

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

CASE No. 2017 CA 000300  
DIVISION:

THE GROUP GOLF OF PALM COAST, LLC,  
A Florida limited liability company,

vs.

CITY OF PALM COAST, FLORIDA, a subdivision of  
the State of Florida.

\_\_\_\_\_ :

**COMPLAINT AND DEMAND FOR JURY TRIAL**

1. In this action The Group Golf Of Palm Coast, LLC (hereinafter “Group Golf”) seeks to enjoin the Defendant City of Palm Coast, Florida (hereinafter “Palm Coast”) from arbitrarily and selectively enforcing alleged ordinances and regulations regarding the condition and maintenance of Group Golf’s property and buildings upon said property. Group Golf, LLC, specifically appeals and challenges the Code Enforcement Board’s Order of April 11, 2017.
2. This Court has jurisdiction to decide this action and to grant the requested injunctive and compensatory relief pursuant to Florida Statutes and 42 U.S.C. §1983 and the Fourteenth Amendment to the United States Constitution.
3. This action is properly brought in Flagler County, Florida.
4. Group Golf seeks to enjoin Palm Coast from enforcing vague, unspecified and inapplicable ordinances which treat Group Golf’s property in a disparate fashion from other similar properties located adjacent to Group Golf’s property and from other similarly situated properties throughout Palm Coast.
5. Group Golf contends that Palm Coast has violated Group Golf’s due process rights by:

- (a) Failing to give proper and adequate notice of alleged code violations;
- (b) Failing to use and implement a meaningful hearing and appeals process;
- (c) Failing to identify valid and reasonable standards;
- (d) Failing to identify the zoning classification which applies to Group Golf's property;
- (e) By giving notice by posting notices on a property which Palm Coast knows is not occupied and is managed by out of town owners; and
- (f) by failing to provide any provision with the City of Palm Coast Ordinance Code by which a property owner may "mothball" an unused building while new plans for the property are being worked out.

6. Group Golf further contends that Palm Coast has violated the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States in that Palm Coast is attempting to hold Group Golf to an unrealistic and unachievable standard of property maintenance, to wit, the City seeks to have Group Golf demolish five structures, a large parking lot and former golf cart paths which run at great lengths over a two hundred seventy seven acre (277) acre property in an unreasonable and unrealistic time frame.

7. Palm Coast is attempting to seize Group Golf's property through foreclosure based on fines alleged to have accrued upon Palm Coast's irrational and discriminatorily enforced maintenance standards.

8. Group Golf contends that Palm Coast is depriving Group Golf of its right to own property and utilize it in a peaceful and meaningful and gainful manner, without any due process and Palm Coast is seeking to discriminate against the Group Golf by treating it differently than all other similarly situated property owners within Palm Coast.

9. Group Golf seek compensatory damages for the harm it has suffered and will suffer due to Palm Coast's harassment, arbitrary and discriminatory enforcement of vague and unlawful alleged standards.

### **Parties**

10. Defendant Palm Coast is a political subdivision of the State of Florida.

11. Group Golf, LLC, is a limited liability company created and existing under the laws of Florida.

### **Factual Allegations**

12. Group Golf is the sole owner of a two-hundred plus acre property situated in Flagler County, Florida, which is commonly known as the Former Matanzas Woods Golf Course (hereinafter "The Property").

13. The golf course that was constructed roughly twenty-four years ago on The Property ceased to operate and exist over eight (8) years ago.

14. Following Group Golf purchasing The Property in 2014 Palm Coast cited Group Golf for alleged code violations related to building conditions and maintenance of the course, to wit, the need for The Property to be mowed.

15. Palm Coast maintained and still seeks to hold Group Golf to a standard of maintaining The Property as though it were still operating as a golf course today.

16. Group Golf maintains that The Property is not currently a golf course and that it will never again be a golf course and that it is irrational and arbitrary for Palm Coast to try to hold Group Golf to any such standard.

17. Palm Coast has never identified with any specificity why Palm Coast maintains that the former clubhouse, the former golf cart storage shed and the former maintenance building and

two bathrooms should all be torn down. Palm Coast has never had any structural expert examine or inspect any of the buildings at issue.

