STATE OF FLORIDA
FIFTH DISTRICT COURT OF APPEAL

RAINBOW RIVER CONSERVATION, INC.,
FREDERICK S. JOHNSTON, et al.,
Appellants

v. **5DCA Case No. 5D15-2436**

RAINBOW RIVER RANCH, LLC;
CONSERVATION LAND GROUP, LLC;
and CITY OF DUNNELLON, FLORIDA

Appellees
_____/

INITIAL BRIEF

Thomas G. Pelham, Esq.
Fla Bar No. 138570
Co-Counsel for RAINBOW RIVER CONSERVATION et al
1474 Constitution Pl E
Tallahassee, Florida 32308
Phone (850)386-9401
tgpelham@aol.com
tom.pelham61@gmail.com

Ralf Brookes Attorney
Florida Bar No. 0778362
Co-Counsel for RAINBOW RIVER CONSERVATION et al
1217 E Cape Coral Parkway #107
Cape Coral, Fl 33904
(239) 910-5464;
(866) 341-6086 fax
Ralf@RalfBrookesAttorney.com
RalfBrookes@gmail.com

Table of Contents

Page

Table of Contents ii

Table of Citations.....iii

Standard of Review..... 1

Statement of Facts..... 1

Summary of Argument..... 4

Argument..... 5

I. The circuit court failed to perform its duty to ensure that relief granted by the SA complies with the requirements of the Bert Harris Act….....6

II. The SA grants relief that does not protect the public interests served by §163.3184,Florida Statutes.....10

a. The SA Violates § 163.3184, Florida Statutes..... 10

b. The SA does not protect the public interests served by § 163.3184.....12

c. The Circuit Court's ruling that Bert Harris Act conflicts with, and supercedes, Chapter 163 is reversible error.....15

III. The SA violates the B. Harris Act because it improperly vests additional development in new locations closer to the Rainbow River.....19

a. 2001 Amendment/Cubbage Agreement: Location of Development..... 20

b. No Good Faith Reliance on the 2001 Amendment/Cubbage Agreement.....23

c. Oral Statements of City Officials Insufficient.....25

d. No Good Faith Reliance on City Officials' Statements.....26

IV. The SA grants relief that exceeds the appropriate relief necessary to prevent an inordinate burden under the B. Harris Act….....33

V. The SA constitutes illegal contract zoning.....36

CONCLUSION..... 40

Table of Citations

Branca v. City of Miramar, 634 So. 2d 604, 606 (Fla. 1994).....28

Brevard County v. Snyder, 627 So.2d 469, 475 (Fla. 1993)….....34

Chisholm Properties South Beach, Inc. v. City of Miami Beach, 8 Fla. L. Weekly Supp. 689b (Fla. 11th Cir. Ct., August 9, 2001), *cert. denied* , City of Miami Beach v. Chisholm Properties South Beach, Inc. 830 So.2d 842 (Fla. 3d DCA 2002) *rehearing en banc denied* , 830 So.2d 842 (Fla 3d DCA 2002)….....7

Chung v. Sarasota County, 686 So.2d 1358, 1359 (Fla. 2d DCA 1996)….....37

Citrus County v. Halls River Development, Inc., 8 So.3d 415, 424 (Fla. 5th DCA 2009).....18, 20, 27, 28

City of Miami Beach v. 8701 Collins Ave., Inc., 77 So.2d 428 (Fla. 1954)….....23

Collier County v. Hussey, 147 So.3d 35 (Fla. 2nd DCA 2014).....18

Corona Properties of Florida, Inc. v. Monroe County, 485 So.2d 1314 (Fla. 3rd DCA 1986).....28, 29

County of Volusia v. City of Deltona, 925 So.2d 340, 345 (Fla 5th DCA 2006)...37

Hartnet v. Austin, 93 So.2d 86, 89-90 (Fla. 1956).....37

Hollywood Beach Hotel Company v. City of Hollywood, 329 So. 2d 10, 15-16 (Fla. 1976).....20

Morgran Co., Inc. v. Orange County, 818 So. 2d 640, 643 (Fla. 5th DCA 2002).....37-39

Martin County v. Yusem, 690 So.2d 1288, 1294 (Fla. 1997).....13

Town of Ponce Inlet v. Pacetta, 120 So.3d 27 (Fla. 5th DCA 20).....12, 25, 27, 28

Florida Statutes

Section 70.001, Florida Statutes (B. Harris Act).....6, passim

§ 163.3184 (Florida Community Planning Act).....10, passim

§163.3211 "**Conflict with other statutes."**.....**17**

Standard of Review

The interpretation of a statute is a question of law subject to de novo review. See Floating Docks, Inc. v. Auto–Owners Ins. Co., 82 So.3d 73, 78 (Fla.2012). Collier Cnty. v. Hussey, 147 So.3d 35 (Fla. 2nd DCA., 2014)(Bert Harris Act).

Statement of Facts and the Case

The subject property is located along the Rainbow River adjacent to Rainbow Springs State Park and includes lands along the river identified as conservation lands in a 2001 Amendment to the City of Dunnellon's Comprehensive Plan. (R: vol. 3, p. 500 SA ¶1). The settlement agreement (SA)[1] at issue in this case would allow development to occur in lands previously designated as conservation in the Comprehensive Plan without first obtaining a comprehensive plan amendment. Id.

This case commenced when the two subject Property Owners filed complaints in circuit court asserting claims against the City, including claims under the Bert Harris Act, § 70.001 and the two cases Case No. 6247-CA-B and Case No.

[1] The Appellants will be referred to as "Intervenors." The Appellees, Rainbow River Ranch, LLC, and Conservation Land Group, LLC., will be referred to as "Property Owners" and the City of Dunnellon will be referred to as the "City." References to the record will be indicated by "R" followed by the volume and page number ("R: vol.___, p.___). The Bert Harris Act will be referred to as the "Act." All statutory references are to the Florida Statutes (2015) unless otherwise indicated. The Amended Settlement Agreement at issue is referred to as ("SA").

10-1960-CA-B were consolidated. (R: vol. 2, p. 296-298). Circuit Judge Frances King was assigned to this case.

The Property Owners and the City negotiated a settlement agreement (SA) that would allow development to occur in lands previously designated as Conservation in the Comprehensive Plan without first obtaining a comprehensive plan amendment. The Property Owners and the City filed in the circuit court a Joint Petition to Affirm Settlement Agreement pursuant to § 70.001(4)(d)2 on April 9, 2010. (R: vol. 1, p. 1-61).

On October 14, 2010, the circuit court granted leave to intervene to DCA, (R: vol. 1, p. 101-22), and granted Intervenors leave to intervene on December 23, 2010 (R: vol. 2, p. 250-251).

