DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July 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

[November 23, 2011]

ON MOTION FOR REHEARING

STEVENSON, J.

We grant appellants' motion for rehearing, withdraw our previous opinion issued on April 13, 2011, and substitute the instant decision in its place.

Appellants challenge the dismissal of their complaint for declaratory relief filed against appellees, the City of Pompano Beach and PPI, Inc., to declare a revised plat approval inconsistent with the City's comprehensive plan. Under section 163.3215(3), Florida Statutes (2009), an aggrieved or adversely affected party may maintain an action for declaratory or injunctive relief against a local government to challenge a "development order" that is inconsistent with the comprehensive plan. The trial court granted the appellees' motion to dismiss and concluded that the City's plat approval was not subject to challenge under section 163.3215(3) because it was not a "development order." Upon further review and consideration of the development rights consequent to a plat approval under the City Land Development Code, we find that the plat approval in the instant case is a "development order" under the statutory scheme and reverse.

The facts are briefly summarized and taken from the complaint. Appellants are all citizens living near or around Pompano Park Racino. The Resolution approving the plat was a revision to a prior, 2008 plat

approval of the Park. The 2008 plat divided the Park into two parcels, A and B. This appeal concerns only parcel A since, according to the complaint, parcel B was ultimately not included in the plat application or approval. The Park, as approved in the 2008 plat, consisted of "an existing 278,381 square foot, 5,256 seat racetrack and grandstand facility known as the Pompano Park Harness Track—a parimutuel wagering facility." In connection with the racetrack, Parcel A contained 550 horse stalls, 44 dormitory rooms for jockeys, 115,906 square feet of ancillary commercial/retail use and a 46,503-square-foot gambling casino.

Subsequently, the City passed Resolution 2009-120, at issue in this case, which made several changes to the 2008 plat. The Resolution authorized the continued use of the existing racetrack and casino, authorized an expansion and conversion of land uses, and increased the development thresholds of the Park. Specifically, development thresholds were increased to allow 850 horse stalls, 154 dormitory rooms, a 500-room hotel, and a 230,000-square-foot casino building (containing a 55,000-square-foot casino and 175,000 square feet of commercial uses). In total, this approved an 8,497-square-foot expansion for casino use, a 54,094-square-foot expansion of commercial uses, and a new hotel. The Resolution also provided a preliminary approval for compliance with the City's land development code regarding traffic standards, as well as adequacy of water management, solid waste disposal and recreation facilities.

According to the complaint, the plat approval is inconsistent with the City's plan because it is a "juxtaposition of intensive commercial and recreational uses over the existing land use on the property, which is designed for less-intensive recreational uses." The comprehensive plan allegedly "identifies a primary land use for the property consisting of less-intensive recreational uses, and permits some more intense commercial uses to exist to support this primary use." Appellants maintain that the approval of the revised plat will allow intense commercial uses, rather than recreational uses, to become the dominant use on the property. Further, appellants maintained that the plat approval is inconsistent with the City's comprehensive plan because it violates various traffic policies and public-facility standards, and threatens surrounding properties and infrastructures. Appellants alleged in their complaint that the plat approval 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 and maintained that a plat approval was not the equivalent of a development order. The trial court agreed with the City and PPI, 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 therefrom 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.

Pursuant to Florida Statutes Chapter 163 governing comprehensive plans, any "development order" issued by a local government must be consistent with that local government's comprehensive land use plan. § 163.3194(1)(a), Fla. Stat. (2009). The Act is to be "construed broadly to accomplish its stated purposes and objectives." § 163.3194(4)(b). A development order is defined as "any order granting, denying, or granting with conditions an application for a development permit." § 163.3164(7), Fla. Stat. (2009). 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) (emphasis added). Pursuant to section 163.3164(6), "development" has the meaning given it in section 380.04 of "The Florida Environmental Land and Water Management Act of 1972," and is defined there as "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), Fla. Stat. (2009). The meaning of "development" in section 380.04(1) is more specifically defined in section 380.04(2)(b) as a "change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land." Further, section 380.04(4) provides that "[r]eference to particular operations is not intended to limit the generality of subsection (1)."

The City of Pompano Beach land development code adopts the statutory definition for "development order," but more specifically defines a "development permit" as "[a]ny building permit, zoning permit, *plat approval*, site plan approval or rezoning, certification, variance, or other action having the effect of permitting development." POMPANO BEACH, FLA., CODE ORDINANCES § 157.01 (emphasis added). A "plat" is defined as:

A map or delineated representation of the subdivision of

> lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable sections of this chapter and of any local ordinances . . . .

POMPANO BEACH, FLA., CODE ORDINANCES § 157.01 (2009).

While the City code cannot expand the statutory definition of development permit, we believe that its specific designation of a plat approval as a development permit is consistent with the plain language of section 163.3164(8) and with the liberal interpretation Chapter 163 must be given. Indeed, the list of development permits contained in section 163.3164(8) was not meant to be exhaustive as it was followed with the language "or any other official action . . . having the effect of permitting the development of land." Since the City's plat approval "ha[s] the effect of permitting development," *see* POMPANO BEACH, FLA., CODE ORDINANCES § 157.01, it falls squarely within the Florida Statutes definition of a "development permit." *See* § 163.3164(8), Fla. Stat. (development permit includes any official action of local government "having the effect of permitting the development of land").

