

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

Case No. 2D21-2094

CONSERVANCY OF SOUTHWEST FLORIDA, INC.,

Appellant,

v.

COLLIER COUNTY, FLORIDA and
COLLIER ENTERPRISES MANAGEMENT, INC.,

Appellees.

Appeal from the Circuit Court, Twentieth Judicial Circuit,
in and for Collier County, Florida
(Case No. 11-2020-CA-000780-0001-XX)

**AMICUS CURIAE BRIEF
OF THE GOLDEN GATE ESTATES AREA CIVIC ASSOCIATION AND
AFFECTED GOLDEN GATE ESTATES RESIDENTS**

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I. Statement of Interest

A. Golden Gate Estates Area Civic Association

Established in 1979, the Golden Gate Estates Area Civic Association (“GGEACA”) is a not-for-profit, non-partisan, non-political organization committed to the protection of the community of Golden Gate Estates and the unique quality of life it offers to families. GGEACA seeks to promote and advance the principles of civic betterment, and provide a means to resolve issues unique to the Golden Gate Estates community. Members of GGEACA include interested residents and businesses of the Golden Gate Estates Area. GGEACA believes that when residents get involved, the Collier County Board of County Commissioners (“BCC”) makes better, more informed decisions.

B. Affected Golden Gate Estates Residents

Amici curiae also include affected residents of Golden Gate Eastern Estates, located in close proximity to the proposed Rivergrass Village. Collier County’s Vision Statement provides that “Golden Gate Eastern Estates is an interconnected, low-density residential community . . . defined by a rural character with an appreciation for nature and quiet surroundings.”¹

¹ Collier Cnty. Growth Mgmt. Dep’t, Cmty. Plan. Section Staff, Golden Gate Area Master Plan Restudy 16 (Sept. 21, 2017), <https://www.colliercountyfl.gov/Home/ShowDocument?id=74810>.

Sally Woliver and David Clark have been Collier County residents for thirty years and have lived in Golden Gate Estates for twenty-nine of those years. Ms. Woliver previously served on Collier County's Habitat Conservation Planning Advisory Committee, the Political Action Committee designed to fund and support Collier County's Land Conservation Tax Amendments, and the Board of Leadership Collier Foundation. She is also a graduate of Leadership Collier, organized by the Greater Naples Chamber, which is program for experienced leaders who want to improve their organizations and their communities. Ms. Woliver has also been an active participant in the Rural Land Stewardship Area ("RLSA") program, appearing before the BCC to testify to how climate change and sea level rise will impact Collier County in the near future, and why Collier County must include adaptation planning in its budget considerations for the RLSA. Both Ms. Woliver and Mr. Clark have closely followed plans for the Rivergrass development in the RLSA and are deeply concerned about its impacts on their lives and other Golden Gate Estates residents.

Marcela Zurita and Michael Tanguay have been residents of Golden Gate Estates for four years. They have vocalized their concerns regarding the Rivergrass development at Collier County Planning Commission ("CCPC") and BCC hearings. Ms. Zurita and Mr. Tanguay believe that

Rivergrass's failure to adhere to the applicable policies in Collier County's Growth Management Plan ("GMP") will permanently alter the character of Golden Gate Estates and their rural way of living. They believe that as a result of Rivergrass's failure to comply with the County's own land development regulations, the development will result in the destruction of Florida Panther habitat, as well as many other species that they enjoy seeing in the area.

Rae Ann Burton has lived in Golden Gate Estates for over twelve years. She moved to the area with the expectation that it would be a safe, quiet, and rural area. Ms. Burton is a Committeewoman in her District and has been very active in the community, speaking at County meetings regarding numerous development projects that impact the Estates, including the CCPC's meetings on Rivergrass. Ms. Burton is concerned that the County is permitting developers to destroying Golden Gate Estates' unique environment and the quality of life for those who reside there, in violation of the County's own policies and regulations.

