

Case No. 2D21-2094

---

**IN THE SECOND DISTRICT COURT OF APPEAL  
STATE OF FLORIDA**

---

CONSERVANCY OF SOUTHWEST FLORIDA, INC.,

*Plaintiff-Appellant,*

*v.*

COLLIER COUNTY, FLORIDA *and*  
COLLIER ENTERPRISES MANAGEMENT, INC.,

*Defendants-Appellees.*

---

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

---

**APPENDIX TO INITIAL BRIEF OF APPELLANT**

---

Geoffrey J. Michael  
Florida Bar No. 86152  
ARNOLD & PORTER  
KAYE SCHOLER LLP  
601 Massachusetts Ave., NW  
Washington, DC 20001  
Phone: (202) 942-5000  
geoffrey.michael@arnoldporter.com

November 10, 2021

Lauren C. Daniel\*  
Brian D. Israel\*  
Ethan G. Shenkman\*  
Stephen K. Wirth\*  
ARNOLD & PORTER  
KAYE SCHOLER LLP  
601 Massachusetts Ave., NW  
Washington, DC 20001  
Phone: (202) 942-5000  
*\* Admitted pro hac vice*

*Counsel for the Conservancy of Southwest Florida, Inc.*

## INDEX FOR APPENDIX TO INITIAL BRIEF OF APPELLANT

<b>Page(s)</b>	<b>Description</b>
App. 7–35	Final Judgment (entered on June 4, 2021)  R. 13289–13317
App. 36–41	Order Granting Defendants’ Motion for Summary Judgment Regarding Consistency With the Adopted Comprehensive Plan (entered on March 5, 2021)  R. 5824–5829
App. 42–44	Amended Order on Plaintiff’s Motion for Rehearing and/or Clarification of Order Granting Partial Summary Judgment (entered on May 6, 2021)  R. 7147–7149
App. 45–57	Order Granting Defendant CEM’s Motion in Limine (entered on May 12, 2021)  R. 7339–7351
App. 58–68	Joint Pretrial Stipulation (filed December 4, 2020)  R. 3097–3107
App. 69–80	Growth Management Plan/Future Land Use Element Excerpts Cited in Initial Brief of Appellants  R. 688–89, 1015–22, 1036
App. 81–84	Land Development Code Excerpts Cited in Initial Brief of Appellants  R. 1052, 1055, 1059
App. 85–91	Hearing Transcript Excerpts Cited in Initial Brief of Appellants  R. 6036 (January 5, 2021)  R. 13059–60, 13125–26 (April 28, 2021)

App. 92-112	Trial Transcript Excerpts Cited in Initial Brief of Appellants  T. 178 (Volume 1, May 10, 2021)  T. 450 (Volume 2, May 11, 2021)  T. 632 (Volume 3, May 12, 2021)  T. 906 (Volume 4, May 13, 2021)  T. 1407-17, 1419 (Volume 5, May 14, 2021)
-------------	---

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the following was filed using the Florida Courts E-Filing Portal and served by Electronic Mail to all counsel listed below this 10th day of November, 2021.

/s/ Geoffrey J. Michael  
Geoffrey J. Michael

*Counsel for the Conservancy of  
Southwest Florida Inc.*

## **SERVICE LIST**

### *Counsel for Collier County, Florida:*

Sally A. Ashkar, Esq.  
Jeffrey A. Klatzkow, Esq.  
Colleen Greene, Esq.  
COLLIER ATTORNEY'S OFFICE  
3299 Tamiami Trail E.  
Suite 800  
Naples, FL 34112  
Phone: (239) 252-8400  
[Sally.Ashkar@colliercountyfl.gov](mailto:Sally.Ashkar@colliercountyfl.gov)  
[Jeff.Klatzkow@colliercountyfl.gov](mailto:Jeff.Klatzkow@colliercountyfl.gov)  
[Colleen.Greene@colliercountyfl.gov](mailto:Colleen.Greene@colliercountyfl.gov)  
[Marian.Rhyne@colliercountyfl.gov](mailto:Marian.Rhyne@colliercountyfl.gov)

Gregory N. Woods, Esq.  
Jessica F. Tolin, Esq.  
WOODS, WEIDENMILLER,  
MICHETTI & RUDNICK LLP  
9045 Strada Stell Court  
Suite 400  
Naples, FL 34109  
Phone: (239) 325-4070  
[gwoods@lawfirmnaples.com](mailto:gwoods@lawfirmnaples.com)  
[jtolin@lawfirmnaples.com](mailto:jtolin@lawfirmnaples.com)

### *Counsel for Collier Enterprises Management, Inc.:*

Glenn Burhans, Jr., Esq.  
Reggie Bouthillier, Jr., Esq.  
Bridget Smitha, Esq.  
STEARNS, WEAVER, MILLER,  
WEISSLER ALHADEFF &  
SITTERSON, P.A.  
106 East College Avenue  
Suite 700  
Tallahassee, FL 32301  
Phone: (850) 329-4850  
[gburhans@stearnsweaver.com](mailto:gburhans@stearnsweaver.com)  
[rbouthillier@stearnsweaver.com](mailto:rbouthillier@stearnsweaver.com)  
[bsmitha@stearnsweaver.com](mailto:bsmitha@stearnsweaver.com)  
[cabbuhl@stearnsweaver.com](mailto:cabbuhl@stearnsweaver.com)

Jacob T. Cremer, Esq.  
Sharon Britton, Esq.  
STEARNS, WEAVER, MILLER,  
WEISSLER ALHADEFF &  
SITTERSON, P.A.  
401 E. Jackson Street  
Suite 2100  
Tampa, FL 33602  
Phone: (813) 223-4800  
[jcrember@stearnsweaver.com](mailto:jcrember@stearnsweaver.com)  
[sbritton@stearnsweaver.com](mailto:sbritton@stearnsweaver.com)  
[mhernandez@stearnsweaver.com](mailto:mhernandez@stearnsweaver.com)

Richard D. Yovanovich, Esq.  
COLEMAN, YOVANOVICH &  
KOESTER, P.A.  
4001 Tamiami Trail North  
Suite 300  
Naples, FL 34103  
Phone: (239) 435-3535  
[ryovanovich@cyklawfirm.com](mailto:ryovanovich@cyklawfirm.com)  
[dquintanilla@cyklawfirm.com](mailto:dquintanilla@cyklawfirm.com)

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA**

**CONSERVANCY OF SOUTHWEST  
FLORIDA, INC.,**

**Case No: 11-2020-CA-000780-0001-XX**

**PLAINTIFF,**

**v.**

**COLLIER COUNTY, FLORIDA, and  
COLLIER ENTERPRISES MANAGEMENT, INC.,**

**DEFENDANTS.**

---

**FINAL JUDGMENT FOR DEFENDANTS**

---

This non-jury action was tried before the Court on May 10 through 14, 2021. The Court heard testimony from the following witnesses presented by the Defendants: Jeremy Frantz, Patrick Utter, and Robert Mulhere, and from the following witnesses presented by Plaintiff: Charles Gauthier and Joseph Minicozzi. The Court also received into evidence the deposition testimony of witnesses and documentary exhibits as reflected in the trial record. Based upon the evidence presented, the Court makes the below findings of fact and conclusions of law and enters Final Judgment in favor of Defendants Collier County and Collier Enterprises Management, Inc. as follows:

**I. FINDINGS OF FACT**

**A. Background**

1. The Rural Land Stewardship Area (“RLSA”) is a voluntary program encompassing approximately 195,846 total acres of rural and agricultural land in eastern Collier County. Under the program, owners of the property within the area voluntarily agree to restrict their development

FILED 6/4/21 14:28 Collier Co 1

rights on certain parcels of environmentally sensitive land (a “Stewardship Sending Area” or “SSA”) in exchange for credits to develop other less-sensitive parcels, such as agricultural land (designated as a Stewardship Receiving Area or “SRA”) within the RLSA. *See Collier County Future Land Use Element (“FLUE”) RLSAO Policy 1.2, 1.3, and 1.14.*

2. Resolution 20-24, adopted by the Collier County Board of County Commissioners on February 7, 2020, is a development order approving and designating 997.53 acres as the Rivergrass Village Stewardship Receiving Area within the Rural Lands Stewardship Area Overlay area (the “Development Order”). *Development Order, DX-02; J. Frantz Tr., 146:12-15* (testifying that the Development Order comprises Resolution 20-24 and all of its attachments). “DX” refers to Defendants’ Exhibit as admitted into evidence at trial. Testimony in the trial transcript is cited as “[Witness name] Tr., [pg.#]:[line #].”

