

IN THE DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

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Case No. 2D21-2094

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CONSERVANCY OF SOUTHWEST FLORIDA, INC.,

Appellant,

v.

COLLIER COUNTY FLORIDA and  
COLLIER ENTERPRISES MANAGEMENT, INC.,

Appellees.

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

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**AMICUS CURIAE BRIEF  
OF STRONG TOWNS**

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November 22, 2021

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**TABLE OF CONTENTS**

**I. Statement of Interest .....5**

    A. Strong Towns.....5

    B. Interest of Amicus Curiae.....6

**II. Summary of the Argument .....9**

**III. Argument..... 10**

    A. The lower court improperly narrowed the scope of challenges under Section 163.3215 by excluding claims based on the GMP’s fiscal neutrality requirement..... 10

    B. Fiscal neutrality directly relates to use, density, and intensity of use..... 12

    C. The lower court’s dismissal of the Conservancy’s fiscal neutrality claims ensures that developers in Collier County, and potentially elsewhere in Florida, will have a pathway to unchecked, expanding development at great cost to local governments and taxpayers..... 14

**IV. Conclusion ..... 16**

## TABLE OF AUTHORITIES

Page(s)

### Cases

<i>Heine v. Lee County</i> , 221 So. 3d 1254 (Fla. 2d DCA 2017).....	11
<i>Imhof v. Walton County</i> , 2021 Fla. App. Lexis 13042, 2021 WL 4189197 (1st DCA, September 15, 2021).....	12-13

### Statutes

Florida Statutes

§ 163.3215 .....	<i>Passim</i>
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### Other Authorities

Collier County Growth Management Plan Future Land Use Element (2021), <a href="https://www.colliercountyfl.gov/home/showpublisheddocument/91408/637557252136930000">https://www.colliercountyfl.gov/home/showpublisheddocument/91408/637557252136930000</a> .....	9, 13-14
Collier County Land Development Code § 4.08.07.L, <a href="https://library.municode.com/fl/collier_county/codes/land_development_code?nodeld=COLLIER_CO_LAND_DEVELOPMENT_CODE">https://library.municode.com/fl/collier_county/codes/land_development_code?nodeld=COLLIER_CO_LAND_DEVELOPMENT_CODE</a> .....	15
Daniel Herriges, <i>Who Pays for Growth in Collier County, Florida: Part 1</i> (May 19, 2021), <a href="https://www.strongtowns.org/journal/2021/5/18/who-pays-for-growth-in-collier-county-florida-part-1">https://www.strongtowns.org/journal/2021/5/18/who-pays-for-growth-in-collier-county-florida-part-1</a> ; .....	8
Daniel Herriges, <i>Who Pays for Growth in Collier County, Florida: Part 2</i> (May 20, 2021), <a href="https://www.strongtowns.org/journal/2021/5/20/who-pays-for-growth-in-collier-county-florida-part-2">https://www.strongtowns.org/journal/2021/5/20/who-pays-for-growth-in-collier-county-florida-part-2</a> ; .....	8

Daniel Herriges, *Who Pays for Growth in Collier County, Florida: Part 3* (May 26, 2021),  
<https://www.strongtowns.org/journal/2021/5/25/who-pays-for-growth-in-collier-county-florida-part-3>; .....8

Daniel Herriges, *Who Pays for Growth in Collier County, Florida: Part 4* (May 27, 2021),  
<https://www.strongtowns.org/journal/2021/5/28/who-pays-for-growth-in-collier-county-florida-part-4>; .....8

Daniel Herriges, *Who Pays for Growth in Collier County, Florida: Part 5* (May 28, 2021),  
<https://www.strongtowns.org/journal/2021/5/28/who-pays-for-growth-in-collier-county-florida-part-5> .....8

Lee County Plan (2021),  
<https://www.leegov.com/dcd/Documents/Planning/LeePlan/LeePlan.pdf> .....9

Sarasota, Fla., Unified Development Code, art. 14, § 124-270,  
[https://library.municode.com/fl/sarasota\\_county/codes/code\\_of\\_ordinances?nodeId=COORSACOFL](https://library.municode.com/fl/sarasota_county/codes/code_of_ordinances?nodeId=COORSACOFL) .....9

## **I. Statement of Interest**

### **A. Strong Towns**

Strong Towns is a non-profit organization that advocates for fiscally strong and resilient communities. Strong Towns seeks to educate, excite, and inspire citizens of all backgrounds to get involved in the conversation about how we build our world. Strong Towns advocates for six principles:

- (1) financial solvency is a prerequisite for long-term prosperity;
- (2) land is the base resource from which community prosperity is built and sustained, and it must not be squandered;
- (3) a transportation system is a means of creating prosperity in a community, not an end in itself;
- (4) job creation and economic growth are the results of a healthy local economy, not substitutes for one;
- (5) strong cities, towns, and neighborhoods cannot happen without strong citizens (people who care); and
- (6) local government is a platform for strong citizens to collaboratively build a prosperous place.

