

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 LEAGUE OF WOMEN VOTERS OF COLLIER COUNTY
IN SUPPORT OF APPELLANT**

November 22, 2021

*Counsel for the League of
Women Voters of Collier County*

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I. Identity and Statement of Interest of the League of Women Voters Collier County

Since 1975, the League of Women Voters of Collier County (LWVCC) has been a nonpartisan organization in Collier County that encourages informed and active participation in government. The LWVCC's mission is "Empowering Voters. Defending Democracy." The LWVCC currently has 345 active members who take an active role in shaping better communities for Florida, particularly within Collier County.

LWVCC members, on behalf of the public good, educate, empower, and encourage the community to participate in issues facing Collier County and Florida. A primary policy position for the LWVCC is to "[p]romote resource conservation, stewardship and long-range planning, with the responsibility for managing natural resources shared by all levels of government."¹ The LWVCC

One Voice Policy includes the following principle:

The League of Women Voters believes that responsible government should be responsive to the will of the people; that government should maintain an equitable and flexible system of taxation, promote the conservation and development of natural resources in the public interest, share in the solution of economic and social problems that affect the general welfare, promote

¹ League of Women Voters of Florida, *Study & Action 2019-2021* 12, 116 (Oct. 2019), <https://lwfvl.org/wp-content/uploads/2021/03/Study-and-Action-2019.2021.pdf>.

a sound economy and adopt domestic policies that facilitate the solution of international problems.²

The League of Women Voters of the United States (LWVUS) also provides a guide for state and local League members and chapters called the *Impact on Issues: A Guide to Public Policy Positions*, which is designed to “inspire Leagues to use national positions to act in their own communities.”³ The following positions of importance are included among the League’s public policy positions:

Natural Resources: Public Participation. Promote public understanding and participation in decision making as essential elements of responsible and responsive management of our natural resources.

Natural Resources: Resources Management & Protection. Promote the management of natural resources as interrelated parts of life-supporting ecosystems. Promote resource conservation, stewardship, and long-range planning, with the responsibility for managing natural resources shared by all levels of government. Preserve the physical, chemical, and biological integrity of the ecosystem with maximum protection of public health and the environment.⁴

² *Id.* at 7.

³ League of Women Voters of the United States, *Impact on Issues: A Guide to Public Policy Positions 2020-2022* 4, <https://www.lwv.org/sites/default/files/2020-12/LWV-impact-2020.pdf>.

⁴ *Id.* at 13–14.

The League strongly believes in long-range comprehensive planning at all levels of government. Comprehensive planning must include a thorough assessment of population growth and of current and future needs in order to assure the future availability of essential resources. When communities plan for growth, certain decisions must be incorporated in the planning process. A few of those decisions are outlined in the League's *Impact on Issues* and include the following:

- Adequate data and a framework within which alternatives may be weighed and intelligent decisions made.
- **Consideration of environmental, public-health, social, and economic impacts of proposed plans and actions.**
- Protection of private property rights commensurate with overall consideration of public health and environmental protection.
- Special responsibility by each level of government for those lands and resources entrusted to them.
- Special consideration for the protection of areas of critical environmental concern, natural hazards, historical importance, and aesthetic value.
- Special attention to maintaining and improving the environmental quality of urban communities.⁵

In adherence to the Leagues' policy position for supporting long-range comprehensive plans, the LWVCC has maintained a strong interest in ensuring that development in the County's Rural Land Stewardship Area (RLSA) strictly

⁵ *Id.* at 88.

follows Collier County's Comprehensive Plan's goals, objectives, and policies that were created to protect natural resources.

As with any community plan in Florida, Collier County's Comprehensive Plan and Land Development Code (LDC) were created after considerable public input and stakeholder meetings taking place over several years. The citizens of Collier County have the right to ensure that all new development within the RLSA enhances the community and achieves *all* of the standards, including the goals, objectives, and policies that have the force of law and are required by Collier County's Comprehensive Plan, including the RLSA Overlay Policies and LDC regulations.

As a primary stakeholder in the amendment process for Collier County's RLSA program (2018-present), the LWVCC has an exceptional understanding of the rules of the RLSA program and the type of development required by the RLSA. The LWVCC even created a RLSA subcommittee engaging members who choose to dedicate significant time to study and comment on the RLSA amendments and to review and comment on applications for Stewardship Receiving Areas (SRAs) within the RLSA. Among the SRA applications that were reviewed by the LWVCC was the application for Rivergrass Village. The LWVCC found that the Rivergrass project is inconsistent with numerous RLSA policies, contrary to the Comprehensive Plan's clear goals, objectives, and

policies and LDC regulations. For example, the League provided testimony that Rivergrass failed to follow the RLSA's design rules for compact, pedestrian-friendly development, and that the project failed to meet the RLSA's goal of directing development away from listed species habitat. The League was also concerned that the developer failed to demonstrate fiscal neutrality, as required by RLSA Policy 4.18, because the applicant refused to provide access to its model, assumptions, and analysis.