On January 29, 2013, Property Owners and the City filed a Motion to Amend Joint Petition to Affirm Revised Settlement Agreement with a copy of the Revised Settlement Agreement attached as Exhibit 1. (R: vol. 3, p. 508-576)

On February 14, 2013, the circuit court granted the City and Property Owners Motion to Amend Joint Petition to Affirm Revised Settlement Agreement. (R: vol. 3, p. 577—578).

On January 13, 2014, a Non-Evidentiary hearing was held before Circuit Judge Steven Rogers who replaced Judge King. Lawyers for the parties presented oral arguments. (R: vol. 6, p. 1193-1200; vol. 7, p. 1201-1262).

On June 20, 2014, the circuit court entered an Order to Set Evidentiary Hearing or, in the Alternative, Granting Leave to Amend Petition for Approval of Revised Settlement Agreement. (R: vol. 5, p. 988-995.)

On July 21, 2014, Property Owners, the City, and DCA, now known as DOE, filed an Amendment to Amended Joint Petition to Affirm Settlement Agreement under § 70.001(4)(d)2, Florida Statutes. (R: vol. 6, p. 1005-1074).

Intervenors filed another Motion for Evidentiary Hearing on September 28, 2014 (R: vol. 6, p. 1127-1167), which the court denied on December 18, 2014. (R: vol. 6, 1183-1184).

On May 4, 2015, a case management conference was held before newly assigned Circuit Judge Lisa Herndon. (R: vol. 6, p. 1191-1192).

A second case management conference was held on June 2, 2005. (R: vol. 7, p. 1263-1264).

On June 11, 2015, the circuit court issued her Order Approving Amended Settlement Agreement, (R: vol. 7, p. 1265-1270). Four days later, on June 15, 2015, the circuit court entered her Order Denying Intervenors' Motion for Evidentiary Hearing. (R: vol. 7, p. 1271)

On July 9, 2015, Intervenors filed their Notice of Appeal to this Court. (R: vol. 7, p. 1274-1285.)

Summary of Argument

The Property Owners alleged that in 2007 a comprehensive plan text amendment reduced the maximum density allowed on lands designated as *Agriculture* in the City's Comprehensive Plan. The Property Owners and the City entered into a Bert Harris Act settlement agreement ("SA") that allows additional development in areas designated as *Conservation* without first amending the comprehensive plan as normally required under § 163.3184, Florida Statutes.

The circuit court was incorrect in approving the SA because the circuit court failed to ensure that the SA satisfied the statutory criteria for settlement agreements under the B. Harris Act. Contrary to the B. Harris Act two-prong statutory test, the relief granted under this SA (1) greatly exceeds the "appropriate relief necessary to prevent an inordinate burden" on the Property and (2) does not "protect the public interests served by" § 163.3184, Florida Statutes (Florida's Community Planning Act).

The SA greatly exceeds the "appropriate relief necessary to prevent an inordinate burden" on the Property because the record reflects that Property owners have no existing or vested right (particularly to locate increased development in the areas designated as Conservation in the Comprehensive Plan), and therefore, they are not entitled to relief under the B. Harris Act. Assuming *arguendo* that Property Owners have some vested right to develop a portion of the parcel designated

Agriculture, the development should have been in areas designated as Agriculture in the Comprehensive Plan and the SA should not have approved additional development in the areas designated as Conservation.

The SA does not "protect the public interests served by" § 163.3184, Florida Statutes (Florida's Community Planning Act) because the SA went beyond agreeing to process a plan amendment but actually purports to approve or waive the requirement of obtaining a plan amendment under the process set forth in § 163.3184, Florida Statutes. Florida's Community Planning Act §163.3211 specifically provides that "***Where this act may be in conflict with any other provision or provisions of law*** relating to local governments having authority to regulate the development of land, ***the provisions of this act shall govern*** unless the provisions of this act are met or exceeded by such other provision or provisions of law relating to local government, including land development regulations adopted pursuant to chapter 125 or chapter 166." (emphasis added). Therefore, if there is any conflict between the B. Harris Act §70.001(4)(c) and Florida's Community Planning Act §163.3184, the latter controls.

The SA also contains numerous provisions that contract away the City's future police powers, purport to waive public hearings and constitute illegal contract zoning. For these reasons, this Court should reverse the circuit court's approval of the SA.

Argument

I. The circuit court failed to perform its duty to ensure that relief granted by the SA complies with the requirements of the Bert Harris Act.

The Bert Harris Act imposes an important duty on the circuit court**.** Section 70.001(4)(d)2, Florida Statutes, requires circuit court review of any Bert Harris settlement agreement that contravenes an otherwise applicable statute. The parties to such an agreement—the governmental entity and the property owner--must jointly file "an action" in circuit court for approval of the agreement by the court.

In reviewing the settlement agreement, the circuit court has the duty "to ***ensure*** that the relief granted **protects the public interest** served by the statute at issue and is the **appropriate relief necessary** to prevent the governmental regulatory effort from inordinately burdening the real property." *Id. (emphasis added).*

The Act does not prescribe the nature of the proceeding to be conducted by the circuit court. It neither expressly permits nor prohibits an evidentiary hearing. However, it does contain the following broad grant of authority: "The circuit court may enter any orders necessary to effectuate the purposes of this section and to make final determinations to effectuate the relief available under this section." Fla. Stat. § 70.001(7)(a). This provision is broad enough to allow the circuit court to

hold any evidentiary hearings needed to ascertain the facts as to whether a Bert Harris Act settlement agreement meets all statutory requirements.

Regardless of the type of proceeding the court conducts, the requirement to "**ensure**" indicates that the court is not to be a "rubber stamp" for Bert Harris settlement agreements. Rather, the court should closely scrutinize and thoroughly evaluate the relief granted by the agreement. See, e.g., Chisholm Properties South Beach, Inc. v. City of Miami Beach, 8 Fla. L. Weekly Supp. 689b (Fla. 11th Cir.Ct., August 9, 2001), *cert. denied* , City of Miami Beach v. Chisholm Properties South Beach, Inc. 830 So.2d 842 (Fla. 3d DCA 2002) *reh en banc denied* , 830 So.2d 842 (Fla 3d DCA 2002).

Without close examination by the Court, there is nothing that prevents a proposed settlement from becoming a "sweetheart deal" that improperly departs from otherwise applicable substantive requirements and procedural safeguards contained in Florida Statutes and City Code provisions. Chisholm v Miami Beach, 830 So.2d 842 (Fla. 3rd DCA 2002); Chisholm v City of Miami Beach, 8 Fla. L. Weekly Supp. 689, Circuit Court Opinion August 9, 2001, (Judge Altonaga). In Chisholm, the circuit court declined to approve a Bert Harris settlement agreement in a detailed opinion explaining the basis for its decision. After denying certiorari review, the Third District Court of Appeal, in a brief opinion denying a motion for rehearing *en banc*, stated that the settlement agreement would have granted

unjustified relief "through the device of a sweetheart 'settlement' of a spurious action" against the City under the Bert Harris Act. 830 So.2d at 842.