18. The buildings at issue are structurally sound; are secured and present no hazard or danger to anyone.

19. The buildings at issue will serve a useful purpose in the future development and operation of the property.

20. Palm Coast Code Enforcement Officials insist for arbitrary reasons that the buildings at issue be restored and used to operate a golf course or that they be torn down.

21. A copy of the Code Enforcement Board's Order being challenged is attached hereto as Exhibit "A." The Order required that permits be pulled to demolish the buildings within fifteen (15) days. While the Order does not recite such the Building Official Mike Lee made clear that the City also expected all related concrete and asphalt which would include a large parking lot and all of the golf cart paths traversing the 277 acre property to be demolished within 60 days – a feat which is not reasonably or logistically possible for Group Golf. The Code Enforcement Board specifically orally recited that the Board was ordering the large parking lot to be removed within the sixty (60) day period as well.

22. Furthermore, following entry of the Code Enforcement Board's Order the City's Building Department has internationally made it difficult for Group Golf to demolish three of the buildings at issue by imposing unduly formalistic requirements in order for the buildings to be demolished including but not limited to a formal site plan identifying the "buildings and such for demolition." Thus, in order to comply with the City's demolition order Group Golf is having to retain a civil engineer to draw a site plan, an engineering firm to define the proper demarcation for slab termination, a demolition company to demolish the structures, an electrical contractor to

terminate electrical service, a fire sprinkler company to separate service and a plumbing contractor to terminate water and sewer service. Finding and hiring those professionals and contractors takes time and those professionals and contractors in turn each have other projects which they have underway and they each will have to schedule time to accomplish their part of the project. In short, the City's Building Department's formalistic requirements to permit a demolition, let alone the time required to carry out a demolition with the pre and post inspections, cannot be complied with within the short time windows imposed by the Code Enforcement Board.

23. The City is treating Group Golf in a disparate manner from the former property owner for whom the City simply required the buildings at issue to be secured. Palm Coast's animus towards Group Golf is demonstrated by Palm Coast on May 21, 2014 having notified the former property owner that what Palm Coast expected of the former owner in regards to the Clubhouse and Cart House was for the former owner to: "Regularly Monitor both structures and parking lot and keep them secure." Palm Coast also directed the former owner to:

- "Repair or Removal of the Damaged Awning that is between the two buildings."
- "Restricting access to the Clubhouse and Cart House Parking Lot with tall fencing that also acts as a visual deterrent." A copy of Michael Esposito's May 21, 2014 email to Greg Kong is attached hereto as Exhibit "B." Yet, almost immediately after Group Golf took ownership of the Property Palm Coast was demanding demolition of those same structures as well as demolition of the metal maintenance building.

24. Group Golf intends to develop the property into a farm with orchards, vineyards and an agritourism component utilizing the existing cart paths as walking trails. Group Golf will also develop and build a reasonable number of residences, a number of which may include an assisted

living component, upon its property. The Property has lain fallow for eight years and Group Golf believes The Property will readily be classified as an organic farm. Group Golf has no desire or intention to engage in a widespread herbicide program which would contaminate the entire property with undesirable chemicals.

25. Palm Coast's arbitrary rules regarding property maintenance as applied to Group Golf are not reasonably necessary to secure the health, safety, good order, and general welfare of the public.

26. Palm Coast is not able to articulate what the current zoning status is of Group Golf's property. Group Golf believes that the property reverted to its former zoning classification when the former golf course failed and that the property is now zoned for agricultural use.

27. Group Golf will suffer significant financial injury and loss through loss of its property and through imposition of fines based upon irrational and arbitrary standards which Palm Coast seeks to impose upon Group Golf.

#### **COUNT ONE (PROCEDURAL DUE PROCESS)**

28. Group Golf adopts and incorporates by reference paragraphs 1 through 26 of the preceding Complaint and Demand for Jury Trial.

29. Palm Coast's application of unpublished and un-promulgated arbitrary and irrational standards constitutes a violation of Group Golf's due process rights.