II. Interest of Amici Curiae

The RLSA and Golden Gate Estates ("Estates") are planning areas in Collier County joined by a fifteen-mile long border, near De Soto Boulevard. The border extends from I-75 to the south to Immokalee Road at the north.

Most of Golden Gate Estates is located east of Collier County’s urban area and east of State Road 951. Golden Gate Estates, including the urban estates and the rural estates, consists of about 66,300 acres.² The Estates is comprised mostly of low-density single family homes and vacant lots. The typical lot size ranges from one to five acre lots; however, in 1982, the legally conforming lot was set at a minimum size of 2.25 acres. As of 2016, the estimated population of rural Golden Gate Estates was 32,000 persons.³

Members of the GGEACA and affected Golden Gate Eastern Estates residents (collectively, “Golden Gate Estates residents”) chose to move to the Golden Gate Estates community because of the quiet, rural character of the area and assurances provided by the RLSA program that any new development would be self-sufficient, maintain the rural character of eastern Collier, and follow smart growth principles. For example, Ms. Woliver and Mr. Clark chose to move to the Estates because it afforded them a rural lifestyle in which to raise their son, enjoy the wildlife, and safely ride horses without overwhelming traffic concerns.

Because it borders the RLSA, Golden Gate Estates is on the “front lines” of RLSA development, and its residents will likely feel the impacts of

² *Id.*

³ *Id.* at 5–6.

RLSA development more than any other community in Collier County. Just this year, Collier County amended its RLSA program to increase the maximum development footprint for Stewardship Receiving Area (“SRA”) to 45,000 acres.⁴ Forty-five thousand acres is a staggering amount of development. As a comparison, the City of Miami is approximately 35,000 acres.⁵

Not only is the amount of development proposed for the RLSA massive, but it is imminent. Currently, there is an application pending for a federal incidental take permit under the Endangered Species Act that covers multiple areas for development in the RLSA. The plan is proposed by Eastern Collier Property Owners (“ECPO”), a group of twelve large RLSA landowners. If ECPO is successful in obtaining all necessary permits, it would be able to develop 45,000 acres, the maximum allowable limit for SRAs in the RLSA.⁶

⁴ Collier County Ordinance 2021-28, <https://app.collierclerk.com/LFBMR/DocView.aspx?id=260987&dbid=0&repo=BMRPROD>.

⁵ 2020 U.S. Gazetteer Files, U.S. Census Bureau, <https://www.census.gov/geographies/reference-files/time-series/geo/gazetteer-files.2020.html> (accessed October 31, 2021).

⁶ Stantec Consulting Servs., Inc., Eastern Collier Multiple Species Habitat Conservation Plan (Aug. 2018), <https://www.regulations.gov/document/FWS-R4-ES-2018-0079-0036>.

Many Golden Gate Estates residents are uncertain and afraid of what will happen to their community as a result of ECPO's plan, and other proposed RLSA development plans. They are concerned over massive traffic impacts, loss of rural way of life, wildlife fatalities, dangerous roads, and impacts to water resources, among other issues that could come from 45,000 acres of development.

For example, Golden Gate Estates residents are concerned about the impact of additional traffic on the roadway network if they should need to evacuate the area during a hurricane. Golden Gate Estates residents worry that the roadway network in this area of the County is not equipped to address increased rainfall and flooding from the canal system from a major landfalling hurricane, and that new development in the area will only further burden these roadways. Residents recall that Hurricane Irma left many roads in the Estates impassable just four years ago, and are also well aware of the climate science data that has shown that hurricanes are intensifying with more extreme precipitation rates.⁷ Golden Gate Estates residents have also had to evacuate their homes on two occasions since 2017 due to

⁷ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis, Summary for Policy Makers* 9, A.3.4 (Oct. 2021), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SP_M_final.pdf.

increased wildfires. Residents are concerned that the network is not adequate to support a mass evacuation of both Rivergrass and Golden Gate Estates residents.