3. The Development Order contains the SRA Development Document and the Master Plan. *J. Frantz Tr., 146:6-15; R. Mulhere Tr., 279:16-18, 280:5-10; C. Gauthier Tr., 576:14-20.* The SRA Development Document specifies the requirements governing the development of Rivergrass Village, while the Master Plan is a visual depiction of certain requirements. *J. Frantz Tr., 145:8-9.*

4. Plaintiff filed this action pursuant to Section 163.3215(3), Fla. Stat., on March 9, 2020, challenging the Development Order as inconsistent with Collier County’s comprehensive plan. *See 1<sup>st</sup> Am. Compl. (Doc. #28).*

5. Collier County’s comprehensive plan is known as the Growth Management Plan (“GMP”). *R. Mulhere Tr., 266:9-20; J. Frantz Tr., 126:13-22.*

6. The Future Land Use Map and Attachment C to the Collier County RLSA Overlay are part of the GMP. *J. Frantz Tr., 131:3-19, 129:6-130:23; DX-10 (2012-2025 Future Land Use*



Map). Attachment C (cited throughout this Final Judgment as “GMP Att. C”) is available at: <https://www.colliercountyfl.gov/home/showpublisheddocument/76737/636516907221900000> (last accessed May 21, 2021).

7. The Future Land Use Map is a “visual depiction of the various designations in the GMP.” *J. Frantz Tr.*, 129:23-130:2.

8. Attachment C to the Collier County RLSA Overlay lists the required characteristics of an SRA. *GMP Att. C*; *J. Frantz Tr.*, 128:25-130:2, 156:4-6; *R. Mulhere Tr.*, 310:16-311:2.

**B. Findings of Fact Relating to “Use”**

9. Under the Development Order, Rivergrass Village is limited to a maximum of 2,500 residential dwelling units. *J. Frantz Tr.*, 147:13-16; *R. Mulhere Tr.*, 340:4-9. The Development Order also mandates that a minimum of 250 multi-family dwelling units must be constructed, all within one-half (1/2) mile of the Village Center. *J. Frantz Tr.*, 147:17-148:14; *R. Mulhere Tr.*, 329:25-330:4. Some of those multi-family units must be constructed within the Village Center to ensure that the center is mixed use. *P. Utter Tr.*, 243:4-7; *R. Mulhere Tr.*, 288:13-15.

10. The GMP authorizes a broad range of residential and nonresidential uses. *See* Policy 4.15.1 (“SRAs are intended to be mixed use and shall be allowed the full range of uses permitted by the Urban Designation of the FLUE, as modified by Policies 4.7, 4.7.1, 4.7.2, 4.7.3, 4.7.4 and Attachment C.”).

11. The Development Order identifies numerous permitted residential and non-residential uses. *DX-02* (SRA Dev. Doc. §§ 5.1.1.A, 5.2.1.A); *R. Mulhere Tr.*, 306:3-14.

12. The permitted uses identified in the Development Order are the only uses permitted within Rivergrass Village. *See C. Gauthier Tr., 859:5-860:20; R. Mulhere Tr., 306:3-14, 306:20-307:7.*

13. All permitted uses identified within the Development Order are within the range of allowable uses within the GMP and none of those permitted uses are prohibited by the GMP. *See C. Gauthier Tr., 858:23-860-14; R. Mulhere Tr., 306:15-19, 308:18-25; compare DX-02 (SRA Dev. Doc. §§ 5.1, 5.2) with GMP Policy 4.15.1 and GMP Att. C.*

14. Rivergrass Village contains two Context Zones: Neighborhood General and Village Center, both of which are depicted on the Master Plan. *See DX-02 (SRA Dev. Doc. §§ 5.1, 5.2); Id. (Master Plan); R. Mulhere Tr., 287:11-288:4.*

15. As set forth in the Development Order, all retail and office uses, as well as any civic, governmental and institutional uses are not permitted in the Neighborhood General Context Zone and must be contained within the Village Center Context Zone. *See DX-02 (SRA Dev. Doc. §§ 5.1, 5.2); R. Mulhere Tr., 287:11-288:4.* A minimum of 62,500 square feet of commercial uses and 25,000 square feet of civic uses must be provided within the Village Center. *DX-02 (SRA Dev. Doc. § 5.2).* The Village Center Context Zone must contain multi-family residential, making the Village Center mixed-use. *R. Mulhere Tr., 306:20-307:14.*

16. The Neighborhood General Context Zone uses include residential uses, open space uses (which includes recreation uses, parks and public green space), an amenity center, and a golf course and clubhouse. *See DX-02 (SRA Dev. Doc. § 5.1).*

17. Attachment C of the GMP requires that at least 1% of the gross acreage (*i.e.*, 9.98 acres) of Rivergrass Village must be provided in the form of parks or public green spaces. *See GMP Att. C; R. Mulhere Tr., 311:4-16; J. Frantz Tr., 156:7-14.*

18. Parks, public green space, and community green space are types of open space. *See J. Frantz Tr., 156:18-20; R. Mulhere Tr., 291:6-12, 304:21-305:3.*

19. “Open space” refers to parts of the development that are not covered by structures and can be both passive and active recreational spaces. *See R. Mulhere Tr., 290:22-291:5.*

20. At least 20 acres of open space in Rivergrass Village is accessible from the interconnected sidewalk and pathway system. *R. Mulhere Tr., 293:17-294:2, 321:14-18.*

21. The Amenity Center is a type of park. *C. Gauthier Tr., 799:3-8.*

**C. Findings of Fact Relating to “Density”**

22. Within the RLSA, the baseline density for parcels is one (1) dwelling unit per five (5) gross acres. *See GMP Att. C; R. Mulhere Tr., 328:10-20; C. Gauthier Tr., 776:25-777:3.*

23. The GMP’s mandatory density range for SRA villages is one (1) to four (4) dwelling units per gross acre. *See GMP Att. C; R. Mulhere Tr., 328:10-14; C. Gauthier Tr., 777:3-6.*

24. Per the Development Order, the density of Rivergrass Village is 2.5 dwelling units per gross acre, and is thus within the required range under the GMP. *DX-02 (SRA Dev. Doc. § 2.9); R. Mulhere Tr., 329:3-8; C. Gauthier Tr., 656:3-20.*

**D. Findings of Fact Relating to “Intensity of Use”**

25. GMP Attachment C specifies the intensity of use requirements for enumerated non-residential uses. *See GMP Att. C; R. Mulhere Tr., 323:20-324:4; J. Frantz Tr., 157:7-9, 158:21-159:2.*

26. The maximum intensity for an SRA village varies based on the type of use and is measured by minimum square footage requirements and by maximum floor area ratio (“FAR”). *GMP Att. C; J. Frantz Tr., 158:21-159:17; R. Mulhere Tr., 323:20-325:12.*

27. An SRA village is required to include a minimum of 25 square feet gross building area per dwelling unit for retail and office uses and a minimum of 10 square feet per dwelling unit for civic, governmental, or institutional uses. *GMP Att. C; R. Mulhere Tr., 307:18-23, 326:10-20, 327:19-328:3.*

