

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

**BARBARA GRAVES, GARY KAST, RANDI MARTIN and LILLIAN
THAMES,**
Appellants,

v.

CITY OF POMPANO BEACH, by and through its City Commission, a
Florida Municipality, and **PPI, INC.,**
Appellees.

No. 4D09-3790

[April 13, 2011]

STEVENSON, J.

This appeal stems from dismissal of appellants' complaint filed against the City of Pompano Beach and PPI, Inc., which challenged a plat approval as inconsistent with the City's comprehensive plan. See § 163.3215(3), Fla. Stat. (2009) ("Any aggrieved or adversely affected party may maintain a de novo action for declaratory, injunctive, or other relief against any local government to challenge . . . a development order . . . which is not consistent with the comprehensive plan . . .") (emphasis added). Because a plat approval is not a "development order" under section 163.3215, we affirm.

Appellants filed their complaint after the City adopted Resolution 2009-120, which approved recordation of the Pompano Park Racino plat. PPI, Inc., the entity that owns the Park, sought to develop it and filed an application for a plat approval with the City. Pursuant to section 157.44(A)(1)(a) of the City of Pompano Beach Land Development Code, a plat approval must be obtained from the City before any building permits may be issued for the subject property. The approved plat outlines several structures and uses that already exist on the property, as well as the development PPI sought to pursue, including expansion of the existing racetrack and casino.

Appellants, who all live around or near the Park, alleged in their complaint that the plat was a development order under section 163.3215 and had to comply with the City's comprehensive plan. The City and PPI

filed a motion to dismiss, arguing that a plat approval was not the equivalent of a development order. The trial court agreed and granted the motion to dismiss.

In reviewing dismissal of a complaint seeking relief under section 163.3215, the standard of review is *de novo*. See *Lutz Lake Fern Rd. Neighborhood Grps., Inc. v. Hillsborough Cnty.*, 779 So. 2d 380, 383 (Fla. 2d DCA 2000). All well pleaded facts and reasonable inferences from them must be accepted as true. See *Wells v. Wells*, 24 So. 3d 579, 582 (Fla. 4th DCA 2009). The test is not whether the complaint shows that the plaintiff is likely to succeed in getting a declaration of rights, but whether the plaintiff is entitled to a declaration of rights at all. See *id.* at 583.

We agree with the trial court's inherent conclusion that a plat approval is not a development order under section 163.3215. A development order is defined as "any order granting, denying, or granting with conditions an application for a development permit." § 163.3164(7). A development permit includes "any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land." § 163.3164(8). Further, development means "the carrying out of any building activity . . . [or] the making of any material change in the use or appearance of any structure or land." § 380.04(1). A plat, on the other hand, is simply "a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision." § 177.031(14). Resolution 2009-120 only approved a map of the Park, but did not permit PPI to begin building on the land or make any alterations to structures existing on the land. As indicated by the land development code, additional steps must be taken in order for development to begin. See CITY OF POMPANO BEACH, FLA. CODE ORDINANCES §§ 157.03, .45 (2009) (listing requirements for site plan approval that must be met prior to issuance of building permits). Thus, the plat approval may not be challenged as a development order under section 163.3215.

Accordingly, the trial court's order dismissing the complaint is affirmed, and appellants will need to wait until later in the process, if the plans continue, to challenge the proposed facilities and uses.

Affirmed.

GROSS, C.J., and GERBER, J., concur.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Robert B. Carney, Judge; L.T. Case No. 09-17793 (04).

Andrew J. Baumann, Kenneth G. Spillias and James E. Charles of Lewis, Longman & Walker, P.A., West Palm Beach, for appellants.

Gordon B. Linn, City Attorney, and Erin Gill Robles, Assistant City Attorney, Pompano Beach, for appellee City of Pompano Beach.

Daniel L. Wallach, Gary C. Rosen and Alan B. Koslow of Becker & Poliakoff, P.A., Fort Lauderdale, for appellee PPI, Inc.

Not final until disposition of timely filed motion for rehearing.