Because the Bert Harris Act allows local governments to enter into settlements that violate state and local law, the Act is susceptible to great abuse. The judiciary should be vigilant in preventing overreaching Harris Act settlements, especially those involving small municipalities that may be intimidated by litigation and huge claims for compensation as noted by Judge Altonaga in the Chisholm circuit court opinion.

Intervenors respectfully submit the circuit court in this case did not fulfill its duty to "ensure" that the relief granted protects the public interest and is the "appropriate relief necessary" because:

(1) The circuit court's Order Approving Amended Settlement Agreement (R: vol. 7, p. 1265) is devoid of any findings of fact to support the circuit court's bare conclusion that the SA protects the public interest and is the appropriate relief necessary to prevent an inordinate burdening of Property Owners' real property. The court's conclusory finding is nothing more than a recitation of the statutory language. It contains no analysis or evaluation of the relief granted by the SA, no explanation of how the relief granted protects the public interest, or why it is the appropriate relief necessary.

(2) The circuit court denied Intervenors' request for an evidentiary hearing which was opposed by the City and Property Owners. (R: vol.6, p. 1183-1184; vol. 7, p. 1274-1285). Curiously, however, the denial came after the circuit court issued its "*Order to Set Evidentiary Hearing Or, In The Alternative Granting Leave To Amend Petition for Approval Of Revised Settlement Agreement*", (R: vol. 5; p. 988-995, which was entered by a prior circuit court judge assigned to the case. In this previous order, the circuit court recognized that the Act does not prohibit an evidentiary hearing and that Intervenors had raised sufficient concerns to justify an evidentiary hearing. (R: vol. 5, p. 992-993). After the City and Property Owners filed an amended petition, the newly assigned circuit court judge denied Intervenors' renewed motion for an evidentiary hearing. (R: vol. 7, p. 1271-1273).

(3) The circuit court refused to consider whether Property Owners have any valid vested rights even though vesting is the cornerstone of their Bert Harris action and the alleged basis for entering into a SA that admittedly violated state law. The record reflects that Property Owners have no vested right under the common law principles of equitable estoppel as will be discussed below. (R: vol. 5, p. 992).

(4) The circuit court failed to consider, and no evidence or argument was presented below to demonstrate, that the excessive and extensive relief granted by

the SA was the appropriate relief necessary to prevent inordinate burdening of Property Owners' alleged vested right. In fact, the relief far exceeded the appropriate relief necessary.

II. The S.A. grants relief that does not protect the public interests served by § 163.3184, Florida Statutes.

As noted above, if a Bert Harris settlement agreement contravenes the application of a statute, the circuit court must ensure that "the relief granted protects the ***public interest*** served by the statute at issue." Fla. Stat. §70.001(4)(d)2 (emphasis added). The statute at issue is § 163.3184, Florida Statutes, establishing the notice, public participation and state review requirements for amendment of local comprehensive plans. The subject SA fails to protect the public interests served by that statute, and therefore, violates § 163.3184.

a. The SA Violates § 163.3184, Florida Statutes.

The SA purports to amend the City Comprehensive Plan in Paragraph 4.b. of the SA which states that Objective 1, Policy 1.6, of the Comprehensive Plan's Future Land Use Element "*is modified to include up to 100,000 square feet of commercial and to exclude Policy 1.6, subset c, g, h, and j"* [i.e., the bulk, height, density, and compatibility standards and requirements for development in the mixed use land use category] (R: vol. 3, p. 500-576; SA, ¶ 4b) By unilaterally

amending the City Comprehensive Plan in the SA without first going through the mandated statutory process to amend duly-adopted local comprehensive plans, the City violated § 163.3184, Florida Statutes.

Section 163.3184 creates a mandatory state process for review and adoption of local comprehensive plan amendments (with certain exceptions not applicable here.). The process **"shall apply to all plan amendments**…and **shall be applicable statewide."** Fla. Stat. § 163.3184(3)(a)(emphasis added). The statute makes no exception for plan amendments adopted in Bert Harris Act settlement agreements.

The adoption process established by Section 163.3184 requires advertised public hearing requirements for the transmittal and adoption of plan amendments, pre-adoption transmittal of proposed plan amendments to state agencies for review and comment, post-adoption state review of plan amendments for compliance with state law, and an administrative process under Chapter 120, Florida Statues (Florida's Administrative Procedures Act) for affected persons to seek a formal administrative hearing challenging the compliance of plan amendments with state law requirements, including the substantive comprehensive planning requirements set forth in 163.3177 Florida Statutes.

Importantly, the statute also expressly provides that proceedings under § 163.3184 are the sole, exclusive proceedings or acts for determining whether a

local plan amendment is in compliance with Chapter 163, Part II, Florida Statutes. Fla. Stat. §163.3184(10). Nevertheless, the City by-passed all of these procedural requirements and amended its Comprehensive Plan in the SA, thereby contravening §163.3184. The City's unilateral adoption of the plan amendment was "a violation of public policy, in light of the public hearings and other government approvals required for comprehensive plan amendments." *Town of Ponce Inlet v. Pacetta*, 120 So.3d 27 (Fla. 5th DCA 2013).

b. The SA does not protect the public interests served by § 163.3184.

Because the SA contravenes §163.3184, the relief it grants must protect the public interests served by that statute. Fla. Stat. §70.001(4)(d)1 & 2. Section 163.3184 serves three important public interests, none of which is protected by the SA.

First, public participation in and enforcement of the planning process is a vitally important public interest served by § 163.3184. The express intent of the Legislature is that the public participate in the planning process "*to the fullest extent possible.*" Fla. Stat. § 163.3181. To that end, §§ 163.3184(3)(b)1 (3)(c)1, & 11(b); 163.3174(1) local governments are required to hold properly noticed public hearings before the local planning agency and the City Council on proposed plan amendments, including hearings at the transmittal and adoption stages, to give

citizens an opportunity to comment on and support or oppose proposed plan amendments. §§ 163.3184(3)(b)1 (3)(c)1, & 11(b); 163.3174(1).

A second important public interest served by § 163.3184 is intergovernmental planning coordination and review by state, regional and local reviewing agencies. For City of Dunnellon plan amendments, the reviewing agencies are Marion County, the regional planning council, and the following state agencies: the state land planning agency now called the Department of Economic Opportunity (DEO), the Southwest Florida Water Management District, the Department of Transportation, the Department of Environmental Protection, the Department of Education, and the Department of State. §163.3184.

These reviewing agencies are charged with responsibility to review and comment on proposed plan amendments and to identify any adverse impacts on important state and regional resources and facilities and the county comprehensive plan. Fla. Stat §163.3184. These agency comments may be the basis for finding a plan amendment is in compliance or not in compliance with state law and may also result in changes to the plan amendment that bring it into compliance. As the Florida Supreme Court has observed, "This integrated review process ensures that the policies and goals of the Act (Chapter 163, Florida Statutes) will be followed." *Martin County v. Yusem*, 690 So.2d 1288, 1294 (Fla. 1997).

