

Testa v. Town of Jupiter Island, No. 4D22-432, 2023 WL 1808293 (Fla. 4th DCA Feb. 8, 2023)

Fourth DCA Holds All Local Government Public Hearings Must Be Re-Noticed Even if the Public Hearing is Continued On the Record

On May 7, 2019, the Town of Jupiter Island (the “Town”) adopted Ordinance 376, which modified the waterfront setback line in the Town’s Land Development Code. The Town Commission conducted the first reading of Ordinance 376 on March 18, 2019. Thereafter, the Town published notice in *The Stuart News*, a newspaper of general circulation, that the second reading would occur at the Town’s Commission’s April 15, 2019 meeting. At the April 15 meeting, the Town Commission voted on the record to postpone the second reading until its May 7, 2019 meeting. Unlike the April 15 meeting, the Town did not re-advertise the second reading on May 7, 2019, and instead published the May 7, 2019 draft agenda by e-mail to all Town residents, which included “Ordinance 376 – Second Reading.”

On June 2, 2021, nearly two years after Ordinance 376 was adopted, a town resident (the “Plaintiff”) filed suit against the Town seeking a declaratory judgement to void Ordinance 376 based on the Town’s failure to comply with the notice requirements in section 166.041(3)(a), Florida Statutes (2018). Section 166.041 requires that a proposed ordinance be noticed in a newspaper of general circulation in the municipality at least 10 days prior to adoption and requires the notice to state the date, time, place of the meeting, title of the proposed ordinance, and a place where the proposed ordinance may be inspected by the public. The Plaintiff argued that strict adherence to these notice requirements was required and that Ordinance 376 was *void ab initio*. The circuit court entered a written order finding that (1) the Town had complied with section 166.041(3)(a)’s minimum notice requirements which require a proposed ordinance to be noticed once, at least ten days prior to adoption – not a ten day notice of the hearing at which the ordinance is adopted; and (2) the Town was not required to comply with section 166.041(3)(c) and denied Plaintiff’s request for injunctive relief.

On appeal, the Fourth DCA held that the Town did not strictly adhere with section 166.041(3)(a)’s minimum notice requirement because a new notice was not sent out to the public for the May 7, 2019 meeting. The Court based its opinion on statutory construction, in that “every word, phrase, sentence and part of” section 166.041(3) must be given significance and effect. Thus, the Court held that a notice of a proposed enactment is only effective for the meeting date, time, and place stated in the notice and not for any other meeting, date, regardless of the reason for the continuation. To fully comply with the statutory notice requirements, the Town would have to re-advertise the proposed ordinance in a newspaper of general circulation prior to the postponed second reading date. The Court remanded the matter back to the circuit court for a trial on the Town’s affirmative defenses of laches and waiver.

STEARNS WEAVER MILLER

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