30. Palm Coast's failure to have any provision within its Ordinance Code which would allow a property owner to mothball a building is a violation of a person's right to own property. Under

the current City Code a building which is not in use for any length of time for the purpose for which it was originally permitted must be immediately restored to the same use or torn down. \

31. City of Palm Coast Official Mike Lee testified under oath that the City was requiring the buildings to be demolished and for the land to be restored to its “natural state.” Mr. Lee went so far as to specify the type of ground cover which should be planted once the pavement was removed. Thus, on the one hand the City is requiring the property to be mowed as though it were a golf course and other hand the City is now ordering the property owners to restore the property to its “natural state.”

32. The Code Enforcement Board’s Order is overreaching, arbitrary, unenforceable and overreaching. The Board has in short ordered the impossible.

33. The fines ordered by the Code Enforcement Board are overreaching, arbitrary and constituted a denial or due process and cruel and unusual punishment under the State of Florida and Federal Constitutions.

34. Palm Coast has by enforcing arbitrary and irrational rules deprived Group Golf of due process as guaranteed by the Fourteenth Amendment to the United States in that the County has deprived Group Golf of significant property interests without due process or hearing on the basis of an irrational and arbitrary rules that have no rational basis, including but not limited to the right to own property, the right to develop property, the right to be treated in a nondiscriminatory manner that is consistent with the treatment of any other lawful property owner, the right to engage in a lawful business and to pursue a livelihood, and the right to compete fairly with other competing properties.

35. The arbitrary, capricious, unreasonable and undefined regulations which Palm Coast seeks to enforce – including the order to demolish all structures which per City of Palm Coast’s

official policy would include all related pavement thus necessitating removal of former golf cart paths which traverse the entirety of the 277 acre property - deprive Group Golf of its due process rights.

**WHEREFORE** the Group Golf respectfully requests the Court to:

- A. Assume jurisdiction of this cause of action;
- B. Declare the notice and enforcement procedures used by Palm Coast to be due process violations;
- C. Declare all fines and costs imposed by Palm Coast upon Group Golf to null and void and of no effect because Palm Coast had deprived Group Golf of significant property interests without notice and without an opportunity to be heard and that such action deprives the Group Golf of Due Process of Law guaranteed by the Fourteenth Amendment to the United States Constitution;
- C. Declare all fines and costs imposed by Palm Coast upon Group Golf to null and void and of no effect because the proposed fines constitute cruel and unusual punishment under the State of Florida and Federal Constitutions;
- D. Issue a permanent injunction restraining the Defendant from further using such faulty and arbitrary enforcement mechanisms to fine Group Golf;
- E. Pending the final determination of this action issue a temporary injunction restraining Palm Coast from further citing or fining Group Golf for any alleged code violations related to The Property;
- F. Vacate and hold the Code Enforcement Board's Order of April 11, 2017 is void;
- G. Award Group Golf its costs and attorney's fees under 42 U.S.C. §1988 herein;
- H. Award the Group Golf compensatory damages for the injuries it has suffered; and



I. Award Group Golf such further and alternative relief as the Court deems just and equitable.

**COUNT TWO (EQUAL PROTECTION)**

36. Group Golf adopts and incorporates by reference paragraphs 1 through 26 of the preceding Complaint and Demand for Jury Trial.

37. Palm Coast by enforcing purported property maintenance standards upon Group Golf which Palm Coast does not enforce upon:

- (a) any similarly situated adjoining property owners;
- (b) upon similarly situated Palm Coast resident property owners;
- (c) upon the former owners of The Property; or
- (d) upon similarly situated property owned by other developers

has deprived Group Golf of equal protection as guaranteed by the Fourteenth Amendment to the United States in that Palm Coast is treating Group Golf differently and intentionally treating Group Golf in a harsh and unfair manner in regards to similarly situated competing properties and businesses.

38. As one drives down Matanzas Parkway and as one drives down the roads which encircle The Property numerous other properties owned by other developers and other persons and entities lie in disheveled states due to no maintenance of any kind being carried out upon those properties.