Thirdly, and perhaps most importantly, § 163.3184 serves the public interest in ensuring that local comprehensive plans and plan amendments are in compliance with Chapter 163, Florida Statutes. Every local government is required to adopt local comprehensive plans and plan amendments that comply with state planning requirements. See § 163.3167. To enforce this requirement, the Legislature expressly provided citizens of the local government the ability to challenge the decisions of the state land planning agency as to whether a plan amendment is "in compliance" with minimum state requirements. Section 163.3184(5) empowers citizens with standing—"affected persons"-- to challenge the compliance of an amendment in a formal administrative proceeding conducted by an administrative law judge from the Florida Division of Administrative Hearings under Chapter 120, Florida Statutes.

The relief granted by the SA does not protect any of the above-referenced public interests served by § 163.3184. Rather it defeats these public interests by bypassing and circumventing the mandatory plan amendment review and adoption process established by § 163.3184. By illegally amending the City Comprehensive Plan in the SA without following § 163.3184 requirements, including notice and hearing requirements, the City deprived Intervenors and other affected persons of their statutory right to participate in the planning process at properly noticed public hearings before the local planning agency and then before the City Council

at the transmittal and adoption stages of the plan amendment process and the opportunity to challenge the non-compliance of the plan amendment in a formal state administrative hearing.

Also, by failing to transmit a proposed plan amendment to the reviewing agencies, the City blocked and prevented integrated agency review of the proposal as required by § 163.3184. Integrated intergovernmental review was not accomplished because Marion County and five state agencies—the regional planning council, Department of Transportation, Department of State, Southwest Florida Water Management, and Department of Education—were deprived of their statutory right and duty to review and comment on the SA plan amendment as provided in §163.3184.

c. The Circuit Court's ruling that Bert Harris Act conflicts with, and supersedes, Chapter 163 is reversible error.

The circuit court ruled that the City may amend its comprehensive plan in a Bert Harris settlement agreement pursuant to §70.001(4)(c) without compliance with §163.3184. The court cited the rule of statutory construction that, where two statutes are in conflict, the specific provision controls the general. Applying this rule, the court characterized § 70.001(4)(c) as a specific provision that controls over the more general provision in §163.3184. (R: vol. 5, p. 988, 990-91). The

court's ruling is erroneous because there is no conflict between the two statutory provisions.

Florida's Community Planning Act, Section 163.3184, sets forth the specific, detailed mandatory procedures for adopting all plan amendments, with a few exceptions not applicable here. This provision clearly states that these procedures "shall apply to all plan amendments…and shall be applicable statewide." Significantly, it makes no exception for plan amendments in Bert Harris settlement agreements.

The B. Harris Act, Section 70.001(4)(c), on the other hand, does not address the procedures for review and adoption of comprehensive plan amendments. In fact, it does not even mention comprehensive plan amendments, and like § 163.3184, it does not except or exempt plan amendments in Bert Harris settlement agreements from the requirements of §163.3184. Certainly, a Settlement Agreement could require that the applicant file and process a Plan Amendment under §163.3184 that would reconcile the two statutes and then compliance with both statutes would be possible. That is not how the subject SA is written – the subject SA actually bypasses and violates §163.3184, Florida Statutes. Any conflict with §163.3184 is created by the SA, not by the two statutes.

There is no conflict between the two statutory provisions, and the "specific controls the general" rule of construction is inapplicable. Even if only one of the two statutes were applicable, § 163.3184 is clearly the more specific provision regarding adoption and review of plan amendments.

If the Legislature had intended to exempt B. Harris Act settlement agreements from the requirements of the § 163.3184 plan amendment procedure, it easily could have done so by amending either § 163.3184 or § 70.001(4)(c) to expressly provide an exemption. Instead, to remove any doubt about the legislature's intent regarding potential conflicts, the Legislature enacted §163.3211 which specifically provides:

> §163.3211 "**Conflict with other statutes."**
>
> ***"Where this act may be in conflict with any other provision or provisions of law*** relating to local governments having authority to regulate the development of land, ***the provisions of this act shall govern*** unless the provisions of this act are met or exceeded by such other provision or provisions of law relating to local government, including land development regulations adopted pursuant to chapter 125 or chapter 166." (emphasis added).

Under this statutory provision, if there is a conflict between §70.001(4)(c) and §163.3184, the latter controls. See, *Hussey v. Collier County*, ("Hussey I") Case No. 08-6933-CA, Twentieth Judicial Circuit, (Sept. 19, 2013), Order Denying Approval of Joint Settlement Agreement, (holding that a Bert Harris settlement agreement cannot adopt plan amendments in violation of §162.3184, citing §

163.3211), affirmed on other grounds in Collier County v. Hussey, 147 So.3d 35 (Fla. 2nd DCA 2014).

The applicable rule of statutory construction is that the courts will give effect to the plain language of a statute. As this Court stated in Citrus County v. Halls River Development, Inc., 8 So.3d 415 , 424 (Fla. 5th DCA 2009)(citations in original), "Florida Law is well settled that ambiguity is a prerequisite to judicial construction, and in the absence of ambiguity, the plain language of the statute prevails" citing *Marion County v. Edenfield*, 609 So.2d 27, 29 (Fla. 1992); *Holly v. Auld*, 450 So.2d 217, 219 (Fla. 1984).

Section 163.3184 clearly and unambiguously sets forth the mandatory procedures for adopting all local comprehensive plan amendments in Florida. Therefore, the plain language of § 163.3184 controls.

The circuit court erred in ruling that §70.001 controls over §163.3211 because no conflict between the statutes exists. (R: vol. 5, p. 988, 990-991). In making it's ruling, the circuit court again erroneously concluded that the two statutes are in conflict, and that §70.001 controls. First, there is no conflict. Second, even if there were a conflict, the express conflict priority provision of Section 163.3211 establishes that the provisions of Chapter 163 will control in the event of a conflict with other statutes. Section 70.001 does not contain a conflict

of laws provision so it cannot, and does not, take priority over § 163.3211, Florida Statutes.

III. The SA violates the B. Harris Act because it improperly vests additional development in new locations closer to the Rainbow River.

The SA improperly provides that the Property and the Project shall be "determined to be vested for 450 dwelling units and 125,000 square feet of commercial." (R: vol. 3, p. 500-576; SA, ¶ 4). The Property Owners and the City contend that this "vested right" is based on the amount of development allowed by the 2001 Amendment which incorporated the Cubbage Agreement. (R: vol., 6, p. 1005-1007). Further, the Property Owners contend that the City inordinately burdened their vested right by enacting the 2007 Plan Amendment which limited development on the Property to 29 residential units and no commercial. The Property Owners and the City assert that the SA's grant of vesting is necessary to prevent inordinate burdening of the Property. (R: vol. 6, p 1005-1007, 1009-912).