Traffic from Rivergrass alone, which is planned to be a 1,000-acre village, will have massive impacts to neighboring Golden Gate Estates. Rivergrass's Traffic Impact Statement ("TIS") shows that external traffic from Rivergrass will consist of 24,891 daily two-way vehicle trips. Less than 3% of all Rivergrass's traffic will be internal or will stay within the development. See Rivergrass TIS Section 1 at 6–7.⁸ Almost all of the external 24,891 daily two-way vehicle trips will head west through Golden Gate Estates. See *id.* at 10–11 (Figures 2A and 2B). Rivergrass residents seeking work, entertainment, medical care, or any number of goods and services afforded in downtown Naples and Collier County's urbanized area will cut through Golden Gate Estates, thereby drastically changing the rural character of the area.

As demonstrated by its traffic impacts, the Rivergrass development is not designed to be self-sufficient, contrary to what is intended by Collier County's GMP RLSA Overlay Policies. Compounding these impacts by tens

⁸ Available at GMD Public Portal, Collier County, <https://cvportal.colliercountyfl.gov/CityViewWeb/Planning/Status?planningId=27987>.

of thousands of acres-worth of RLSA development that is yet to come is a recipe for disaster for the Estates, especially if, like Rivergrass, these SRAs do not conform with the County's GMP and Land Development Code ("LDC") requirements.

Golden Gate Estates residents believe that *all* rules of Collier County's Comprehensive Plan are necessary to protect the community from the effects of poorly planned development. Collier County's Comprehensive Plan, which incorporates the RLSA Overlay, provides many protections for Estates residents to buffer them from any negative impacts of sprawl. As such, it is imperative for Estates residents to maintain their right to legally challenge development orders that violate *any part* of Collier County's Comprehensive Plan, including the RLSA Overlay, the Transportation Element, Capital Improvement Element, Future Land Use Element ("FLUE"), and LDC. Golden Gate Estates residents strongly support the Conservancy's appeal to overturn the trial court's decision to hold Collier County and RLSA developers accountable to the rules of development.

III. Summary of the Argument

Golden Gate Estates residents must be able to challenge development orders as violative of the County's GMP and LDC when such violations will result in negative impacts to their way of life. First, GMP and LDC

requirements are necessary to ensure that the impacts of new development are not unduly felt by citizens in the surrounding areas. By excluding claims based on the LDC, the trial court eliminated a substantive means of redress for Golden Gate Estates residents when new development violates the County's regulations intended to protect them.

Second, the scope of Section 163.3215 claims should not be narrowed to exclude claims based on a development's inconsistency with transportation policies of the GMP. The legislature could not have intended that citizens be without recourse when patterns of poor land use planning result in traffic and safety issues that directly affect citizens' lives.

Finally, the Rivergrass development in particular will have massive, unmitigated impacts to the Collier County transportation system. These consequences will be felt most by Golden Gate Estates residents, who moved to this area of the County precisely to avoid these sorts of congestion and traffic problems.

For these reasons, the trial court's decision should be reversed.

IV. Argument

- A. If the trial court’s decision stands, Golden Gate Estates would be without recourse to challenge RLSA development approvals that fail to comply with GMP and LDC requirements, and as a result negatively impact their rural way of life.**

The County’s RLSA program, which is incorporated into the County’s Comprehensive Plan, has special rules and policies “based upon innovative planning and development strategies” that are “recognized as methods of discouraging urban sprawl.” GMP, FLUE RSLA Overlay Policy 4.6. These GMP policies are implemented by the County’s LDC regulations. If enforced, these GMP policies, together with the LDC regulations, ensure that a project’s impacts, such as traffic, do not bleed into other areas of the County, including Golden Gate Estates. Without enforcement of policies intended to mitigate new development’s externalities, Golden Gate Estates residents will be forced to bear the brunt of the consequences of poor planning.