39. Palm Coast is violating Group Golf's due process rights by intentionally and vexatiously imposing unrealistic standards and burdens upon Group Golf which Palm Coast does not impose

or enforce upon any other similarly situated property owner including property which is owned by Palm Coast.

40. Palm Coast is violating Group Golf's due process and equal protection rights by not allowing Group Golf to mothball the buildings it owns which are not presently in use.

41. Group Golf expended significant moneys on purchasing The Property and in conducting maintenance and repairs upon the property.

**WHEREFORE** Group Golf respectfully requests the Court to:

- A. Assume jurisdiction of this cause of action;
- B. Declare that all fines, costs and liens imposed by Palm Coast upon Group Golf are null and void and of no effect because Palm Coast has deprived Group Golf of its rights of Equal Protection as guaranteed by the Fourteenth Amendment to the United States Constitution;
- C. Issue a permanent injunction restraining the Defendant from further using such faulty and arbitrary enforcement mechanisms to fine Group Golf;
- D. Pending the final determination of this action issue a temporary injunction restraining Palm Coast from further citing or fining Group Golf for any alleged code violations related to The Property;
- E. Vacate and hold the Code Enforcement Board's Order of April 11, 2017 is void;
- F. Award Group Golf its costs and attorney's fees under 42 U.S.C. §1988 herein;
- G. Award the Group Golf compensatory damages for the injuries it has suffered; and
- H. Award Group Golf such further and alternative relief as the Court deems just and equitable.

**COUNT THREE (STATUTORY VIOLATION)**

42. Group Golf adopts and incorporates by reference paragraphs 1 through 26 of the preceding Complaint and Demand for Jury Trial.

43. The Code Enforcement's Board's findings are not supported by any rational, reasonable or substantial evidence.

44. The Code Enforcement Board's Order is void.

45. The fines ordered by the Code Enforcement Board are not supported or warranted by competent substantial evidence or the standards set bet Florida statutes and law.

**WHEREFORE** Group Golf respectfully requests the Court to:

- A. Assume jurisdiction of this cause of action;
- B. Declare that all fines, costs and liens imposed by Palm Coast upon Group Golf are null and void and of no effect.
- C. Vacate and hold the Code Enforcement Board's Order of April 11, 2017 is void;
- D. Award Group Golf its costs and attorney's fees; and
- E. Award Group Golf such further and alternative relief as the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

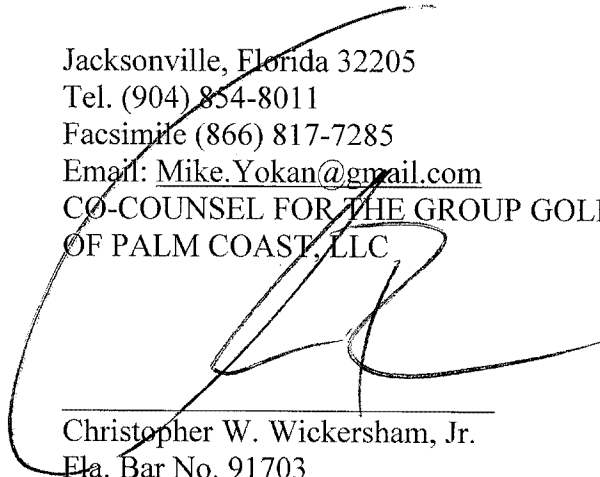
In accordance with Rule 1.430, Florida Rules of Civil Procedure Group Golf hereby demands a jury trial on all issues triable by a jury.

Respectfully submitted,



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CO-COUNSEL FOR THE GROUP GOLF  
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CO-COUNSEL FOR THE GROUP GOLF  
OF PALM COAST, LLC

Parcel ID: 07-11-31-7037-ORP0A-0002

Legal Description:

Section 37 Block Lot

Lakeview Subdivision

ONC

**CITY OF PALM COAST  
CODE ENFORCEMENT BOARD  
PALM COAST, FLORIDA**

Code Enforcement Case Number: 2017010508

OCM# 9171 9690 0162 0657 22

CITY OF PALM COAST,  
Petitioner

Vs.