28. The Development Order mandates that Rivergrass Village contain a minimum of 62,500 (25 x 2,500 dwelling units) square feet for retail and office uses and a minimum of 25,000 (10 x 2,500 dwelling units) square feet for civic, governmental, and institutional uses. *See DX-02 (SRA Dev. Doc. § IV, and § 5.2.1).*

29. Rivergrass Village must comply with the maximum FAR of 0.5 for retail and office uses, and 0.6 for civic, governmental, and institutional uses. *See GMP Att. C; R. Mulhere Tr., 324:5-325:2; 325:14-21; J. Frantz Tr., 159:4-14.* The Development Order does not permit for any deviation from these intensity requirements. *See R. Mulhere Tr., 325:3-12.*

#### **E. Procedural History**

30. Plaintiff filed this action pursuant to Section 163.3215(3), Fla. Stat., on March 9, 2020. *See Compl. (Doc. #2).* Plaintiff named Collier County as the only Defendant. *Id.*

31. By Order dated May 11, 2020, the applicant for the Development Order, Collier Enterprises Management, Inc. (“CEM”) was “added to this case as a party Defendant with full recognition and involvement in this matter, and shall not be subordinate in any way to the other parties.” *See Order Granting Motion to Intervene as a Party Defendant (Doc. #26).* Additionally, the Clerk was directed to amend the case style to reflect CEM as a party Defendant. *Id.*

32. Both Defendants requested an award of attorneys’ fees pursuant to Section 163.3215 in their answers. *See Answer and Affirmative Defenses by Collier County Florida (Doc. #24); Answer and Affirmative Defenses by Collier Enterprises Management Inc. (Doc. #27).*

33. Plaintiff amended its complaint on June 5, 2020. *See Motion to Amend Complaint/Petition with Amended Complaint/Petition Attached* (Doc. #28).

34. Both Defendants again requested an award of attorneys' fees pursuant to Section 163.3215 in their answers. *See Collier County, Florida's Answer and Affirmative Defenses to First Amended Complaint* (Doc. #30); *CEM's Answer and Affirmative Defenses to First Amended Complaint* (Doc. #31).

35. The parties participated in non-binding arbitration pursuant to § 44.103, Fla. Stat., and the award was issued on or about December 9, 2020. *See Notice of Filing Sealed Arbitrator's Award* (Doc. #199).

36. Pursuant to Section 44.103(5), Florida Statutes, Plaintiff filed a Motion for Trial De Novo on December 22, 2020. *See Motion for Trial De Novo* (Doc. #280).

37. The Honorable Judge Brodie *sua sponte* recused herself on January 12, 2021. *See Order of Recusal by Judge* (Doc. #309).

38. Partial summary judgment was granted in favor of Defendants on March 5, 2021. *See Order Granting Defendant's Motion for Summary Judgment Regarding Consistency with the Adopted Comprehensive Plan* (Doc. #364).

39. CEM's Motion in Limine and Incorporated Memorandum of Law was granted on May 11, 2021. *See Order Granting Motion in Limine* (Doc. #584).

40. Collier County's Second Motion in Limine was granted on May 12, 2021. *See Order Granting Motion in Limine* (Doc. #585).

## **II. CREDIBILITY AND WEIGHT OF EXPERT TESTIMONY**

41. Plaintiff offered two experts at trial, Joseph Minicozzi and Charles Gauthier. Both witnesses were qualified and accepted as experts by the Court pursuant to Section 90.702, Florida

Statutes. *J. Minicozzi Tr.*, 948:16-959:2 (accepted over Defendant CEM's objection); *C. Gauthier Tr.*, 564:16-24.

42. Mr. Minicozzi is a self-described urbanist. Although he is a member of the American Institute of Certified Planners, his background and expertise appear to be in urban design and economics. *See J. Minicozzi Tr.*, 931:7-11. Prior to this case, Mr. Minicozzi did not have any experience applying the Collier County GMP to any developments in Collier County for purposes of assessing consistency. *See J. Minicozzi Tr.*, 955:20-956:17. Mr. Minicozzi offered the opinion that Rivergrass Village failed to employ innovative planning techniques. *Id. at 961:23-962:19.*

43. On direct examination, Mr. Minicozzi testified that he had been confused in his deposition about the definitions of use, density, and intensity of use, and whether the Rivergrass development is consistent with same. *J. Minicozzi Tr.*, 1019:4-1020:4; 1020:7-1022:7. Mr. Minicozzi also testified on direct examination that the GMP did not define use, density, or intensity of use. *Id. at 1019:15-17, 1020:17-19, and 1021:18-20.* However, on cross-examination, Mr. Minicozzi conceded that the GMP specifies requirements for each term. *Id. at 1039:9-1043:11.* Indeed, those requirements are the same ones the Court applies in Section III below.

44. Mr. Minicozzi's opinion essentially amounts to imposing his view of what constitutes "innovative" design and how the Development Order could have or should have provided for same, rather than apply Policy 4.6. *See, e.g., J. Minicozzi Tr.*, 1005:18-24, 1011:5-9.

45. On balance, the Court finds that: (a) Mr. Minicozzi lacked an understanding of the key issues of this case relating to use, density, and intensity of use; (b) Mr. Minicozzi's opinions are contrary to, and at times ignore, the plain language of the GMP; and (c) Mr. Minicozzi's testimony is not credible; accordingly, the Court gives his opinions <sup>minimal</sup> weight.

(Handwritten signature)

46. Plaintiff also tendered Mr. Charles Gauthier as an expert on land use planning and regulations. Mr. Gauthier is a Fellow of the American Institute of Certified Planners and has over 40 years of planning experience. *See C. Gauthier Tr., 556:13-23, 563:24-564:15.* From 1985 to 1989, Mr. Gauthier served as the chief of long-range planning and then planning manager for Collier County, during which time Collier County was preparing its original comprehensive plan. *Id. at 557:10-21.* Mr. Gauthier was tendered and accepted as an expert witness relating to land use planning and regulations pursuant to Section 90.702, Florida Statutes, without objection. *Id. at 564:16-24.*

47. Mr. Gauthier opined that the developer of Rivergrass could avoid the mandatory minimum requirements of the Development Order by exploiting what he described as a “phasing loophole.” *See C. Gauthier Tr., 781:23-782:12.* The so-called loophole, found in Section 8.3 of the SRA Document, is merely a timing provision that ensures a sufficient number of residential units will be constructed to support the development of commercial uses; however, this timing provision cannot be used to circumvent the myriad mandatory minimum requirements contained in the Development Order. *See R. Mulhere Tr., 370:19-371:7, 327:13-328:9, 330:5-9.*

48. Mr. Gauthier further opined that the Development Order violated Policy 4.11 for, among other reasons, the failure to provide a well-defined perimeter edge and to provide a transition from higher density and intensity uses within the SRA to lower density and intensity of uses on adjoining property. *See C. Gauthier Tr., 647:9-22, 652:11-21.* With respect to the lack of a well-defined edge, Mr. Gauthier pointed to an “area of non-compliance” located in the northeast corner of the project. *Id. at 659:12-660:3, 680:17-25.* He opined that the Development Order fails to utilize techniques recognized by Policy 4.11 such as setbacks, buffers, and recreation/open space placement. *See, e.g., id. at 676:14-280:25.* In particular, Mr. Gauthier testified that, while the

Development Order required the use of setbacks, he attempted to distinguish those setbacks because they projected inward on the residential property, rather than outward from the property line towards the adjoining property outside of the SRA boundary. *Id. at 680:17-681:25*. As explained by Mr. Mulhere, Mr. Gauthier's construct of the term "setback" is contrary to common understanding and usage within the land planning community. *R. Mulhere Tr., 1291:25-1292:11, 1292:20-1294:24, 1295:19-1298:2*. Moreover, what Mr. Gauthier attempted to describe was a buffer rather than a setback. *Id. at 1297:12-1298:2*.