This Court is required by Section 70.001(4)(d)2, F.S. to determine whether the relief granted by the SA "is the appropriate relief necessary to prevent" the 2007 Amendment "from inordinately burdening" the vested right claimed by the Property Owners. This determination necessarily requires the court to determine whether Property Owners have a vested right that has been inordinately burdened.

§ 70.001 (2). Under the Bert Harris Act, the existence of a "vested right" is to be determined by application of the common law principles of equitable estoppel. Fla. Stat. § 70.001(3)(a).

The common law doctrine of equitable estoppel is applied to prevent application of new governmental regulations to land where there is: (1) some act or omission of government (2) upon which the landowner relies in good faith (3) by making such a substantial change in position or by incurring such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights that the owner has acquired. Citrus County v. Halls River Development, Inc., 8 So.3rd 413, 421 (Fla. 5th DCA 2009); Hollywood Beach Hotel Company v. City of Hollywood, 329 So. 2d 10, 15-16 (Fla. 1976).

As the following analysis demonstrates, the determination of vested rights in the SA clearly exceeds, and was not based on, application of the principles of equitable estoppel as required by the Act.

a. The 2001 Amendment/Cubbage Agreement: Location of Development.

The City adopted the 2001 Amendment in City Ordinance 01-02 (Exhibit D to SA R: vol. 3, p. 500) pursuant to a stipulated settlement agreement entered into by the City and the state land planning agency after the agency found the City's 1996 plan amendment for the subject Property "not in compliance" pursuant to Chapter 163, Florida Statutes.

Both the stipulated settlement agreement and City Ordinance 01-02 (Exhibit D to SA R: vol. 3, p. 500) incorporated an Agreement Limiting Development between the City and Property Owners' predecessor in title, the Cubbages (hereinafter "Cubbage Agreement") (The Cubbage Agreement is *Exhibit A* to Exhibit D attached to the SA (R: vol. 3, p. 500, SA).

The Cubbage Agreement provided that development on the Property "shall not exceed" 450 residential units and 125,000 square feet of commercial, but the Agreement did more than place maximum density and intensity limits on development on the Property. It also contained a future land use plan for the Property that specified the *geographic location* on the Property where the 450 residential units and 125,000 square feet of commercial could be located and developed. It designated specific, separate areas for each of the Property's future land use categories-- commercial, medium density residential, agriculture, and conservation.

To protect the Rainbow River, more intense land uses (25 acres of commercial and 85 acres of medium density residential at 5 units per acre), were located away from the river. Thirty-six acres along the river were designated conservation, permitting only passive uses. Also, on a portion of the property along the river, 152 acres were designated agriculture, allowing one residential unit per five acres, for a total of 31 residential units at most.

City Ordinance 01-02 adopted the Cubbage Agreement's land use plan into the City's comprehensive plan. Therefore, by law under Chapter 163, Florida Statutes the 450 residential units and 125,000 square feet of commercial space *cannot be developed in locations that are inconsistent with the land use plan* approved by the 2001 Plan Amendment.

Further, and importantly, the Cubbage Agreement expressly provided that "any modification in the limitations provided in this Agreement purporting to permit an increase" in residential units or commercial space in the agriculture, medium density residential, and commercial land use categories "shall be effective *only if adopted by further amendment to the City of Dunnellon Comprehensive Plan in accordance with the formalities then required for amendments to the Comprehensive Plan*."[2]

Property Owners cannot claim *vested* property rights that are greater than the rights bestowed upon them by the 2001 Plan Amendment/Cubbage Agreement on which they claim to have relied. They cannot in good faith claim a vested right to the amount of development allowed by the 2001 Plan Amendment/Cubbage Agreement and ignore its development locational limitations or the Cubbage Agreement's requirement that increases in density or intensity can only be made by

[2] See also, Cubbage Agreement pp. 2-3, para 4, Changes in Law.

an amendment to the City Comprehensive Plan adopted "in accordance with the formalities then required for amendments to the comprehensive plan."

b. <u>No Good Faith Reliance on the 2001 Amendment/Cubbage Agreement</u>.

The 200l Amendment and the Cubbage Agreement were matters of public record when the Property Owners purchased the Property in 2004. The Cubbage Agreement was recorded in the Marion County public records at OR Book/Page 02935/1118. The Comprehensive Plan is a public record that is also generally available and part of any due diligence that might be conducted as to the ability to develop property within the City of Dunnellon. Thus, at the time of purchase, Property Owners knew, or should have known, about the land use locational restrictions on the Property in the 2001 Amendment /Cubbage Agreement.

Moreover, mere purchase of land does not create a vested right in existing zoning or comprehensive plan designations. Other acts of good faith reliance on the existing land use designation are necessary to equitably estop the local government from changing the existing designation and applying new regulations. <u>City of Miami Beach v. 8701 Collins Ave., Inc</u>., 77 So.2d 428 (Fla. 1954).

The Property Owners never attempted to develop the Property consistent with the 2001 Amendment's future land use plan for the Property. Instead, in 2004 they began seeking approval of a different plan, one that substantially increased

allowable density and/ or the location of allowable density of development and placed more development along the river.

The 2004 Amendment would have increased density on the Property by 638 units. After the state agency raised numerous objections to the proposal, the City did not adopt the proposed 2004 plan amendment. (R: vol. 1, p. 101, 1111-1112).

In 2005, the City transmitted another plan amendment for the Property to the state planning agency which again raised objections. Although the 2005 amendment would have decreased overall residential density on the Property, it greatly reduced the size of the Conservation area and located much more development adjacent to and near the river. The City initially adopted the 2005 amendment, but after the state agency issued its Notice of Intent to find the amendment "*not in compliance*" with Chapter 163 requirements, the City rescinded the 2005 amendment. (R: vol. 1, p. 101, 1111-1112).

Consistent with their earlier attempts, the Property Owners now seek through the SA to once again attempt to change the future land use plan established for the Property in the 2001 Amendment/Cubbage Agreement. Although the amount of development approved by the SA does not exceed the maximum density and intensity limits established by the 2001Amendment/Cubbage Agreement, the *location* of the development is not consistent with the 2001 Amendment/Cubbage Agreement. The SA approves a land use plan for the Property that is substantially

different from the future land use plan approved by the 2001 Amendment/Cubbage Agreement in several respects, including but not limited to the following:

- the SA approves a plan that reduces the Conservation area from 36 to 10 acres,
- the SA allows additional development density and lots in the Conservation area,
- the SA approves additional one acre lots (rather than 5-acre lots) in Agriculture lands along the River,
- the SA allows far more than 30 residential units in the Agriculture area.