As pointed out by appellants' motion for rehearing, the land development code provides that a development order [plat approval] "grants to the applicant . . . the right to develop or utilize the premises in accordance with the terms and conditions contained in the development order." POMPANO BEACH, FLA., CODE ORDINANCES § 157.07(A). Appellees assert that the plat approval cannot be a development order since, under the City's land use code, approval of a site plan and the issuance of building permits are still needed before any of the items depicted on the plat can be completed. The notion of the inconsequence of plat approvals in the development process was debunked in *City of Coconut Creek v. Broward County Board of County Commissioners,* 430 So. 2d 959, 963 (Fla. 4th DCA 1983). There, in a case involving a dispute between the county and a municipality over the county's right to veto the municipalities platting decisions, the court remarked:

> [T]he county is vested with the substantive authority to retain veto power over the municipalities *platting* decisions to insure that *development* within the county is consistent with the overall scheme set out in the county's land use plan. To hold otherwise would be to deny the county effective, coordinated control over *development* within the entire county including the municipalities located therein. Without some overall supervision[,] the municipalities would be free

> to make *development* decisions without consideration of their effect on adjacent communities.

Id. at 964 (emphasis added). The court further noted that the municipalities' "narrow construction" of the purpose of platting requirements as providing little more than a map "was implicitly rejected in *Kass v. Lewin*, 104 So. 2d 572, 579 (Fla. 1958)," where the supreme court "acknowledged that the legislature intended the plat act 'to promote community planning.'" 430 So. 2d at 963.

In conclusion, section 163.3164 does not suggest that a development order is one which grants development rights only in the advanced stages of the development process or to a shovel-ready project. As appellants maintain, and we agree, the City's approval of the revised plat grants PPI the right to develop the subject property in accordance with the increased uses or "restrictions" listed in the plat notes. Accordingly, we find that the City's plat approval, with its attendant development consequences, constitutes a development order subject to challenge under section 163.3215(3). The final order of dismissal is therefore reversed and this cause remanded for further proceedings.

Reversed and remanded.

GROSS, J., concurs.
GERBER, J., dissents with an opinion.

GERBER, J., dissenting.

I respectfully dissent. Our original opinion, *Graves v. City of Pompano Beach ex rel. City Comm'n*, 36 Fla. L. Weekly D778 (Fla. 4th DCA Apr. 13, 2011), was based upon applicable statutes. The appellants' motion for rehearing is based upon inapplicable authorities.

Our original opinion affirmed the trial court's order dismissing the appellants' complaint. We concluded that the City's plat approval is not a "development order" subject to challenge under section 163.3215, Florida Statutes (2009). *Id.* We based our conclusion upon the plain language definitions of section 163.3164:

> 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). . . . 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.
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> 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.

Id. at D779.

The appellants' motion for rehearing nevertheless argues that the City's plat approval constitutes a "development order" under section 163.3215. The appellants base their argument not upon the plain language definitions of section 163.3164, but upon two other authorities: (1) our holding in *City of Coconut Creek v. Broward County Board of County Commissioners*, 430 So. 2d 959, 963 (Fla. 4th DCA 1983); and (2) *the City's* definition of "development permit."

The appellants' reliance on those two authorities is misplaced. First, *Coconut Creek* is inapplicable. *Coconut Creek* pre-dates by two years the legislature's creation of section 163.3125, the statute under which the appellants brought this action. Thus, *Coconut Creek* can have no bearing upon an interpretation of section 163.3125.

Second, the City's definition of "development permit" also is inapplicable. Section 163.3215 specifically provides that a "development order" is "as defined in s. 163.3164":

> 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.

(emphasis added). A "development order," *as defined in section 163.3164*, is "any order granting, denying, or granting with conditions an application for a development permit." § 163.3164(7). A "development permit," *as defined in section 163.3164*, is "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). A "plat approval" is not included in that definition and, as we noted in our original opinion, the plat approval here, by itself, did not permit the development of land.

The appellants' motion for rehearing ignores section 163.3215's use of the phrase "as defined in s. 163.3164." Instead, the appellants rely on *the City's* definitions of "development order" and "development permit." The City's definition of "development order" is the same as section 163.3164's definition. However, the City's definition of "development permit" contains one key difference from section 163.3164's definition. The City's definition includes a "plat approval." *See* POMPANO BEACH, FLA., CODE ORDINANCES § 157.01 ("development permit" means "[a]ny building permit, zoning permit, *plat approval*, site plan approval or rezoning, certification, variance, or other action having the effect of permitting development.") (emphasis added).

The appellants' reliance on the City's definition cannot prevail as a matter of law. Our supreme court "has long held as a general rule that a statewide statute prevails over a conflicting municipal ordinance." *City of Casselberry v. Orange Cnty. Police Benev. Ass'n*, 482 So. 2d 336, 340 (Fla. 1986). "[A] conflict exists when two legislative enactments cannot co-exist." *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 888 (Fla. 2010) (citation and internal quotations omitted). Here, the two legislative enactments cannot co-exist. Section 163.3215 creates a cause of action limited to a development order "as defined in section 163.3164." Adding the City's definition of "development permit" to section 163.3164's definition broadens the cause of action beyond that which the legislature intended by its own words.

Based on the foregoing, I stand by our original opinion to affirm the circuit court's order dismissing the appellants' complaint. I would deny the appellants' motion for rehearing.

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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).

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