49. Mr. Gauthier also opined that the Development Order was not consistent with GMP Policy 4.7.2, which provides in relevant part: "Villages shall be designed to encourage pedestrian and bicycle circulation by including an interconnected sidewalk and pathway system serving all residential neighborhoods." *See C. Gauthier Tr., 697:3-698:6*. The plain language of Policy 4.7.2 explains precisely how an SRA village must be "designed to encourage pedestrian and bicycle circulation" and that is "by including an interconnected sidewalk and pathway system serving all residential neighborhoods." *Policy 4.7.2* (emphasis added). Mr. Gauthier "partitioned" that sentence and ignored the word "by" in his opinion. *C. Gauthier Tr., 866:2-7*.

50. Rather than apply the GMP policy's plain language, Mr. Gauthier opined that Rivergrass Village is not "walkable" based upon a number of measures that he proposed, including: a distance of no more than 1/4 mile walking distance from residences to amenities, a sidewalk system should have a connectivity index (*i.e.*, the ratio of intersections and cul-de-sacs to segments between intersections) of 1.4 or more to be walkable, block perimeters should be limited to an average of 1,320 feet to be walkable, or include more than 14.1 blocks per square mile. *C. Gauthier Tr., 750:14-751:6, 763:7-10, 873:11-20, 874:5-14, 886:22-888:5*.



51. Mr. Gauthier testified on cross-examination that none of the walkability measures he proposed are contained within the GMP nor do they provide any binding requirement under the GMP. *See C. Gauthier Tr., 873:3-874:4, 884:25-886:11.*

52. In the end, Mr. Gauthier's opinions rest upon the omission of key words from the GMP and the addition of words and requirements that do not exist in the GMP; accordingly, the Court gives his opinions <sup>minimal</sup> ~~A~~ weight. (Gauth)

53. Defendant CEM tendered Mr. Robert Mulhere, who was offered and accepted without objection as an expert witness on land use planning and regulations pursuant to Section 90.702, Florida Statutes. *See R. Mulhere Tr., 275:25-276:13.* Mr. Mulhere is a Fellow of the American Institute of Certified Planners and has 32 years' experience as a professional planner – both as a planner for Collier County and in private practice. *See R. Mulhere Tr., 261:4-265:7.*

54. Mr. Mulhere has worked extensively within Collier County and he has had occasion to interpret and apply the GMP to hundreds of development projects. *R. Mulhere Tr., 264:18-266:11, 267:2-10, 270:12-19.* Mr. Mulhere served as a planner for Collier County from 1989 until 2001. *Id. at 264:18-21.* From 1997 until 2001, Mr. Mulhere served as the Collier County Planning Director. *Id. at 264:25-265:7.* In that capacity, Mr. Mulhere was Collier County's lead on the development, review, drafting, and implementation of the RLSA program provisions and their amendment into the GMP. *Id. at 271:10-273:13.*

55. As CEM's lead planner, Mr. Mulhere coordinated preparation of the application for the Rivergrass SRA village designation that resulted in the Development Order. *R. Mulhere Tr., 276:14-277:7.* In particular, Mr. Mulhere had primary responsibility for preparing the SRA Document and the Master Plan contained within the Development Order. *Id. at 278:14-280:10.*

56. In addition to effectively rebutting Mr. Minicozzi and Mr. Gauthier, Mr. Mulhere gave clear and convincing expert opinion testimony that the Development Order is consistent with the use, density, and intensity of use requirements of the GMP. *See, e.g., R. Mulhere Tr., 306:15-308:25, 323:7-325:12, 326:10-331:17.*

57. As discussed below, the Court does not believe it necessary to rely upon expert opinion in order to determine consistency here; rather, the Court need only independently compare the plain text of the Development Order to the plain text of the GMP. However, upon balancing the credibility and weight of the expert opinions at trial, the Court credits the opinions of Mr. Mulhere and finds that his testimony supports the Court's independent conclusions below with respect to the Development Order's consistency with the GMP. *See, e.g., Bates v. State, 506 So. 2d 1033, 1034 (Fla. 1987)* ("the factfinder (in this case the trial court) has great discretion in considering the weight to be given expert testimony and need not be bound by such testimony even if all the witnesses are presented by only one side.").

### **III. CONCLUSIONS OF LAW**

#### **A. Governing Law, Construction of the GMP, and Burden of Proof**

58. Plaintiff brought this action under Section 163.3215(3), Florida Statutes, which provides that an aggrieved or adversely affected party may maintain a de novo challenge to "a development order ... 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." § 163.3215(3), Fla. Stat. Section 163.3215 "limits the scope of claims to use, density, and intensity challenges only." *Heine v. Lee Cty., 221 So. 3d 1254, 1258 (Fla. 2d DCA 2017).*

59. The elements of Plaintiff's Section 163.3215(3) claim are: "(1) The challenged action must be a 'development order' as defined by 163.3164; (2) The development order must

materially change the use, density or intensity of use of a piece of property; and (3) The altered-use density or intensity of use [of the particular parcel] is inconsistent with the relevant comprehensive plan.” See *Heine v. Lee County, et al.*, Case No. 15-CA-1192, p. 8 (20th Jud. Cir., Lee County) (Order on Amended Motion for Summary Judgment of Defendant-Alico West, LLC dated April 14, 2016), *aff’d Heine v. Lee County*, 221 So. 3d 1254, 1259 (Fla. 2d DCA 2017) (citing § 163.3215 (3), Fla. Stat.); *Howell v. Pasco County*, 165 So. 3d 12 (Fla. 2d DCA 2015); *US Sugar Corporation v. 1000 Friends of Florida*, 134 So. 3d 1052 (Fla. 4th DCA 2013); *1000 Friends of Florida v. Palm Beach County*, 69 So. 3d 1123 (Fla. 4th DCA 2011); *Nassau County v. Willis*, 41 So. 3d 270 (Fla. 1st DCA 2010); *Bay County v. Harrison*, 13 So. 3d 115 (Fla. 1st DCA 2009); *Pinecrest Lakes, Inc. v. Shidel*, 795 So. 2d 191 (Fla. 4th DCA 2001); *Dixon v. City of Jacksonville*, 774 So. 2d 763 (Fla. 1st DCA 2000); *Gilmore v. Hernando County*, 584 So. 2d 27 (Fla. 5th DCA 1991)).

60. Where a ground challenged by Plaintiff does not qualify as a “use,” “density,” or “intensity of use” – or does not pertain to a requirement imposed by the GMP – it does not fall within the scope of Section 163.3215(3). *Heine*, 221 So. 3d at 1257 (“the type of claim allowed under the Consistency Statute is not unlimited . . . . A plain reading of [Section 163.3215(3)] compels us to conclude, as did the trial court, that the Heines’ challenges to the rezoning resolution do not fall within the ken of these three areas [*i.e.*, use, density, or intensity of use]”). Where the challenge does not fall within the scope of Section 163.3215(3), the trial court lacks jurisdiction to hear it. *Little Club Condo. Ass’n v. Martin Cty.*, 259 So. 3d 864, 868 (Fla. 4th DCA 2018) (holding that the trial court lacked jurisdiction to review determination that fell outside of the scope of Section 163.3215(3)). The Court’s subject matter jurisdiction is limited to that conferred by constitution or by statute. *Strommen v. Strommen*, 927 So. 2d 176, 179 (Fla. 2nd DCA 2006); *see*

also *Loza v. Marin*, 198 So. 3d 1017, 1020 (Fla. 2nd DCA 2016) (holding that trial court lacked subject matter jurisdiction because the “statutes provide clear directives” and the petition did not comply with the statute’s directives). A “trial court’s lack of subject matter jurisdiction makes its judgments void, and a void judgment can be attacked at any time, even collaterally.” *Little Club Condo. Ass’n*, 259 So. 3d at 868 (citations omitted).