The LWVCC supports the Conservancy of Southwest Florida, Inc. (Conservancy) in its mission to overturn the trial court's decision so development of land within the RLSA is in strict compliance with the rules that were created by the community during adoption of the Comprehensive Plan and implementing land development regulations.

II. ISSUES ON APPEAL ADDRESSED BY AMICUS

A. The trial court improperly narrowed the scope of claims available under Section 163.3215, Florida Statutes

Viewed in light of legislative history, the scope of claims allowed under Section 163.3215 should be more broadly construed than the trial court opinion below. This legislative history shows us that citizen enforcement is the intended and sole mechanism established by the Florida Legislature to enforce

comprehensive plan goals, objectives, and policies to protect environmentally sensitive areas and discourage urban sprawl.

The history of land use planning in Florida should inform this Court's understanding of how the Legislature intended comprehensive plans to be enforced. The legislative history of land use planning in Florida shows that "the State of Florida did not assert meaningful formal control over the explosive and unplanned development of land in this state until the passage of the first growth management statute, the Local Government Comprehensive Planning Act of 1975." *Pinecrest Lakes, Inc. v. Shidel*, 795 So. 2d 191, 198 (Fla. 4th DCA 2001). The 1975 Act required cities and counties to adopt comprehensive plans, but it was widely criticized as ineffective in controlling and regulating Florida's rapid development. *Id.* at 199 (citing Reid Ewing, *Florida's Growth Management Learning Curve*, 19 VA. ENV'T L.J. 375 (2000)). In particular, the 1975 Act was criticized for failing to give affected property owners and citizen groups standing to challenge land use decisions that were inconsistent with comprehensive plans. *Id.* at 199–200 ("If affected property owners in the area of newly permitted development could not challenge a project on the grounds that it would be inconsistent with the Comprehensive Plan, that eliminated the only real check on local government compliance—a challenge by those most directly affected by a proposed development.").

In response, the Legislature passed the Comprehensive Planning Act of 1985, which liberalized the Act's standing requirements to encourage citizen enforcement of comprehensive plans, rather than enforcement by the state planning agency. See *Bd. of Cnty. Comm'rs v. Snyder*, 627 So. 2d 469 (Fla. 1993). In enacting the 1985 Act, the Legislature "demonstrate[d] a clear legislative policy in favor of the enforcement of comprehensive plans by persons adversely affected by local action." *Sw. Ranches Homeowners Ass'n, Inc. v. Cnty. of Broward*, 502 So. 2d 931, 935 (Fla. 4th DCA 1987). And today, "citizen enforcement is the primary tool for insuring consistency of development decisions with the Comprehensive Plan." See *Pinecrest Lakes*, 795 So. 2d at 202.

Citizen enforcement is especially important given the broad nature of comprehensive plans. As the court in *Machado v Musgrove*, 519 So. 2d 629, 635 (Fla. 3d DCA 1987), explained, "[a] Comprehensive Land Use Plan is not a vest-pocket tool . . . for making individual zoning changes based on political vagary. . . . Instead, it is a broad statement of a legislative objective to protect human, environmental, social, and economic resources; and to maintain, through orderly growth and development, *the character and stability of present and future land use and development in this state.*" (emphasis added) (internal quotations and citations omitted); see also § 163.3161(7), Fla. Stat.

Moreover, these “comprehensive” plans were not enacted to be disregarded and unenforceable. See *Machado*, 519 So. 2d at 635 (“Uselessness will not be attributed to legislative acts. . . . We know of no rule . . . which allows government, acting in its executive capacity, to disregard its own laws.”).

The courts should not limit the Legislature’s intended scope of citizen enforcement by narrowing the scope of such review. To do so would eliminate the only real check on local government compliance with duly adopted and enforceable comprehensive plans. Instead, the Court should broadly construe the scope of claims available under Section 163.3215. Specifically, claims available under Section 163.3215 should include claims regarding inconsistency with comprehensive plans’ fiscal neutrality and transportation policies, which are of particular importance to the LWVCC and citizens at large. The Legislature intended that citizens have the right to enforce comprehensive plans; this remedy should not be invalidated by the courts when clearly contrary to the legislative intent.

B. The trial court should not have excluded claims based on the Land Development Code because these claims are clearly within the scope and legislative intent of Sections 163.3215 and 163.3194(3), Florida Statutes.

The Defendants moved for summary judgment on the Conservancy's claims based on Collier County's LDC, arguing that such claims are "separate from the Comprehensive Plan."⁶ The trial court granted partial summary judgment, finding that the LDC is "not incorporated into the [Growth Management Plan]," and therefore claims based on the LDC are not within the scope of Section 163.3215.⁷ This was error. Such limited review of development orders under Section 163.3215 would render the LDC meaningless despite its *expressly stated* purpose of implementing comprehensive plan policies.