Rather than relying upon the land use plan for the Property in the 2001 Amendment, the Property Owners have repeatedly sought to replace it with a different future land use plan. The Property Owners never relied on or sought any approvals in good faith on the 2001 Amendment/Cubbage Agreement.

c. <u>Oral Statements of City Officials Insufficient.</u>

The Property Owners alleged that they relied on unofficial preliminary statements of support and encouragement made by city officials[3] even though this is rejected by case law. See <u>Town of Ponce Inlet v. Pacetta</u>, 120 So.3rd 27 (Fla. 5th DCA 2013). Specifically, Property Owners allege the following:

[3] See, Case No. 6247-CA-B, Case No. 10-1960-CA-B (consolidated) . Harris Act Complaint Count I, paragraphs 4-9, Count II, paragraph 50. (R: vol. 2, p. 296-298).
.

(1) At a meeting with the City Manager and City Community Development Director in 2004, Property Owners "were assured and *promised that the City would support development* on the property, and assist future development should the property be purchased." [4]

(2) At a meeting with the City Community Development Director on November 23, 2004, to discuss Property Owners' proposed development plans for the Property, the Director "was encouraging…and *made positive suggestions* for the future development of the site."[5]

(3) During appearances before the Planning Commission and the City Council in January and February, 2005 to discuss their proposed development, the Property Owners "received *support and encouragement* from the City."[6]

d. No Good Faith Reliance on City Officials' Statements.

Property Owners cannot establish good faith reliance on the alleged statements of City officials set forth above for several reasons. First, at the time of the alleged meetings with the City Council, City Planning Commission, and City staff in 2004 and 2005, the City's duly adopted Comprehensive Plan did not allow for the proposed development. Accordingly, Plaintiffs' alleged reliance on City assurances of "support for the project" could not be in good faith.

[4] Count I, paragraph 4.
[5] Count I, paragraph 6.
[6] Count 1, paragraph 8.

The Fifth District in Town of Ponce Inlet v. Pacetta, 120 So.3rd 27 (Fla. 5th DCA 2013) held that with regard to estoppel or vesting that good faith reliance could not be established where the existing comprehensive plan did not allow Pacetta's proposed development.

The Fifth District also held in Citrus County v. Halls River Development, Inc., 8 Sos.3d 413, 422-23 (Fla. 5th DCA 2009) that, where a Comprehensive Plan did not permit the developer's proposed development, the County and the developer should have known that the developer could not "utilize the doctrine of equitable estopped to compel the County to issue the necessary approvals for the project *despite the County's willingness to do so*" because the plan prohibited the development.

Similarly, in the instant case, both the Property Owners and the City knew that Property Owners' proposed development project was inconsistent with the 2001 Amendment to the City's Comprehensive Plan. A county or city cannot promise approval of any development that would violate a local comprehensive plan because all development must be consistent with a duly adopted comprehensive plan. Florida Statutes §163.3215. As discussed above, on two different occasions, in 2004 and 2005, the City and Property Owners attempted to amend the City Comprehensive Plan to allow the proposed development project, but the state

planning agency objected to both amendments and neither became legally effective.

Second, if the City Council or City staff made any representation to the Property Owners that their *specific* development plan and location of units closer to the Rainbow River was permissible under the City's existing comprehensive plan, the representation was a **mistake of law.** An equitable estoppel or vested rights claim against the City cannot be based on a mistake of law. Citrus County v. Halls River Development, Inc., 8 Sos.3d 413, 422-23 (Fla. 5th DCA 2009) ("the doctrine of estoppel does not generally apply to transactions that are forbidden by law or contrary to public policy."); Branca v. City of Miramar, 634 So. 2d 604, 606 (Fla. 1994) ("as a general rule, estoppel will not apply to mistaken statements of the law."); Corona Properties of Florida, Inc. v. Monroe County, 485 So.2d 1314 (Fla. 3rd DCA 1986).

Third, even if the City officials represented that the City would *amend* its comprehensive plan to allow Property Owners' proposed development, this representation cannot legally be the basis of an estoppel or vested rights claim against the City. Town of Ponce Inlet v. Pacetta, *LLC*, 120 So.3rd 27 (Fla. 5th DCA 2013). In *Town of Ponce Inlet*, this court held that the Town officials' assurances that the Town's Comprehensive Plan would be amended to allow Pacetta's development plans were not legally binding and could not reasonably be relied

upon in good faith by Pacetta because "the town officials lacked the authority to unilaterally amend the Comprehensive Land Use Plan." *Id*. See § 163.3184(4), (15)."

Fourth, the Property Owners in this case could not reasonably rely in good faith on mere expressions of support for development of the property by the City Manager and Community Development Director. Only the City Council had the authority to approve a specific development plan that would under state statutes or City Code require City Council approval. In this case, no City Council approvals were obtained for a comprehensive plan amendment for the Property and no approval was obtained for a plat, planned development, rezoning, or any other site plan approval. See Fla. Stat. §§ 163.3184(3)(c)2 and 163.3184(11)(a); City Charter, section 7; City Code, Chapter 2, section 2-104; Chapter 94, Article II, section 94-37; Chapter 98, §§ 98-81; 98-82; 98-83. (R: vol. 5, p. 845-878).

The statements of these two city *staff* persons who lacked the authority to make such approvals unilaterally cannot be the basis of an estoppel or vested rights claim against the City. See Corona Properties of Florida, Inc. v. Monroe County, 485 So.2d 1314 (Fla. 3rd DCA 1986) (Vested rights determination issued by county zoning official was invalid because the official lacked the authority to issue the determination).

Section 70.001(2) provides in part that only when a specific action of a governmental entity inordinately burdened an existing or a non-speculative "**vested right"** to a specific use of real property, the property owner of that real property is entitled to relief under the B. Harris Act. The Property Owners are only entitled to relief under the Act if they in fact have an existing or non-speculative vested right, determined by application of the common law principles of equitable estoppel. As discussed above, the Property Owners in this case do not have a vested right because they cannot show good faith reliance on any official City action, as required by the principles of equitable estoppel, or any right to develop in locations that are shown as Conservation in the 2001Plan Amendment/Cubbage Agreement. Therefore, they are not entitled to relief under the Act, and the circuit court should not have approved the SA and this court should reverse the lower court's approval of the B. Harris Act SA in this case.

IV. The SA grants relief that exceeds the appropriate relief necessary to prevent an inordinate burden under the B. Harris Act.

The B. Harris Act requires that the Property Owners and the City submit the SA to the circuit court for review and approval pursuant to § 70.001(4)d, (R: vol. 3, p. 500 SA ¶1). The property owners and the City, but not the Appellant/Intervenors, assert that "the conditions in this settlement agreement …are the appropriate relief necessary" to prevent an inordinate burdening of the

Property Owners' vested rights. (R: vol. 3, p. 500 SA, ¶ 20) The Property Owners and the City, but not the Appellant/Intervenors, "stipulate that the project should be approved as a settlement agreement under the authority of section 70.001, F.S." (R: vol. 3, p. 500 SA ¶20).