61. The text of the relevant GMP provisions is clear and unambiguous; thus, this Court must apply their plain meaning. *Heine*, 221 So. 3d at 1257-58; *see also 1000 Friends of Fla.*, 69 So. 3d at 1126 (“If the terms of the comprehensive plan are not defined, then the language of the plan ‘should usually be given its plain and ordinary meaning.’”) (citing *Fla. Birth-Related Neurological Injury Comp. Ass’n v. Fla. Div. of Admin. Hearings*, 686 So. 2d 1349, 1354 (Fla. 1997)); *Johnson v. Gulf County*, 26 So. 3d 33, 42 (Fla. 1st DCA 2010) (holding that “the trial court erred in accepting parol evidence to determine the meaning and intent of [the unambiguous] land use policy.”); *see also C. Gauthier Tr.*, 863:7-14 (agreeing that, when looking at the plain language of the Collier County Growth Management Plan, unless there is a term specifically defined, the word’s plain and ordinary meaning should be applied).

62. To determine consistency here, it is not necessary to resort to expert opinion; rather, the Court need only compare the plain language of the Development Order to the plain language of the GMP. *See Heine v. Lee County, et al.*, Case No. 15-CA-1192, p. 6 (20th Jud. Cir., Lee County) (Order on Amended Motion for Summary Judgment of Defendant-Alico West, LLC dated April 14, 2016), *aff’d Heine v. Lee County*, 221 So. 3d 1254, 1259 (Fla. 2d DCA 2017) (“The issues in this Case can be determined by comparing the Resolution to the Comprehensive Plan as amended in 2010 by Ordinance 10-40 and as modified by the District’s 12/16/15-finalized Permit. Further evidence doesn’t appear to be necessary”); *see also C. Gauthier Tr.*, 847:13-23 (stating

that, in preparing his expert opinion for Plaintiff, he read the “plain language” of the GMP and applied it to the “plain language” of the Development Order).

63. When construing the Development Order, the SRA Development Document and the Master Plan must be read together in determining consistency with the GMP. *R. Mulhere Tr.*, 278:5-13, 279:16-18, 280:5-22; *J. Minicozzi Tr.*, 1057:5-8.

64. As the proponents of the Development Order, CEM and the County have the burden of proof to establish that the Development Order conforms strictly to the GMP. *See United States Sugar Corp. v. 1000 Friends of Fla.*, 134 So. 3d 1052, 1053 (Fla. 4th DCA 2013); *White v. Metro Dade Cty.*, 563 So. 2d 117, 128 (Fla. 3d DCA 1990) (citing *Machado v. Musgrove*, 519 So. 2d 629, 632 (Fla. 3d DCA 1987)).

65. As detailed below, Defendants carried their burden to show by competent and substantial evidence that the Development Order conforms strictly to the use, density, and intensity of use provisions of the GMP. *White*, 563 So. 2d at 128 (citing *Machado*, 519 So. 2d at 632 (“Analogously where a zoning action is challenged as violative of the comprehensive land use plan the burden of proof is on the one seeking a change to show by competent and substantial evidence that the proposed development conforms strictly to the comprehensive plan and its elements.”)).

66. The Court addresses the Development Order’s consistency with the GMP’s requirements governing use, density, and intensity of use in turn below.

#### **B. The Development Order is Consistent with the GMP’s “Use” Requirements**

67. “In the context of a third-party cause of action under Section 163.3215, use means a change in a land use category.” *See Heine v. Lee County, et al.*, Case No. 15-CA-1192, p. 8 (20th Jud. Cir., Lee County) (Order on Amended Motion for Summary Judgment of Defendant-Alico

West, LLC dated April 14, 2016), *aff'd Heine v. Lee County*, 221 So. 3d 1254, 1259 (Fla. 2d DCA 2017).

68. Courts have consistently reviewed “land use” in the context of a Section 163.3215(3) challenge as a comparison of the uses permitted within the challenged development order with the uses allowed within the adopted comprehensive plan. *See United States Sugar Corp. v. 1000 Friends of Fla.*, 134 So. 3d 1052 (Fla. 4th DCA 2013) (holding that a development order was inconsistent with the adopted comprehensive plan when it allowed a use prohibited under the plan); *1000 Friends of Fla., Inc.*, 69 So. 3d at 1127 (same); *Dixon v. City of Jacksonville*, 774 So. 2d 763, 766 (Fla. 1st DCA 2000) (same); *Lake Rosa v. Board of County Commissioners*, 911 So. 2d 206, 209-10 (same); *Bay Cty. v. Harrison*, 13 So. 3d 115 (Fla. 1st DCA 2009) (holding that a trial court erred when it found a development order inconsistent with the adopted comprehensive plan when the plan allowed the type of use).

69. The GMP authorizes a broad range of residential and nonresidential uses. *See* Policy 4.15.1 (“SRAs are intended to be mixed use and shall be allowed the full range of uses permitted by the Urban Designation of the FLUE, as modified by Policies 4.7, 4.7.1, 4.7.2, 4.7.3, 4.7.4 and Attachment C.”).

70. The Development Order identifies numerous permitted residential and non-residential uses. *DX-02* (SRA Dev. Doc. §§ 5.1.1.A, 5.2.1.A); *R. Mulhere Tr.*, 306:3-14.

71. All permitted uses identified within the Development Order are within the range of allowable uses within the GMP and none of those permitted uses are prohibited by the GMP. *See C. Gauthier Tr.*, 858:23- 860-14; *R. Mulhere Tr.*, 306:15-307:7, 308:18-25; *compare DX-02* (SRA Dev. Doc. §§ 5.1, 5.2) *with GMP Policy 4.15.1 and GMP Att. C.*

72. After comparing the Development Order to the GMP, the Court finds that each of the land uses permitted under the Development Order are expressly authorized within the GMP. *See DX-02* (SRA Dev. Doc. §§ 5.1, 5.2); *Policy 4.15.1 and GMP Att. C*.

73. The GMP sets forth the requirements pertaining to use, namely: (1) retail and office uses; (2) civic, governmental and institutional uses; (3) diversity of housing types, styles, and lot sizes; and (4) having parks or public green spaces within neighborhoods. *See Policy 4.7.2; GMP Att. C*.

74. Attachment C requires SRA villages to include retail and office uses along with civic, governmental, and institutional uses. *GMP Att. C*. The Development Order sets forth minimum requirements to provide retail and office uses as well as civic, governmental and institutional uses. *See DX-02* (SRA Dev. Doc. § IV).

75. As to diversity of housing types, Policy 4.7.2 provides: “Villages are primarily residential communities with a diversity of housing types and mix of uses appropriate to the scale and character of the particular village.” Attachment C requires that an SRA Village have a “[d]iversity of single family and multi-family housing types, styles, and lot sizes.” *GMP Att. C*. The Development Order is consistent with these provisions. The Development Order provides for the required mix of housing types, styles and lot sizes. *See DX-02* (SRA Dev. Doc. § 5.1.2.A (providing for a diversity of housing types (single and two family and multi-family)); providing for a diversity of housing styles (single family detached, single family attached and two-family, zero lot line and townhome, ALF, CCRC & other multi-family); providing for a diversity of lot sizes (setting forth various minimum lot area and lot widths requirements)).

76. Rivergrass must have both single-family and multi-family residential units. *DX-02* (SRA Dev. Doc. §§ IV, 5.1); *R. Mulhere Tr., 329:17-24*. The Development Order also calls for a

minimum of 250 multi-family units. *DX-02* (SRA Dev. Doc. § II.9); *R. Mulhere, Tr.*, 329:25-330:4. There is no “loophole” within the Development Order that would allow Rivergrass to be developed without building the minimum 250 multi-family units. *See DX-02* (SRA Dev. Doc. § IV); *R. Mulhere, Tr.*, 330:5-9; 330:24-331:13.