The GMP policies applicable to SRAs require an integrated network of streets that are walkable to the SRA’s economic center, a variety of housing types, and ample shopping and workplaces within the SRA. Namely, GMP RLSA Overlay Policy 4.2 “requires SRAs to be compact, mixed use and self-sufficient in the provision of services, facilities and infrastructure.” GMP, FLUE RLSA Overlay Policy 4.2. Examples of the County’s LDC

requirements that implement this policy to curb sprawl and create self-sufficient SRAs include the following:

- **LDC 4.08.07.J.3.a.ii:** Villages shall be designed in a compact, pedestrian-friendly form.
- **LDC 4.08.07.J.3.a.v:** Be developed in a progressive rural to urban continuum with the greatest density, intensity and diversity occurring within the village center.
- **LDC 4.08.07.J.3.a.iii:** Create an interconnected street system to disperse and reduce the length of automobile trips.
- **LDC 4.08.07.C.2:** Villages are primarily residential communities with a diversity of housing types and mix of uses appropriate to the scale and character of the particular village.

As is made clear with the above example, the GMP's smart growth policies are carried out by adherence to the LDC. Yet, despite the fact that RLSA Overlay Polices 4.3 and 4.5 expressly require SRAs to conform to the LDC's requirements for development in the RLSA, the lower court prohibited the Conservancy of Southwest Florida, Inc., from bringing forth inconsistency claims based on these same LDC requirements.

Ultimately, both GMP and LDC requirements ensure that new development will be compact, interconnected, and self-sufficient, and will therefore result in fewer impacts to the rest of the County. By minimizing external vehicle trips, requirements in both the GMP and LDC provide

assurance that the rural character of Golden Gate Estates is maintained. If the trial court's decision stands, Golden Gate Estates residents will be left with no recourse to challenge developments that do not follow the GMP and LDC's design requirements, which protect their community from the impacts of sprawl. Citizens should be able to bring claims against development when it fails to comply with the GMP and LDC requirements intended to protect them.

B. If the trial court's decision stands, Golden Gate Estates would be without recourse for massive traffic impacts of new development.

The trial court decided that transportation issues were not within the scope of consistency challenges under Section 163.3215, Florida Statutes, because the GMP's transportation policies did not relate to the use, density, or intensity of use on a particular piece of property. If this decision is not overturned, the trial court's improper narrowing of the scope of challenges under Section 163.3215 would leave Golden Gate Estates residents wholly without redress for challenging any RLSA development that would substantially impact Golden Gate Estates' transportation network. Golden Gate Estates, sandwiched between urban Collier County and the RLSA, is on the frontline of the RLSA's traffic impacts. Thus, it is crucial that Estates residents are

able to challenge developments that are inconsistent with the County's Plans.

Section 163.3215 provides that relief is available to the public if a local government approves a development order which "materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan adopted under this part." Section 163.3215(3), Fla. Stat. The statutory definition of "intensity" expressly includes "the measurement of the use of or demand on facilities and services." Section 163.3164(22), Fla. Stat. Public "facilities" include transportation facilities. Section 163.3164(39), Fla. Stat. Therefore, if a development's demand on transportation facilities is inconsistent with the rules of a local government's comprehensive plan, the public has the right to challenge the approval of that development order.

Numerous Collier County GMP Policies require an SRA applicant to measure the demand that a proposed development will have on the County's transportation facilities:

- **GMP Transportation Element ("TE") Policy 8.2:** Pursuant to Chapter 163.3180 F.S., and in accordance with the Collier County Adequate Public Facilities Ordinance (Land Development Code Sections 6.02.00 and 10.02.07), development proposals shall be required to submit traffic impact analyses. (Emphasis added.)