Section 163.3194(3)(a) of the Community Planning Act expressly provides:

A development order or land development regulation **shall be consistent with the comprehensive plan** if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan ***and if it meets all other criteria enumerated by the local government.*** (Emphasis added.)

⁶ See Collier Enterprises Management, Inc.'s Mot. for Summ. J. Regarding Consistency with the Adopted Comprehensive Plan 12 (R. 541).

⁷ Order Granting Defs.' Mot. for Summ. J. Regarding Consistency with the Adopted Comprehensive Plan 3 (R. 5826).

Similarly, Section 163.3194(3)(b) provides:

A development approved or undertaken by a local government **shall be consistent with the comprehensive plan** if the land uses, densities or intensities, capacity or size, timing, and other aspects of the development are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan ***and if it meets all other criteria enumerated by the local government.***” (Emphasis added.)

The LDC is the “other criteria enumerated by the local government.”

The plain and express language of the Growth Management Plan (GMP) Policies make it clear that the LDC is the means to implement the goals, objectives, and policies of the GMP. Future Land Use Element (FLUE) Policy 3.2 expressly states that “Land Development Regulations have been adopted into the Collier County Land Development Code (LDC) that contain provisions to implement the Growth Management Plan through the development review process.” With respect to the RLSA-specific policies, the GMP’s FLUE also provides that requests for land use designations within the RLSA (such as SRAs) “may be denied by the Board of County Commissioners based on criteria in the Land Development Code.” GMP, FLUE Future Land Use Designation Description Section.

In addition, numerous GMP policies at issue in the Conservancy's challenge to the Rivergrass Development Order require compliance with specific LDC provisions. For example, GMP Transportation Element Policy 8.2 requires that a developer perform a Traffic Impact Statement "in accordance with . . . Land Development Code Sections 6.02.022 and 10.02.07." Other FLUE policies expressly require developers to comply with the "LDC Stewardship District" regulations, which are set forth in LDC 4.08.00 *et seq.* See FLUE RLSA Overlay Policies 4.3 and 4.5. In all, the "land development code" or "LDC" is cited in the FLUE 143 times.

To exclude the LDC, particularly when expressly referenced by and incorporated into a specific comprehensive plan policy, is contrary to the Legislature's express directive regarding "consistency" contained in 163.3194(3)(a) and (b) as "**other criteria enumerated by the local government.**"

C. The trial court improperly excluded evidence relevant to Section 163.3215 claims.

Before trial, the trial court improperly granted Collier Enterprises Management, Inc.'s motion in limine to exclude broad categories of evidence from the court's de novo review as irrelevant, including all Rivergrass application materials in the record. The trial court also improperly excluded County staff

reports, correspondence, and memoranda relevant to Rivergrass's compliance with the GMP and LDC. In essence, the trial court held that only two documents mattered: the Rivergrass Development Order and the GMP Policies at issue.

Judicial review and admissibility of evidence are separate inquiries. Excluding evidence because judicial review is *de novo* is an error as a matter of law. Courts reviewing development orders *de novo* should be able to consider at least all of the relevant evidence the County considered to determine whether a development complies with the GMP. *De novo* review means only that the court may rule on *the evidence* and matters of law without deferring to the Collier County Board of County Commissioners' (BCC's) findings. See *e.g.*, *Delta Fire Sprinklers, Inc. v. OneBeacon Ins. Co.*, 937 So. 2d 695, 697–98 (Fla. 5th DCA 2006) (In a *de novo* review of a trial court ruling on a motion for summary judgment, “a reviewing court should consider the evidence contained in the record . . . in the light most favorable to the nonmoving party.”).

The correspondence, County staff reports, and memoranda that were in the record available to the Collier County Planning Commission and BCC are highly relevant evidence that would tend to prove that the Rivergrass Development Order violated various GMP provisions. For example, many of the County's correspondence and staff reports expressed concern that the Rivergrass project *did not* comply with the GMP. See Jan. 22, 2020 Staff Report

at 7 (R. 4864) (“The Rivergrass Village SRA does not fully meet the minimum intent of the policies in the RLSA . . . and is contrary to what is intended in the RLSA.”) (emphasis omitted). Conclusions reached by the County’s own staff (including land use planners, transportation reviewers, and economic reviewers) concerning whether the Rivergrass development met the policies of the GMP are relevant to a Section 163.3215 challenge on that exact basis. *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957) (“such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.”). The County’s own land use planning staff memos, correspondence, reports, and statements concerning Rivergrass’s consistency with the GMP meets the standard for admissible evidence, and therefore should not have been excluded.

III. Conclusion

For the reasons stated herein, the League of Women Voters of Collier County seeks to be a friend of the court by providing the information it believes is helpful to full consideration of the issues raised by this case as set forth above.

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.045(b), counsel for the League of Women Voters Collier County 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 the League of Women Voters Collier County further certifies that the foregoing brief contains 2,636 words, excluding the parts of the brief exempted from the word count by Rule 9.045(e).

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