77. “Minimum” means that Rivergrass is required to build at least, and not less than, 250 multi-family units. *See R. Mulhere Tr.*, 463:24-464:12; *C. Gauthier Tr.*, 849:21-850:3; *see also J. Minicozzi Tr.*, 1046:14-25 (defining “minimum” as the “minimum amount of the requirement to meet the objective that was stipulated in the provisions”). There is no mechanism by which Rivergrass could be developed in a manner such that any of the minimum requirements would not be met. *See R. Mulhere, Tr.*, 464:7-12. Plaintiff claims a loophole exists because CEM could subvert this minimum requirement by simply halting development. That notion defies common sense given that developers look to maximize land building values and is well outside of the scope of Section 163.3215(3) as found in *Heine*. Indeed, taking such speculation into consideration would prevent any development order from ever being found consistent with the GMP. Moreover, the Court must apply the plain terms of the Development Order and the GMP; consistency cannot be determined based upon the assumption that the developer will fail to comply with – and the County will also fail to enforce – the Development Order or the GMP. Yet, that is precisely Plaintiff’s presumption here.

78. The Development Order does not allow for any housing types that are not authorized by the GMP. *See R. Mulhere Tr.*, 306:15-19. The GMP does not require a specific percentage of housing types, or styles. *See R. Mulhere Tr.*, 456:5-10.

79. Policy 4.7.2 also requires that villages “have parks or public green spaces within neighborhoods.” Attachment C of the GMP requires: (i) a minimum of 1% of the gross acres to be



parcs and public green spaces within neighborhoods; and (ii) an open space minimum of 35% of the SRA. *See GMP Att. C; R. Mulhere Tr., 311:4-16, 347:15-24.* The Development Order satisfies both of these requirements: (i) the Development Order provides “[a] minimum of 1 percent of the SRA gross acreage (9.98 acres) will be provided in the form of Parks & Community Green Space;” *DX-02* (SRA Dev. Doc. § II.10); and (ii) the Development Order provides that at least 57% of the SRA (*i.e.*, 571.91 acres) qualify as open space. *DX-02* (SRA Dev. Doc. §§ II.1, II.5); *R. Mulhere Tr., 311:4-16, 347:25-10.* By setting aside more open space than is required, Rivergrass is more dense than required by the GMP. *See R. Mulhere Tr., 349:5-10.*

80. The Development Order is consistent with Policy 4.7.2 and Attachment C by providing the required amount of parks and public green spaces, as well as open space. *See R. Mulhere Tr., 312:20-313:6; 317:17-25* (stating there are no circumstances under which Rivergrass Village could be developed without providing at least 1% of the SRA gross acreage or 9.98 acres of parks and community green space). While the precise location of the parks and public green spaces will not be fixed in location until the plat is submitted, the Master Plan identifies, locates, and quantifies open space. Open space includes parks and public green space. *See R. Mulhere Tr., 290:22-291:12; J. Frantz Tr., 156:15-20.*

81. Based upon the findings of fact detailed in Section I and the foregoing conclusions of law in this Section III.B, the Court finds that the Development Order is consistent with the GMP’s requirements relating to use.

**C. The Development Order is Consistent with the GMP’s “Density” Requirements**

82. “In the context of a third-party cause of action filed per Section 163.315[sic], [density] means an increase or decrease in the population permitted on a piece of land.” *See Heine v. Lee County, et al.*, Case No. 15-CA-1192, p. 8 (20th Jud. Cir., Lee County) (Order on Amended

Motion for Summary Judgment of Defendant-Alico West, LLC dated April 14, 2016), *aff'd Heine v. Lee County*, 221 So. 3d 1254, 1259 (Fla. 2d DCA 2017).

83. Within the RLSA, the baseline density is one (1) dwelling unit per five (5) gross acres. *See R. Mulhere Tr.*, 328:15-20. Attachment C of the GMP calls for a density range of one (1) to four (4) dwelling units per gross acre. *See GMP Att. C; R. Mulhere Tr.*, 328:10-20; *C. Gauthier Tr.*, 776:25-777:3.

84. Per the Development Order, the density of Rivergrass Village is 2.5 dwelling units per gross acre, which is within the range of density permitted by the GMP. *DX-02* (SRA Dev. Doc. § 2.9); *R. Mulhere Tr.*, 329:3-8; *C. Gauthier Tr.*, 656:3-20.

85. Based upon the findings of fact detailed in Section I and the foregoing conclusions of law in this Section III.C, the Court finds that the Development Order is consistent with the GMP's requirements relating to density.

**D. The Development Order is Consistent with the GMP's "Intensity of Use" Requirements**

86. "In the context of a Section 163-third-party action, [intensity] means an increase or decrease in the number or size of structures on a piece of land." *See Heine v. Lee County, et al.*, Case No. 15-CA-1192, p. 8 (20th Jud. Cir., Lee County) (Order on Amended Motion for Summary Judgment of Defendant-Alico West, LLC dated April 14, 2016), *aff'd Heine v. Lee County*, 221 So. 3d 1254, 1259 (Fla. 2d DCA 2017).

87. Section 163.3215(3) expressly limits application of Section 163.3164 to the definition of "development order" and does not apply to "intensity." *See* Section 163.3215(3) ("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.”) (emphasis added); *Schoeff v. R.J. Reynolds Tobacco Co.*, 232 So. 3d 294, 304 (Fla. 2017) (“One canon of construction requires this Court to presume that the Legislature intended the words it chose to include in the statute. Under the canon of construction *expressio unius est exclusio alterius*, we conclude that the Legislature purposefully excluded items not included in a list. . . . *Expressio unius est exclusio alterius* encourages [an] omission to be interpreted as purposeful.”); *Siegle v. Lee County*, 198 So. 3d 773, 775 (Fla. 2d DCA 2016) (“Pursuant to [canon of statutory construction *expressio unius est exclusio alterius*], when a statute or code provision lists the areas to which it applies, it will be construed as excluding from its reach any areas not expressly listed”).

88. Here, Attachment C of the GMP specifies the intensity of use requirements for enumerated non-residential uses. *See GMP Att. C; R. Mulhere Tr.*, 323:20-324:4; *J. Frantz Tr.*, 157:7-9, 158:21-159:2. The maximum intensity for an SRA village varies based on the type of use and is measured by minimum square footage requirements and by maximum floor area ratio. An SRA village is required to include a minimum of 25 square feet of gross building area per dwelling unit for retail and office uses and a minimum of 10 square feet per dwelling unit for civic, governmental, or institutional uses. *GMP Att. C; R. Mulhere Tr.*, 307:18-23, 326:10-20, 327:19-328:3; *C. Gauthier Tr.*, 779:8-780:14. The Development Order mandates a minimum of 62,500 (25 x 2,500 dwelling units) square feet for retail and office uses and a minimum of 25,000 (10 x 2,500 dwelling units) square feet for civic, governmental, and institutional uses. *See DX-02* (SRA Dev. Doc. §. IV); *J. Frantz Tr.*, 148:22-149:13; *P. Utter Tr.*, 208:9-22, 209:19-25, 210:13-20. Rivergrass Village must also comply with the maximum FAR of 0.5 for retail and office uses, and

0.6 for civic, governmental, and institutional uses. *See GMP Att. C; R. Mulhere Tr., 324:5-325:2; 325:14-21; J. Frantz Tr., 159:4-14.*

89. The Development Order does not permit for any deviation from the intensity requirements. *See R. Mulhere Tr., 325:3-12.*

90. The Development Order is consistent with the intensity of use provisions of the GMP (*i.e.*, the required square footage minimums and the maximum floor area ratios for enumerated non-residential uses).

91. Based upon the findings of fact detailed in Section I and the foregoing conclusions of law in this Section III.D, the Court finds that the Development Order is consistent with the GMP's requirements relating to intensity of use.

