods … . […] Transient accommodations shall include hotels, motels … and other similar uses. A transient accommodation shall be considered a residential use." (emphasis added)."

Then Grosso contended, "This definition does two things that refute the Defendants' theory. First, it treat hotels categorically as residential uses, with no caveat or limitation for specific issues addressed by the code. **The Defendants have never explained what purpose this sentence serves if not to apply residential density limits to hotels. Neither, importantly, have they ever pointed to anything in the Comprehensive Plan or any relevant ordinance stating that "kitchenless" hotel rooms are governed by commercial bulk, not residential density, standards**."

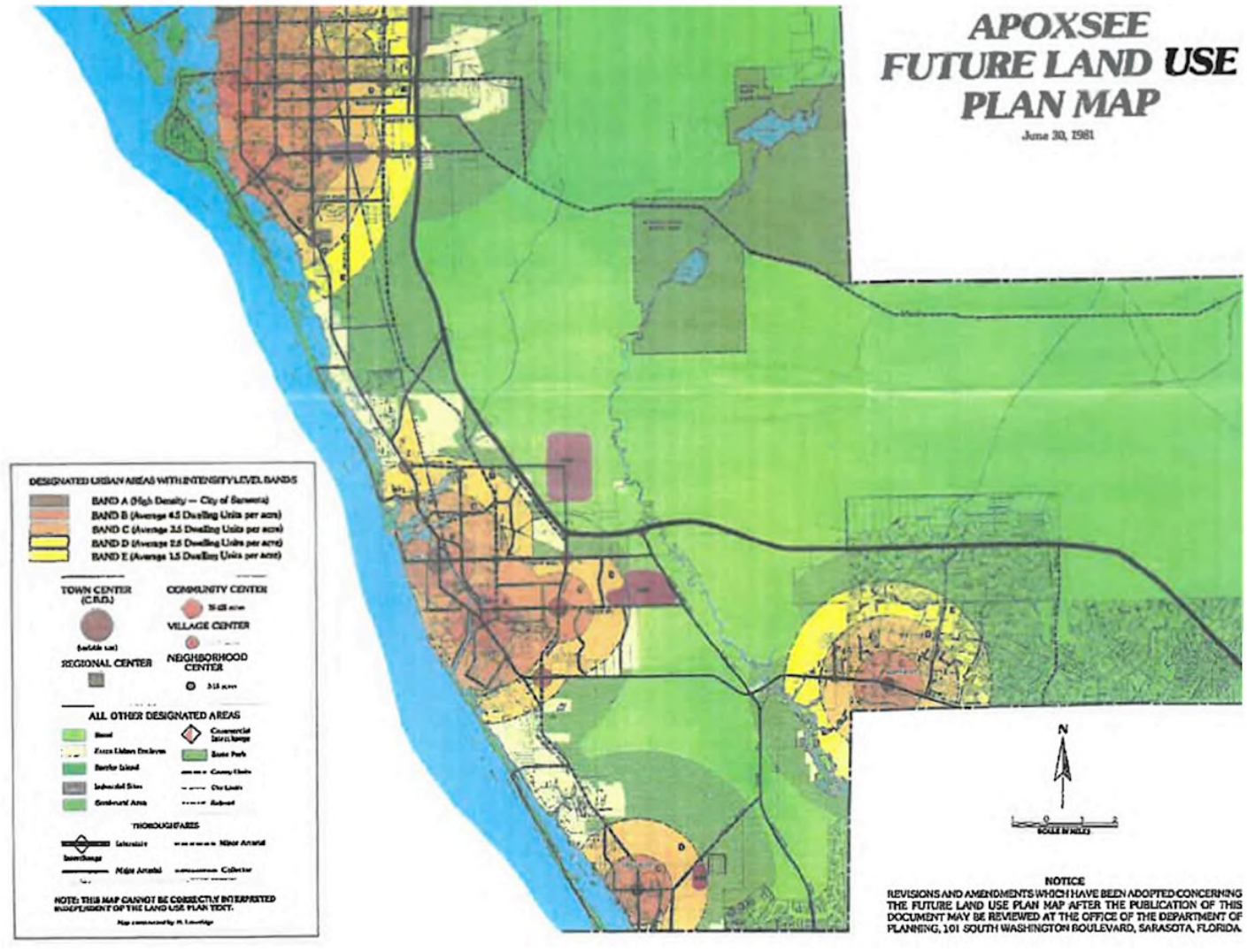
Both Assistant County Attorney Pearce and the Intervenors' attorneys — Scott McLaren and Shane Costello of Hill Ward Henderson in Tampa — have cited county ordinances in contending that a hotel room without a kitchen is not considered a dwelling unit.

The Intervenors' position

In their supplemental filing for the Intervenors, McLaren and Costello also cite changes from the 1975 ordinance to the 1983 ordinance. They stress, "Under decades of controlling precedent on the interpretation of zoning regulations, the Court cannot interpret the County's zoning ordinances to restrict the use of property where they do not clearly do so."

They cited a 2020 Florida Second District Court of Appeal decision in *Persaud Properties FL Investments, LLC v. Town of Fort Myers Beach* and a 1968 Third District Court of Appeal case, *City of Miami Beach v. 100 Lincoln Rd., Inc.*, as the basis for that assertion.

Through Ordinance 83-08, McLaren and Costello add, the county removed the countywide maximum residential density for hotels "and replaced it with **a maximum residential density for hotels only <u>within the Intensity Level Bands</u>** [their emphasis]…" They were referring to section of the county regulations that specified density limits on the basis of location.



MAXIMUM RESIDENTIAL DENSITY:
(Dwelling units per acre, see Sec. 28.33, "Density, Residential" definition.)

2. Transient accommodations where not more than twenty-five percent (25%) of the units have cooking facilities:

Intensity Level Band (see Future Land Use Plan Map in Apoxsee)	Maximum Density (subject to provisions of Apoxsee)
Band B	36
Band C	26
Band D	18
Band E	12

3. Transient accommodations where more than twenty-five percent (25%) of the units have cooking facilities:

Intensity Level Band (see Future Land Use Plan Map in Apoxsee)	Maximum Density (Subject to provisions of Apoxsee)
Band B	18
Band C	13
Band D	9
Band E	6

The map, above, and this chart provide details about the 'IntensityLevel Bands.' Image courtesy Sarasota County

That ordinance still allowed hotels by Special Exception in the Commercial General zoning district, they continued. However, the barrier islands were not included in those Intensity Level Bands, they have stressed. "Such were the zoning regulations for hotels on [Commercial General] CG zoned properties on March 13, 1989," they point out.

"Any intent by the County to restrict hotel density on CG properties outside the Intensity Level Bands (which is disputed), is not legally enforceable because the Court cannot rewrite the zoning ordinances to include such restriction where it does not exist," they add, citing a 2008 Florida Supreme Court decision in *Lawnwood Med. Ctr, Inc. v. Seeger*.

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1 thought on "Judge presiding over Siesta hotel litigation asks for complete copies of two county ordinances at heart of arguments in Ramirez case"

Bernard P. Friel
August 18, 2023 at 2:37 pm

My congratulations to SNL for its excellent, comprehensive, and understandable coverage of this important litigation, and my best wishes for Ramirez's success !!

Comments are closed.