Pursuant to §70.001(4)(d)2, the circuit court has the *duty* to determine whether the SA grants, but does not exceed, the appropriate relief necessary to prevent an inordinate burdening of the Property Owners' vested rights. To make this determination, the court must consider the nature and extent of the vested rights and of the alleged inordinate burdening of those rights.

The Property Owners claim their Property is vested for 450 residential units and 125,000 square feet of commercial under the 2001Amendment's future land use classifications for the Property. Further, they contend their vested rights are inordinately burdened by the 2007 Comprehensive Plan Amendment. The 2007 Amendment changed the density on Agriculture, from 1 unit per 5 acres to 1 unit per 10 acres. However, the new 2007 Comprehensive Plan allows the same agricultural density as the prior comprehensive plan (1 unit per 5 acres) if the applicant utilizes an available conservation subdivision option which requires clustering the units on the less sensitive portions of the Property.

Assuming *arguendo* that the Property Owners have a vested right in the 2001 Plan Amendment's future land use provisions for the Property that is inordinately burdened by the 2007 Plan Amendment, the only relief that is appropriate and necessary is the restoration of the right to develop the Property in accordance with the 2001 Plan Amendment/Cubbage Agreement rather than the 2007 Amendment. In other words, the Property Owners would be returned to the position they were in before adoption of the 2007 comprehensive plan amendment.[7]

Allowing development of the Property under the 2001Amendment would be appropriate to prevent the 2007 Amendment from being an "inordinate burden" as that term is defined in §70.001(3)(e). It would allow Property Owners to realize their alleged reasonable, investment- backed expectations, i. e., the purchase and development of the Property in accordance with the 2001 Amendment in effect at the time they purchased the Property in 2004. Also, this level of appropriate relief would leave Property Owners with reasonable commercial, residential, conservation, and agricultural uses in locations allowed by the 2001 Amendment.

Instead, the SA grants relief far in excess of what is appropriate or necessary to prevent inordinate burdening of Property Owners' alleged vested rights. (A copy

[7] As noted in the Cubbage Agreement, any further increases or relocation of density would require a plan amendment.

of the SA is in the record (R: vol. 3, p. 500). Among the most egregious grants of relief in the SA are the following:

First, and most significantly, the SA purports to "vest" Property Owners' specific development Project as depicted on Exhibit A to the SA. (R: vol. 3, p. 500 SA, ¶¶ 1, 4). Ironically, this Project Site Plan, which had never been approved by the City, violates the 2001Plan Amendment/Cubbage Agreement.

Second, the SA bypasses the City zoning process, approving and vesting the Project as Mixed-Use with a PUD zoning. (R: vol. 3, p. 500 SA, ¶¶ 1, 4, 4b, 4c). The SA states the 2001 Amendment gave the Property a Mixed Land Use category designation, but this is pure fiction. (R: vol. 3, p. 500 SA, ¶ 4,4b). The 2001 comprehensive plan did not have a Mixed Use classification, and the Property had never been zoned PUD. A future land use classification alone does not constitute development approval or approval of any specific development, or approval of any development permit or order required for development. The application of a comprehensive plan's future land use categories to property does not exempt development of the property from additionally complying with all local land development regulations. Local governments are required to implement their comprehensive plans by the adoption and enforcement of appropriate land development regulations, including zoning and subdivision regulations. §§ 1633.3201; 163.3202, Fla. Stat.. Thus, even if Property Owners have a vested right

in the future land use categories applied to the Property by the 2001Amendment, the Property is not automatically rezoned or vested against the City's current land development regulations. Even the 2001 Amendment does not automatically entitle the Property Owners to develop the Property to the maximum limits allowed by that Amendment. As the Florida Supreme Court stated in Brevard County v. Snyder, 627 So.2d 469, 475 (Fla. 1993), "the comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth," and therefore, the local government retains "the discretion to decide that the maximum development density should not be allowed provided the governmental body approves some development that is consistent with the plan." Id.

Third, the SA bypasses the City platting process by purporting to grant record subdivision plat approval for the Project based on a preliminary plat attached to the SA as Exhibit A. The SA purports to grant approval of the preliminary plat waiving any public hearings on the plat. (R: vol. 3, p. 500 SA, ¶ 1.)

Fourth, the SA purports to make a factual "quasi-judicial" finding that Property owners have met the substantive requirements for a variance under section 14.2 of the City Code. (R: vol. 3, p. 500 SA, ¶ 20). This is improper under Chisholm, supra.

Fifth, the SA allows the Property Owners to convert some or all of the 125,000 square feet of commercial to residential dwelling units at a conversion rate of 2,000 square feet of commercial for one residential unit, not to exceed 50 additional units, delegating this authority to sole unbridled discretion of the City Manager, waiving future public hearings by future City Council (R: vol. 3, p. 500 SA, ¶¶ 3, 4 c.l)

Sixth, and perhaps most outrageous of all, the SA states that the Project may contravene the City comprehensive plan, existing zoning regulations, and existing and future ordinances, chapters, and sections of the Dunnellon Code of Ordinances. Incredibly, the SA even provides that if there is a conflict between the Agreement and the City's duly adopted comprehensive plan or land development regulations, the SA shall prevail. (R: vol. 3, p. 500 SA, ¶ 20). This is contrary to Florida Statute §163.3211.

This SA grants Property Owners far greater relief than is necessary to prevent an inordinate burden on their Property. It bestows far greater rights than the Property Owners had under the 2001 Plan Amendment/Cubbage Agreement upon which they rely. It grants various approvals for the Project without complying with the City's own regulations, exempts the Project from numerous City zoning and development requirements, waives City Code requirements, regulations and fees, and binds the City to approve applications not yet submitted or filed.

It is this kind of grossly over-reaching "sweet heart" deal that the Legislature intended to prevent when it provided for circuit court review in § 70.001(4)(d) 1 and 2.

V. The SA constitutes illegal contract zoning.

The SA is rife with provisions requiring the City to exercise or refrain from exercising its police power in return for Property Owners' agreement to comply with various development conditions. These provisions include the following:

(1) The City agrees to amend its comprehensive plan and land development code to establish a Transfer of Development Rights ordinance that complies with various requirements in the SA. (R: vol. 3, p. 500 SA, ¶ 2).

(2) The City agrees to determine that the Property and Project are *"vested"* for 450 residential units and 125,000 square feet of commercial.

(3) The City agrees to look favorably on the creation of a community development district. (R: vol. 3, p. 500 SA, ¶4.c.ii.)