#### **E. Plaintiff's Claims**

92. Plaintiff asserts five claims that Defendants contend are outside the scope of Section 163.3215(3) (the "Non-Jurisdictional Claims"):

- a) Rivergrass does not include "an interconnected sidewalk and pathway system serving all residential neighborhoods" and is not "designed to encourage pedestrian and bicycle circulation." (Policy 4.7.2)
- b) Rivergrass lacks a "mixed-use village center to serve as the focal point for the community's support services and facilities." (Policy 4.7.2)
- c) Rivergrass is not "compact." (Policies 4.2 and 1.2)
- d) Rivergrass's perimeter fails to "provide a transition from higher density and intensity uses within the [village] to lower density and intensity uses on adjoining property," such that the "edge" of the village is "well defined." (Policy 4.11)

e) Rivergrass fails to provide the “required uses” and the “mix of uses.”

(Policy 4.7.2, GMP Att. C)

93. Defendants maintain that the Non-Jurisdictional Claims are unrelated to use, density, or intensity of use, and are therefore outside the scope of Section 163.3215(3). In support, Defendants cite *Heine*, 221 So. 3d at 1257 and *Little Club Condo.*, 259 So. 3d at 868. However, it is not necessary to reach that issue because the Court finds that the Development Order is consistent with the GMP provisions underlying Plaintiff’s Non-Jurisdictional Claims as follows:

a) The Development Order “encourage[s] pedestrian and bicycle circulation,” by providing a “sidewalk and pathway system that is connected along all of the roadways and connects all of the residential” neighborhoods, and “is interconnected throughout the entire Rivergrass Village. *See R. Mulhere Tr.*, 290:5-13, 293:17-22, 294:20-295:3. Because the GMP does not define “by,” the Court applies the plain meaning of the phrase. *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 454 (Fla.1992). The plain meaning of “by” is “used for showing how or in what way something is done.” *See “By,” Oxford Advanced Learner’s Dictionaries*, Oxford University Press, [https://www.oxfordlearnersdictionaries.com/us/definition/english/by\\_1?q=by](https://www.oxfordlearnersdictionaries.com/us/definition/english/by_1?q=by) (last accessed 5/24/21). The GMP does not require that a specified percentage of homes be located within a specified distance of the Village Center, nor a grid system of sidewalks. Rather, the only measure specified in the plain text of Policy 4.7.2 for complying with the requirement to “encourage pedestrian and bicycle circulation” is by including an “interconnected sidewalk and pathway system.” *See C. Gauthier Tr.*, 866:10-22. Although the Collier County Board of County

Commissioners could have made the policy choice to specify a quarter-mile distance factor as they have included in other areas, they chose not to do so here in the RLSA. *See C. Gauthier Tr.*, 869:23-870:12; 871:22-872:5; *see also id.*, at 873:21-874:4 (admitting that the GMP does not provide for a specific average or maximum block perimeter length); 881:8-13, 883:9-1; 884:25-885:12 (admitting that the GMP does not require that every residence be located within 1/4 mile of a destination); 885:13-886:11 (admitting that the GMP does not set forth a specific requirement to meet a directness index of 1.5 or less, nor a connectivity index of 1.4 or more, nor a specific requirement to include at least 100 blocks per square mile); 888:2-5 (admitting he would not expect to see that level of detail in a GMP policy). As Mr. Mulhere testified, and as is plain from the Master Plan, the Development Order provides for an interconnected sidewalk and pathway system serving all residential neighborhoods and, thus, is consistent with Policy 4.7.2 as it pertains to encouraging pedestrian and bicycle circulation.

b) The Development Order is consistent with Policy 4.7.2, which requires villages to “include a mixed-use village center to serve as the focal point for the community’s support services and facilities.” The term “focal point” does not have a “geographic connotation.” *See R. Mulhere Tr.*, 460:10-23. Because the GMP does not define “focal point,” the Court applies the plain meaning of the phrase. *Forsythe*, 604 So. 2d at 454. The plain meaning of “focal point” is “a thing or person that is the center of interest or activity.” *See* “Focal point,” *Oxford Advanced Learner’s Dictionaries*, Oxford University Press, <https://www.oxfordlearnersdictionaries.com/us/definition/english/focal->

point?q=focal+point (last accessed 5/24/21). The Development Order requires inclusion of a mixed-use Village Center which must include the placement of multi-family units, requires a minimum of 62,500 square feet of neighborhood-scale commercial and office uses with numerous different retail or office establishments, and requires a minimum of 25,000 square feet of civic uses. *See DX-02* (SRA Dev. Doc. § 5.2.1); *R. Mulhere Tr.*, 306:20-308:16, 327:19-328:3; *C. Gauthier, Tr.*, 665:17-666:7. The only place where “commercial retail, commercial office and civic uses” are located within Rivergrass Village is the Village Center. *C. Gauthier Tr.*, 721:5-25. The Village Center is, thus, the “focal point” (*i.e.*, a center of interest or activity) for the community’s support services and facilities – residents are attracted to the focal point by the activities provided at the Village Center. *See R. Mulhere Tr.*, 288:16-289:5, 460:10-23. The GMP does not require locating the focal point at the center of the village. *Id.* Rather, the Village Center need only be “accessible,” which the Court finds it is. *See R. Mulhere Tr.*, 458:22-25.

c) RLSA Overlay Policies 4.2 and 1.2 do not require Rivergrass to be “compact.” These Policies stand for the proposition that the RLSA Overlay program results in compact development in the form of SRAs. *See R. Mulhere Tr.*, 270:25-271:9, 333:17-25, 336:8-14 (“As an approved village, by definition, [Rivergrass] is a compact development”); *J. Frantz Tr.*, 138:12-16 (stating that SRA Villages are “a compact form of development in the RLSA”). To develop within the RLSA, the SRA must obtain development rights severed from an SSA, thereby causing the total area that may be developed to “shrink.” *See J. Frantz Tr.*, 142:9-15 (“It’s compact in that it requires the severance of development credits

from another area in order to develop as an SRA, so it shrinks the footprint of where a development can occur”). This compactness has been achieved by requiring an SRA village density range of one (1) to four (4) residential dwelling units per gross acre versus the baseline density one (1) residential unit per five (5) acres. *See R. Mulhere Tr.*, 334:2-21. Thus, absent an SRA designation, 2,500 residential dwelling units would consume 12,500 acres. *See R. Mulhere Tr.*, 340:11-22; *DX-102*. In contrast, as a designated SRA village, Rivergrass’s 2,500 units are limited to 1,000 acres. *See R. Mulhere Tr.*, 340:4-9, 341:7-15; *DX-103*. As an SRA village, Rivergrass is, by its very nature, compact. Regardless, compactness is not a “land use.” *See R. Mulhere Tr.*, 331:14-18, 333:18-25. Thus, an allegation that a development is not compact does not fall within the scope of this Section 163.3215(3) proceeding. *See Heine v. Lee Cty.*, 221 So. 3d 1254, 1257 (Fla. 2nd DCA 2017).

d) The Development Order is consistent with RLSA Policy 4.11, which requires: (i) “a transition from higher density and intensity uses within the SRA to lower density and intensity uses on adjoining property”; and (ii) that “[t]he edges of SRAs shall be well defined and designed to be compatible with the character of adjoining property.” To accomplish these commands, the Policy identifies “[t]echniques such as, but not limited to setbacks, landscape buffers, and recreation/open space placement.” *Id.* Consistent with this requirement, the Development Order requires perimeter buffers and setbacks, which define the edges of the SRA. *See DX-02* (SRA Dev. Doc. §§ III; IV; V.1.1.A.2; V.1.2.A Table 1; and V.2.2.A Table 2). The Development Order further meets the requirements of