The Strong Towns approach emphasizes consideration of future generations and how they can afford to maintain the infrastructure passed on to them.

A core focus of Strong Towns' work is to document that patterns of development, which are pervasive across the United States, frequently fail to

generate enough revenue to support long-term maintenance of the associated infrastructure. Strong Towns has performed numerous fiscal neutrality assessments to assess the true costs of infrastructure maintenance across the United States today. For example, a study of one town completed by Strong Towns found that a typical residential cul-de-sac required 79 years of tax revenue to repave; the asphalt itself will not last that long. And as is often the case, the costs of a local street maintenance project are not remotely covered by the taxes generated from properties adjoining the street in question. Another case study of Lafayette, Louisiana, completed by Strong Towns found that an average property tax increase of \$3,300 per household would be required simply to adequately fund the maintenance of the City's transportation and water infrastructure already in existence. These are only a couple of examples of Strong Towns' work that demonstrate that fiscal neutrality of development should be a vital concern of residents in any community, including, certainly, Collier County, Florida.

#### **B. Interest of Amicus Curiae**

The solvency of new land development is a pressing concern all over the Country, and in Collier County in particular. The prevailing North American pattern of development creates shortfalls that are not readily apparent on a local government balance sheet because they consist of unfunded future

maintenance obligations that are not recorded as present-day liabilities. The only way to know there is a shortfall in the ability to pay for future infrastructure obligations is to do a fiscal neutrality assessment that compares the revenues generated by development to the public-sector obligations that will be incurred by it. Strong Towns encourages all cities to undertake such assessments and to base development decisions on them. This is because consequences of a pattern of long term insolvent development will ultimately fall on local taxpayers and residents, in the form of higher taxes, degraded services, and failing infrastructure. These consequences, however, are delayed, often by decades, as they are only felt when the infrastructure falls into disrepair and requires maintenance or replacement. For this reason, current residents of a community have a strong interest in ensuring that proposed development can demonstrate fiscal neutrality at the time of approval.

Strong Towns has found that deferred maintenance is a significant problem for Florida communities. For example, the City of Tampa recently announced a \$3.2 billion program to repair and replace water and sewer infrastructure, funded by a combination of new debt and substantial rate hikes. Reporting on Tampa's program indicates that most of the now-failing infrastructure was built in the mid-20th century. In Collier County, the bulk of the infrastructure is even newer than that. As the County's population has

quadrupled since 1980, it is likely that the most significant impacts of deferred maintenance are yet to be felt. Even so, Collier County exhibits the same patterns followed by Tampa and other older Florida communities, as evidenced by the County's debt-funded expansion of water infrastructure and projected rate hikes.

Strong Towns believes that fiscal neutrality is a vital concern for all residents and local governments in Florida, especially in Collier County.<sup>1</sup> This concern has demonstrably led to the establishment of fiscal neutrality policies in comprehensive plans and land use codes. See, e.g., Collier County Growth Management Plan (GMP) Future Land Use Element (FLUE) Rural Lands

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<sup>1</sup> See Daniel Herriges, *Who Pays for Growth in Collier County, Florida: Part 1* (May 19, 2021), <https://www.strongtowns.org/journal/2021/5/18/who-pays-for-growth-in-collier-county-florida-part-1>; Daniel Herriges, *Who Pays for Growth in Collier County, Florida: Part 2* (May 20, 2021), <https://www.strongtowns.org/journal/2021/5/20/who-pays-for-growth-in-collier-county-florida-part-2>; Daniel Herriges, *Who Pays for Growth in Collier County, Florida: Part 3* (May 26, 2021), <https://www.strongtowns.org/journal/2021/5/25/who-pays-for-growth-in-collier-county-florida-part-3>; Daniel Herriges, *Who Pays for Growth in Collier County, Florida: Part 4* (May 27, 2021), <https://www.strongtowns.org/journal/2021/5/28/who-pays-for-growth-in-collier-county-florida-part-4>; Daniel Herriges, *Who Pays for Growth in Collier County, Florida: Part 5* (May 28, 2021), <https://www.strongtowns.org/journal/2021/5/28/who-pays-for-growth-in-collier-county-florida-part-5>.