Group Golf of Palm Coast,LLC  
Respondent

**ORDER OF NON-COMPLIANCE**

This matter came to be heard by the City of Palm Coast Code Enforcement Board on 5th day of April, 2017, after proper notice to Respondent who was present. Based on the testimony and evidence submitted, the Board hereby makes the following:

**FINDINGS OF FACT**

1. The Respondent is the property owner of 398 Lakeview Blvd., the legal description and parcel identification number of said property is stated above, and there has been the following violation:  
No Permit for Structures, Palm Coast Code Section 15-1-111-4.
2. The Respondent has not brought the property into compliance as of April 04, 2017.
3. The Board has considered the following factors in determining the amount of the fine;
  - a. The gravity of the violation
  - b. The actions taken by the violator to correct the violation and
  - c. Any previous violations committed by the violator.

AI#45

**Exhibit "A"**

6. This Order may be appealed by an aggrieved party to the Circuit Court within 30 days of its execution.

DONE AND ORDERED this 11th day of April, 2017.

CITY OF PALM COAST, FLORIDA CODE ENFORCEMENT BOARD

Attest: [Signature]  
William Wry, Code Enforcement Clerk

By: [Signature]  
Norman Mugford, Chairman

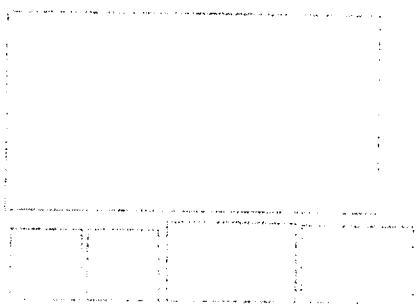
Certificate of Service

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished to Group Golf of Palm Coast, LLC at 2720 Park Street STE 210, Jacksonville, FL 32205 by Certified Return Receipt and first class mail delivery, this 11th day of April, 2017.

[Signature]  
William Wry, Senior Staff Assistant



ONC



**From:** Greg Kong [mailto:gregkongpa@gmail.com]  
**Sent:** Wednesday, May 21, 2014 8:17 PM  
**To:** Michael Esposito  
**Subject:** Re: Matanzas Golf Course Discussion...

Michael,

We really appreciate you getting back to us in a promptly manner.

Look forward to speaking in the future.

Best regard,

Greg

On Wednesday, May 21, 2014, Michael Esposito <mesposito@palmcoastgov.com> wrote:

Greg,

It was a pleasure talking to you. I wanted to provide a review of our conversation this morning regarding the golf course and it's maintenance.

He are the items that we discussed:

1. **Minimum Maintenance Standards.** The current maintenance information was emailed to you this morning.
2. **Clubhouse and Cart House.** Regularly Monitor both structures and parking lot and keep them secure.
3. **Clubhouse and Cart House Parking Lot Access.** Restricting access to the Clubhouse and Cart House Parking Lot with tall fencing that also acts as a visual deterrent.
4. **Clubhouse and Cart House Awning.** Repair or Removal of the Damaged Awning that is between the two buildings.

**Exhibit "B"**

5. **Driving Range Road.** Restricting access to the Driving Range Road with a gate or fencing.
6. **Front Entry Right-of-Way.** Maintain the Right-of-Way area at the Entry to the Clubhouse with regularly scheduled mowing.
7. **Front Entry Sign.** Maintain the Entry Sign to the Clubhouse and keep it free of graffiti and damage.
8. **Trespassing.** Place signage stating "No Trespassing" on the property and enforce and pursue trespassing issues with the Flagler County Sherriff's Office.
9. **Quarterly Meetings.** Have a Representative from the Golf Course meet quarterly with the City Code Enforcement and the Flagler County Sherriff's Office to discuss the course and its status.
10. **Citizen Issues.** That all Public Complaints or Concerns pertaining to the Golf Course will be directed to a Golf Course Representative to contact the complainant and report the outcome/resolution to Code Enforcement.

If you have any further questions or clarifications please feel free to contact me.

Michael

Michael Esposito,

Code Enforcement  
Inspector

City of Palm Coast

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