

Appeals court hears challenge to Royal Poinciana Playhouse ruling

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A three-judge appeals court panel heard arguments today in a PAC's challenge of a lower-court ruling that a proposed referendum designed to shield the Royal Poinciana Playhouse from demolition was unconstitutional.

The referendum was advanced in a petition drive orchestrated by Preserve Palm Beach and its leader, Patrick Flynn.

In November, Palm Beach County Circuit Court Judge David Crow sided with the town in its opposition to the PAC's and Flynn's effort to get a referendum on the ballot that would mandate voter approval before changes could be made to a 1979 property-use agreement between the town and the owners of the Royal Poinciana Plaza.

If passed, the referendum would require that two provisions from the agreement be incorporated into the town charter. One would forbid new construction at the plaza, and the other would require that the Playhouse only be used as a "theater of the performing arts and/or visual arts or for lectures and other special events."

If the referendum survives the legal challenge, the town charter obligates the town to put it on the ballot at the next general election or hold a special election.

During the hearing before the Fourth District Court of Appeal, attorneys for the opposing parties reiterated and refined arguments already aired in the lower court.

Town attorney John Randolph argued that the March 1979 agreement was a development order covering five or fewer parcels, which is protected from referendums under state law.

Attorney Robert Hauser, representing the PAC and Flynn, maintained that the Town Council's decision at a February 1979 meeting to grant the owners of the plaza a variance to build a structure on the property constituted the development order. The March 1979 agreement that followed is a contract, which is subject to referendums, he said.

"This is a contract, and it can be enforced," Hauser said. "The decision that must be made is who controls the enforcement of the contract."

Currently the town decides, but if the referendum passes, that control would pass to the voters, he said.

Randolph countered that without the March 1979 agreement, no development could have occurred at the plaza.

The agreement is not a simple contract, he argued. If the owners want to develop the property in the future, they will have to go to the Town Council and request another development order, he said.

"What this referendum is calling for is subsequent referendums on future development orders," which would be illegal under state statute, Randolph argued.

The judges' questions challenged both sides' points of view.

"The power of the ballot box in a representative government is that when the government does something you don't like, your remedy is to vote those people out of office," said Judge Mark Polen. "Isn't the remedy of the people of Palm Beach who want that theater preserved to vote out the council members who don't agree with that?"

The state statute forbidding referendums governing properties of five parcels or less was designed to protect local governments from being micromanaged by their constituencies, Polen said.

Judge Martha Warner challenged the town's position that the March 1979 agreement was a development order rather than a contract.

"Isn't an order an order and not a mutual agreement?" she said. A development order alone could not create a covenant that runs with the land and obligates successive owners to abide by it, as the March 1979 agreement does, she said.

John Little, representing Sterling Palm Beach, which intervened in the case, said there is no legal reason why a development order cannot also be an agreement.

It's not certain when the appeals court will rule.

"I expect it will be a long time before we hear from them," Hauser said after the hearing.

Flynn said he was encouraged by the hearing and the tenor of some of the judges' questions.

At the moment, speculation about the court's position is just that.

"The arguments went well," Randolph said. "Now the decision rests with the court."

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