Stewardship Area (RLSA) Overlay Policy 4.18;<sup>2</sup> Lee Plan FLUE Policy 1.6.1;<sup>3</sup> and Sarasota, Fla., Unified Development Code, art. 14, § 124-270.

It is crucial that citizens have recourse through the judicial system to hold these local governments accountable to their own policies. Citizens who will bear the brunt of financial burden imposed by new development must be able to bring challenges under Section 163.3215, Florida Statutes, for inconsistency with fiscal neutrality policies in comprehensive plans.

## **II. Summary of the Argument**

When development fails to be fiscally responsible, it is taxpayers who ultimately suffer. These taxpayers should be able to challenge development orders when local governments fail to apply their own fiscal neutrality requirements.

There are many reasons why challenges to the fiscal neutrality of a development fall within the scope of Section 163.3215. First, fiscal neutrality policies directly relate to land use, density, and intensity of use. This is because a development's land use, density, and intensity of use directly affect whether

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<sup>2</sup> Collier County Growth Management Plan Future Land Use Element, Collier County (2021), <https://www.colliercountyfl.gov/home/showpublisheddocument/91408/637557252136930000>.

<sup>3</sup> The Lee Plan, Chapter II (Future Land Use Element), Lee County (2021), <https://www.leegov.com/dcd/Documents/Planning/LeePlan/LeePlan.pdf>.

the development will have negative externalities, and therefore impose a fiscal burden on taxpayers outside of the development.

Second, if such claims do not fall within the scope of Section 163.3215 challenges, developers in Collier County, and potentially elsewhere in Florida, will have an easy path to unchecked, expansive development at great cost to local governments and taxpayers. Indeed, many local government fiscal neutrality policies fall exclusively within comprehensive plans and land development codes.

Finally, Courts should be able to review claims related to comprehensive plans' fiscal neutrality requirements as a matter of fundamental fairness. Without review, taxpayers will incur the deficits that these policies seek to prevent, while developers reap handsome profits.

### **III. Argument**

#### **A. The lower court improperly narrowed the scope of challenges under Section 163.3215 by excluding claims based on the GMP's fiscal neutrality requirement.**

The trial court held that Florida Statute §163.3215(3) only permits a challenge to the “use, density, or intensity of use of a piece of property.” Final Judgment ¶¶ 59, 60.

Section 163.3215(3) states in pertinent part as follows:

Any aggrieved or adversely affected party may maintain

a de novo action for declaratory, injunctive, or other relief against any local government to challenge any decision of such local government granting or denying an application for, or to prevent such local government from taking any action on, a development order, as defined in s. 163.3164, 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....

Relying on *Heine v. Lee County*, 221 So. 3d 1254 (Fla. 2d DCA 2017)(*in passim*), the trial court precluded the Conservancy's challenges on all grounds other than those which directly affected "use or density or intensity of use" of the land. Respectfully, the trial court's interpretation of the statute is too narrow.

F.S. 163.3215(3) does not preclude challenges other than for the actual use, density, or intensity of use. Rather, the statute merely outlines a four part test for jurisdiction:

- (a). is a party adversely affected;
- (b). has an application for a development order been granted;
- (c). does the development order materially alter the density and intensity of the subject acreage from what is permitted in a comprehensive plan; and
- (d). is the development order inconsistent with the comprehensive plan.

If all four elements are met then the Court has jurisdiction.

In satisfying these elements the Conservancy of Southwest Florida has met its burden in pleading and demonstrating:

- (a). The Conservancy of Southwest Florida is an adversely affected party;
- (b). Collier County has granted an application for a development order for the Rivergrass Village project;
- (c). The development order materially alters the density and intensity of the subject acreage from what is permitted in Collier County's comprehensive plan, *i.e.* Growth Management Plan; and
- (d). The development order is not consistent with the comprehensive plan.

Respectfully, the statute does not restrict the scope of the Court's jurisdiction as so indicated by the trial court. Once the above four elements are satisfied the trial court has jurisdiction to entertain and resolve any disputes brought before it by the litigants pertaining to the development order. This would include a claim that the development order violates the fiscal neutrality provision of the comprehensive plan. *See Imhof v. Walton County*, 2021 Fla. App. Lexis 13042, 2021 WL 4189197 (1<sup>st</sup> DCA, September 15, 2021)(*in passim*).