(4) The City agrees to give final local construction permit approval to all existing docks which will be accepted as non-conforming uses. (R: vol. 3, p. 500 SA, ¶16)

(5) The City agrees that the Property Owners have complied with the substantive requirements for any variance that **may** be granted. (R: vol. 3, p. 500 SA, ¶ 20)

(6) The City agrees that, if the SA contravenes the City's comprehensive plan, zoning regulations, or the City Code of ordinances, the SA will prevail. (R: vol. 3, p. 500 SA, ¶20)

A local government does not have the authority to regulate by contract or contract away so many of its future police powers in this fashion. See Hussey, *supra*, Order Denying Approval of Joint settlement Agreement, at 24-15, in which the circuit court rejected a Bert Harris Settlement Agreement because it constituted illegal contract planning and regulation. See also County of Volusia v. City of Deltona, 925 So.2d 340, 345 (Fla 5th DCA 2006) ("an agreement contracting away a city's exercise of its police power is unenforceable); Morgran Co., Inc. v. Orange County, 818 So. 2d 640, 643 (Fla. 5th DCA 2002) (illegal contract zoning exists even if the development agreement only requires the local government to "support" an application for development approval); Chung v. Sarasota County, 686 So.2d 1358, 1359 (Fla. 2d DCA 1996) (holding that a local government cannot enter into settlement agreements which commit the local government to enact a zoning ordinance); Hartnet v. Austin, 93 So.2d 86, 89-90 (Fla. 1956) ("a city cannot legislate by contract. If it could, then each citizen would be governed by an individual rule based upon the best deal that he could make with the governing body.").

The drafters of the SA sought to avoid the prohibition against contract zoning by including two provisions in the SA that state the City "retains its inherent authority to take appropriate actions within its discretionary powers, notwithstanding the conditions in this Agreement." (R: vol. 3, p. 500 SA, ¶¶ 1, 27) However, this language is illusory.

The SA imposes severe penalties on the City for failure to abide by the Agreement. If it fails to act consistently with each of the conditions in the SA, "the City will be deemed to have inordinately burdened existing uses of real property and vested rights" as those terms are used in §70.001. (R: vol. 3, p. 500 SA, ¶1). In this event the Property Owners may refile a claim in circuit court under the Bert Harris Act, and the City agrees not to plead any affirmative defenses to the claim and waives all pre-suit requirements set forth in the Bert Harris Act. (R: vol. 3, p. 500 SA, ¶ 28)

In view of these penalties, it is not realistic to think that the City can or will fail to abide by the SA "in the exercise of its discretionary powers." This language does not save the SA.

Morgran Company, Inc. v. Orange County, 818 So2d 640 (Fla. 5th DCA 2002) is instructive on this issue. In Morgran this Court reviewed a development agreement that required the County to "*support and expeditiously process*" Morgran's rezoning application and found it to be impermissible contract zoning.

The Morgran agreement also contained a provision that the rezoning was subject to all County regulations, and that the County could not waive any of the requirements for the rezoning. Nevertheless, the Fifth District Court declared that the development agreement to "support and expeditiously process" the rezoning constituted illegal contract zoning and the provision that the rezoning was subject to all county regulations did not cure the problem. Similarly, the "exercise of discretionary powers" language does not cure the contract zoning problem in the SA.

VI. CONCLUSION

The circuit court was incorrect in approving the SA. Contrary to the B. Harris Act two-prong statutory test, the relief granted under this SA (1) greatly exceeds the "appropriate relief necessary to prevent an inordinate burden" on the Property and (2) does not "protect the public interests served by" § 163.3184, Florida Statutes (Florida's Community Planning Act). The SA greatly exceeds the "appropriate relief necessary to prevent an inordinate burden" because the Property owners have no existing or vested right to locate increased development in the areas designated as Conservation and the SA should not have approved additional development in the areas designated as Conservation. The SA does not "protect the public interests served by" § 163.3184, Florida Statutes (Florida's Community Planning Act) because the SA went beyond agreeing to process a plan amendment but actually purports to approve or waive the requirement of obtaining a plan amendment under the process set forth in § 163.3184, Florida Statutes. Florida's Community Planning Act §163.3211 specifically provides that, if there is any conflict between the B. Harris Act §70.001(4)(c) and Florida's Community Planning Act §163.3184, the latter controls. The SA also contains numerous provisions that contract away the City's future police powers, purport to waive public hearings and constitutes illegal contract zoning. For these reasons, this Court should reverse the circuit court's approval of the SA.

Respectfully submitted,

/s/ Ralf Brookes
Ralf Brookes Attorney
Fla Bar No. 0778362
Co-Counsel for Intervenors RRC et al
1217 E Cape Coral Parkway #107
Cape Coral, Fl 33904
(239) 910-5464;
(866) 341-6086 fax
RalfBrookes@gmail.com
Ralf@RalfBrookeSAttorney.com
/s/Thomas G. Pelham
Thomas G. Pelham, Esq.
Fla Bar No. 138570
Co-Counsel for Intervenors RRC et al
1474 Constitution Pl E
Tallahassee, Florida 32308
Phone (850)386-9401
tgpelham@aol.com
tom.pelham61@gmail.com

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Answer Brief served in the above styled appeal complies with the requirements contained in Rule 9.210(a)(2), Florida Rule of Appellate Procedure and uses New Times Roman 14 point font.

/s/ Ralf Brookes
Ralf Brookes Attorney
Fla Bar No. 0778362
Co-Counsel for Intervenors RRC et al
1217 E Cape Coral Parkway #107
Cape Coral, Fl 33904
(239) 910-5464;
(866) 341-6086 fax
RalfBrookes@gmail.com
Ralf@RalfBrookeSAttorney.com
/s/Thomas G. Pelham
Thomas G. Pelham, Esq.
Fla Bar No. 138570
Co-Counsel for Intervenors RRC et al
1474 Constitution Pl E
Tallahassee, Florida 32308
Phone (850)386-9401
tgpelham@aol.com
tom.pelham61@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by email on this September 30, 2015 to the following:

Bryce Ackerman Esq 125 NE 1 Ave Suite 1 Ocala Fl 34470	BAckerman@gahlaw.com parrish@gahlaw.com
Virginia Cassady 2300 Maitland Center Parkway 100 Maitland Florida 32751	vcassady@shepardfirm.com lsmith@shepardfirm.com
Aaron C Dunlap Esq. State of Florida DEO, Office of General Counsel 107 E Madison Street MSC 110 Tallahassee Fl 32399-4128	DEOEService@deo.myflorida.com Aaron.Dunlap@deo.myflorida.com

/s/ Ralf Brookes
Ralf Brookes Attorney
Fla Bar No. 0778362
Co-Counsel for Intervenors RRC et al
1217 E Cape Coral Parkway #107
Cape Coral, Fl 33904
(239) 910-5464;
(866) 341-6086 fax
RalfBrookes@gmail.com
Ralf@RalfBrookeSAttorney.com
/s/Thomas G. Pelham
Thomas G. Pelham, Esq.
Fla Bar No. 138570
Co-Counsel for Intervenors RRC et al
1474 Constitution Pl E
Tallahassee, Florida 32308
Phone (850)386-9401
tgpelham@aol.com
tom.pelham61@gmail.com