- **GMP TE Policy 5.1:** The County Commission shall review all rezone petitions, SRA designation applications, conditional use petitions, and proposed amendments to the Future Land Use Element (FLUE) affecting the overall countywide density or intensity of permissible development, with consideration of their impact on the overall County transportation system, and shall not approve any petition or application that would directly access a deficient roadway segment as identified in the current [Annual Update and Inventory Report (“AUIR”)] or if it impacts an adjacent roadway segment that is deficient as identified in the current AUIR, or which significantly impacts a roadway segment or adjacent roadway segment that is currently operating and/or is projected to operate below an adopted Level of Service Standard within the five year AUIR planning period, unless specific mitigating stipulations are also approved. A petition or application has significant impacts if the traffic impact statement reveals that any of the following occur:

 - a. For links (roadway segments) directly accessed by the project where project traffic is equal to or exceeds 2% of the adopted [level of service (“LOS”)] standard service volume;
 - b. For links adjacent to links directly accessed by the project where project traffic is equal to or exceeds 2% of the adopted LOS standard service volume; and
 - c. For all other links the project traffic is considered to be significant up to the point where it is equal to or exceeds 3% of the adopted LOS standard service volume. (Emphasis added.)

- **GMP FLUE RSLA Overlay Policy 4.14:** The SRA must have either direct access to a County collector or arterial road or indirect access via a road provided by the developer that has adequate capacity to accommodate the proposed development in accordance with accepted transportation planning standards. No SRA shall be approved unless the capacity of County collector or arterial road(s) serving the SRA is demonstrated to be adequate in accordance with the Collier County Concurrency Management System in effect at the time of SRA designation. A

transportation impact assessment meeting the requirements of Section 2.7.3 of the LDC, or its successor regulation shall be prepared for each proposed SRA to provide the necessary data and analysis. (Emphasis added.)

- **GMP FLUE RLSA Overlay Policy 4.16:** A SRA shall have adequate infrastructure available to serve the proposed development, or such infrastructure must be provided concurrently with the demand. The level of infrastructure provided will depend on the form of SRA development, accepted civil engineering practices, and LDC requirements. The capacity of infrastructure necessary to serve the SRA at buildout must be demonstrated during the SRA designation process. Infrastructure to be analyzed includes transportation, potable water, wastewater, irrigation water, stormwater management, and solid waste. Transportation infrastructure is discussed in Policy 4.14. (Emphasis added.)

These policies clearly: (1) require the developer to prepare a TIS that quantifies the impacts that a proposed development will have on the Collier County road network; (2) require that the TIS comply with Section 163.3180, Fla. Stat., and the LDC; (3) require that the County review SRA applications for “density or intensity, of permissible development, with consideration of their impact on the overall Collier County transportation system”, TE Policy 5.1; (4) require a demonstration that the capacity of the County’s road network will be adequate to serve the SRA; and (5) require that the County not approve an SRA if it will be inadequate (i.e., affect roadway segments that are deficient or are projected to be deficient absent specific mitigating stipulations to address those deficiencies). Challenges based on these

policies directly speak to a development's measure of demand on transportation facilities and therefore are clearly within the ambit of Section 163.3215 Fla. Stat.

A new development's measure of its demand on transportation infrastructure is crucial to not only ensure that the transportation network will be adequate to serve all citizens in the County, but also to ensure that levels of service be maintained in times of emergency. Collier County's TE requires that the level of service must be maintained for evacuation routes within a Transportation Management Concurrency Area (LDC 6.02.03.F.1). Safe evacuation is a major concern for Golden Gate Estates residents. Collier County's Growth Management Department states that because of the Eastern Estates' size and development pattern, "flooding, wildfire and wildlife conditions play a more important role in eastern Estates residents' lives as compared to the urban area."⁹ Indeed, in 2017 and 2020, Golden Gate Estates residents had to evacuate their homes due to wildfires. What will happen if, due to a hurricane or wildfire, residents need to evacuate on failing roads as result of new development that fails to comply with the GMP and LDC traffic requirements?

⁹ Collier Cnty. Growth Mgmt. Dep't, Cmty. Plan. Section Staff, Golden Gate Area Master Plan Restudy 5 (Sept. 21, 2017), <https://www.colliercountyfl.gov/Home/ShowDocument?id=74810>.