**B. Fiscal neutrality directly relates to use, density, and intensity of use**

The Conservancy has alleged as one of its grounds for relief that the development of the Rivergrass Village is not fiscally neutral and, therefore, violates Collier County's Growth Management Plan.

There has been no evidence submitted to the trial court that this project is fiscally neutral. Nor did the trial court consider fiscal neutrality before rendering

its decision. Rather, the trial court incorrectly restricted its inquiry to whether the Conservancy's challenges directly affected the "use or density or intensity of use" of the Rivergrass Village land. *See Imhof, supra*.

Ensuring the fiscal neutrality of development growth is a principal reason that local governments regulate development density, use, and intensity of use in the first place. Indeed, reflecting the understanding that uncontrolled sprawl results in unintended economic impacts, Collier County land use regulations include specific provisions requiring that County "discourage sprawl" and invoke creative land use planning techniques. GMP FLUE Policies 1.4, 5.5, 6.2, 6.3; GMP FLUE RLSA Overlay Goal, Group 4 Policies, and Policy 4.8.

For example, Collier County's GMP requires developments to be compact, walkable, mixed-use, and interconnected. These concepts have a purpose. Compactness, walkability, and interconnectedness are design standards intended to mitigate a development's externalities. These design standards help mitigate a new development's demands on the surrounding public infrastructure, such as the transportation network.

Case studies undertaken by Strong Towns consistently find that development utilizing these planning techniques delivers a higher financial return on land and infrastructure than that which is characterized as sprawl (automobile-oriented and containing a large amount of land devoted to

accommodating motor vehicles and their effects, such as parking and stormwater runoff retention areas). This is generally true even when the pedestrian-oriented land uses are older and in poor condition, and the automobile-oriented land uses are new and in good condition.

Questions of fiscal neutrality are therefore unquestionably related to land density, use, and intensity of use. As such, challenges regarding the fiscal neutrality of development must fall under the scope of review under Section 163.3215.

**C. The lower court's dismissal of the Conservancy's fiscal neutrality claims ensures that developers in Collier County, and potentially elsewhere in Florida, will have a pathway to unchecked, expanding development at great cost to local governments and taxpayers.**

Multiple local governments in Florida require new growth to demonstrate fiscal neutrality for approval. Challenges under these provisions would be excluded based on the trial court's narrow interpretation of Section 163.3215. This should be a concern for all local governments.

In Collier County, the importance of fiscal neutrality (and a developer's demonstration of fiscal neutrality) is made clear throughout various GMP Policies. The GMP FLUE Policy 4.18 explicitly requires Stewardship Receiving Area (SRA) applicants to measure the demand that the proposed SRA will have on surrounding public facilities to ensure that the development will be fiscally

neutral or positive to the County at buildout (an economic assessment), and prohibits the County from approving an SRA if no such demonstration is made. Similarly, GMP FLUE Policy 4.16 requires SRA applicants to demonstrate that the SRA must analyze the adequate infrastructure available to serve the proposed development. Collier County's Capital Improvement Element (CIE) echoes the County's strong policy of ensuring that adequate infrastructure is available to new development. CIE Policy 4.5 prohibits the County from issuing any "final site development plans, final plats, and building permits . . . unless the levels of service for the resulting development will meet or exceed the standards" set for roadways, stormwater management, potable water, wastewater, schools, and parks. These policies are further implemented through Collier County's Land Development Code (LDC). See, e.g., Collier County LDC § 4.08.07.L (requiring SRA applications to include an economic assessment demonstrating that "the development, as a whole, will be fiscally neutral or positive to the Collier County tax base").

Fiscal neutrality requirements for new development is crucial to responsible growth in Florida, to County budgets, and to County taxpayers. A local government's adherence to policies meant to ensure fiscally responsible development should not be beyond Court review.

#### **IV. Conclusion**

For the reasons stated herein, the Court should reverse the circuit court's final judgment.

Dated: November 22, 2021

Respectfully submitted,

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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 22<sup>nd</sup> day of November 2021.

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## **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing Amicus Curiae Brief was submitted using Ariel 14-point font in compliance with Florida Rule of Appellate Procedure 9.045(b) and complies with the word count limits in accordance with Florida Rule of Appellate Procedure 9.370(b).

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