Excluding a comprehensive plan's transportation policies from the ambit of Section 163.3215 claims would leave Golden Gate Estates residents without recourse for the substantial, unmitigated impacts Rivergrass will have on their lives and the community.

C. Rivergrass serves as a warning why Estates residents must maintain the right to challenge developments that are inconsistent with Collier County's GMP and LDC transportation policies.

Rivergrass Village serves as an example of why GGEACA and Golden Gate Estates residents must maintain the right to challenge RLSA development orders that are inconsistent with Collier County's Transportation Element and RLSA Overlay.

The Rivergrass developer's own TIS found that "most of the analyzed roadway segments [would be] significantly impacted by the project." TIS Section 1 at 23. Three of these roadways were projected to be deficient before completion of the Rivergrass development. *Id.* at 20–23. Specifically, Immokalee Road and Vanderbilt Beach Road, two major east-west roads that flow from urban Collier to Golden Gate Estates, will have sections that will fail prior to 2030. *Id.* Rivergrass should not have been approved for this very reason. See FLUE Policy 4.16.

Further, an attempt by the County (rather than the developer, as required) to mitigate these impacts by increasing roadway capacity in the

east and southeast of the County and within Golden Gate Estates will only exacerbate the harm caused to Golden Gate Estates residents. This is because any plans to increase capacity in the Eastern part of the County will only encourage those who move to the RLSA to travel westward—through the Golden Gate Estates community—more frequently for shopping and to obtain essential goods and services. As example, Walmart and Target are located near I-75 and Immokalee Road, which will attract residents from Rivergrass who must travel through Golden Gate Estates to get to these destinations. Adding roadway capacity within Golden Gate Estates due to increased traffic from Rivergrass is robbing Peter to pay Paul. In other words, adding roadway capacity due to increased traffic from Rivergrass and expected, future RLSA development, will only *increase* traffic in Golden Gate Estates, ruining the quiet, rural character of the community and the RLSA.

Furthermore, the cumulative impacts from Rivergrass and the developer's other two villages that have recently been approved in the RLSA (Longwater and Bellmar) will be severe, will add even more traffic to failing roadways, and will cause additional roadways to exceed the County's adopted level of service standards. Many of these roadways are in Golden Gate Estates. These are unfair impacts to Golden Gate Estates residents.

Golden Gate Estates residents' rights to protect themselves from substantial traffic impacts resulting from nonconforming SRAs must be preserved.

V. Conclusion

The RLSA is still in its infancy. Ultimately, the RLSA could accommodate 45,000 acres worth of SRAs. Without the public's ability to enforce full review of development orders under Section 163.3215 for violations of substantive GMP policies, there will be unchecked, unruly urban sprawl in Collier County. This sprawl will result in unmanageable traffic impacts to the area and a decimation of the rural character of Golden Gate Estates.

Golden Gate Estates residents strongly believe that the trial court's decision, which severely limited the types of claims that could be brought forth under a Section 163.3215 challenge, must be overturned. If the trial court's decision is not overturned, Golden Gate Estates residents will have no recourse to fight development approvals that are inconsistent with the Comprehensive Plan and have significant impacts on their daily lives.

For the reasons stated herein, the Court should reverse the circuit court's final judgment and give Golden Gate Estate residents and the community a critical opportunity to challenge developments that do not meet the comprehensive GMP.

Dated: November 22, 2021

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed using the Florida Courts E-Filing Portal and served by Electronic Mail to all counsel listed below this 22ND day of November, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.045(b), counsel for Appellant hereby certifies that the foregoing brief complies with the applicable font requirements because it is written in 14-point Arial font.

Pursuant to Florida Rule of Appellate Procedure 9.045(e), counsel for Appellant further certifies that the foregoing brief contains 4,086 words, excluding the parts of the brief exempted from the word count by Rule 9.045(e).

Dated: November 22, 2021

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