Policy 4.11 through the perimeter placement of lakes and open space. *See DX-02* (Master Plan, p. 1). The Development Order is consistent with Policy 4.11 through the implementation of several of the compatibility “techniques” set forth in RLSA Policy 4.11 and the well-defined edge that is designed to be compatible with the character of adjoining property. *R. Mulhere Tr., 1290:16-1301:5.*

e) Policy 4.7.2 requires “a mix of uses appropriate to the scale and character of the particular village.” Attachment C also sets forth the minimum amount of square footage or acreage for each required use. *GMP Att. C.* The Development Order meets the required mix of uses and the minimum required amount of each use. *See, e.g., R. Mulhere Tr., 307:15-308:25.* Section 8.3 C. of the Development Order (“No more than 1,750 dwelling units will be issued certificates of occupancy until a minimum of 30,000 sq. ft. of the neighborhood retail and office uses have been developed and issued certificate(s) of occupancy”) does not allow the Development Order to deviate from the requirements of the GMP. To hold otherwise would render all the express minimum requirements set forth in the Development Order meaningless. *Bethany Trace Owners’ Ass’n, Inc. v. Whispering Lakes I, LLC*, 155 So. 3d 1188, 1191 (Fla. 2d DCA 2014) (“When interpreting contractual provisions, courts ‘will not interpret a contract in such a way as to render provisions meaningless when there is a reasonable interpretation that does not do so.’”) (citing *Moore v. State Farm Mut. Auto. Ins. Co.*, 916 So. 2d 871, 877 (Fla. 2d DCA 2005)). Section 8.3 C. of the Development Order is a timing provision that ensures a sufficient number of residential units will be constructed to support the development of commercial uses. *See R. Mulhere Tr., 371:5-7.* As noted above,

Plaintiff's claim that the Development Order is inconsistent with the GMP because it "lack[s] assurances" or is "not sufficiently conditioned" are outside the scope of a Section 163.3215(3) challenge. *See C. Gauthier Tr., 852:6-12; Heine, 221 So. 3d at 1257* (involving allegations by plaintiffs that a development order was inconsistent because it failed to include "enforcement conditions for the construction of a minimum square footage of commercial space"). Regardless, Rivergrass is required to provide a minimum of 62,500 square feet square feet of commercial uses and a minimum of 25,000 square feet of civic, governmental and institutional uses. *See R. Mulhere Tr., 327:19-328:3; C. Gauthier Tr., 850:16-23*. There is no loophole that would allow Rivergrass to be developed without meeting these minimum requirements. *R. Mulhere Tr., 327:13-18, 328:4-9; see also C. Gauthier Tr., 850:4-15* (agreeing that the text of the Development Order contains the specified minimum requirements). The Development Order is thus consistent with Policy 4.7.2.

94. Defendants have met their burden and have established that the Development Order is consistent with the GMP as it pertains to use, density and intensity of use; Plaintiff has failed to introduce any evidence that would warrant a contrary finding.

#### **IV. CONCLUSION**


Pursuant to Section 163.3215, a "prevailing party in a challenge to a development order filed under subsection (3) is entitled to recover reasonable attorney fees and costs incurred in ... defending the order, including reasonable appellate attorney fees and costs." § 163.32115(8)(c). Defendants Collier County and Collier Enterprises Management, Inc. have prevailed on the significant issues in defending the Development Order's consistency with the Collier County

Growth Management Plan. Both parties requested an award of attorneys' fees and costs pursuant to Section 163.3215, Florida Statutes, in their answers. *See CEM's Answer and Affirmative Defenses to First Amended Complaint* (Doc. #31); *Collier County, Florida's Answer and Affirmative Defenses to First Amended Complaint* (Doc. #30). The Court reserves determination of attorney fees and costs pending a timely motion and hearing upon same.

Following entry of this Final Judgment, the Court retains jurisdiction of this action to enter such further orders that are necessary and just (upon appropriate timely motion(s)), including, without limitation, orders determining attorneys' fees and costs to be awarded pursuant to Sections 163.3215, 44.103, and/or 57.041, Florida Statutes, adjudicating post-judgment interest, if any, on such attorneys' fees and costs, matters relating to discovery in aid of execution, and matters relating to execution of this Final Judgment.

**IT IS ORDERED AND ADJUDGED** that Plaintiff, Conservancy of Southwest Florida, Inc., takes nothing by this action and that Defendants Collier County and Collier Enterprises Management, Inc. shall go hence without day.

**DONE AND ORDERED** in Collier County, Naples, Florida this 04 day of June, 2021.

  
\_\_\_\_\_  
Hon. Hugh D. Hayes, Circuit Judge

cc: All counsel of record via Clerk's E-portal

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA

CONSERVANCY OF SOUTHWEST  
FLORIDA, INC.,

Case No: 11-2020-CA-000780-0001-XX

PLAINTIFF,

v.

COLLIER COUNTY, FLORIDA, and  
COLLIER ENTERPRISES MANAGEMENT, INC.,

DEFENDANTS.

---

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
REGARDING CONSISTENCY WITH THE ADOPTED COMPREHENSIVE PLAN

---

This matter is before the Court on Defendant Collier Enterprises Management, Inc.'s *Motion for Summary Judgment Regarding Consistency with the Adopted Comprehensive Plan* [Doc. #78] (the "Motion") and *Motion for Reconsideration* [Doc. #320]; Defendant Collier County joined both motions [Doc. #154; 321]. Plaintiff Conservancy of Southwest Florida, Inc. filed its response to both motions [Doc. #234; 322]. The Court heard the matter on February 18, 2021. Having considered all submissions and the argument of the parties and the legal authority, and otherwise being fully advised in the premises, the Court finds as follows:

1. The instant Motion was first heard by Judge Brodie on January 5, 2021. Judge Brodie reserved ruling on the record at that hearing. On January 6, 2021, Judge Brodie's Judicial Assistant advised counsel for the parties via email that "[t]he Court is denying [the Motion] as there are disputed issues of material fact regarding whether the Development Order is consistent with the County's Comprehensive Plan." The email also directed Plaintiff's counsel to submit a

proposed order. A docket entry reflects that the Motion was denied [Doc. #304], but Judge Brodie did not sign nor enter a written order on the Motion.

2. On January 12, 2021, Judge Brodie recused herself from this matter, which was reassigned to the undersigned on January 13, 2021. Regardless of whether Judge Brodie entered an order on the Motion, it is undisputed that the undersigned has the authority to hear and rule upon the Motion. *See, e.g.*, § 38.07, Fla. Stat. (authorizing petition for reconsideration upon recusal); Fla. R. Jud. Admin. 2330(h) (providing that “[p]rior factual or legal rulings by a disqualified judge [to] be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration...”); *North Shore Hospital, Inc. v. Barber*, 143 So. 2d 849, 851 (Fla. 1962) (holding “it is well settled that a trial court has the inherent authority to control its own interlocutory orders prior to final judgment.”); *AC Holdings 2006, Inc. v. McCarty*, 985 So. 2d 1123, 1125 (Fla. 3d DCA 2008) (“An order granting summary judgment is an interlocutory order, and a trial court has inherent authority to reconsider and modify its interlocutory orders.”). Each of the parties agree that the Court has the authority to hear and decide the Motion, and each indicated on the record that they were prepared to—and did—argue the Motion at the hearing. This Court’s ruling on the Motion follows.

3. This action arises from the adoption of Resolution 20-24 by the Collier County Board of County Commissioners. Resolution 20-24, adopted January 28, 2020, approved designation of a proposed mixed-use development known as Rivergrass Village as an “SRA Village” within the Rural Land Stewardship Area.

4. In the First Amended Complaint, Plaintiff brings a single count under Section 163.3215(3), Fla. Stat., alleging that Collier County Resolution No. 20-24 is inconsistent with Collier County’s comprehensive plan, known as the “Growth Management Plan” or “GMP.”

5. Before the Court on the Motion is a question of law: the proper scope of a claim under Section 163.3215(3), Fla. Stat. This is a matter of statutory construction, there are no disputed issues of material fact, and summary judgment is warranted. *See* Fla. R. Civ. P. 1.510; *Maggio v. Fla. Dept. of Lab. and Empl. Sec.*, 899 So. 2d 1074, 1076 (Fla. 2005).

6. Section 163.3215(3) provides in relevant part:

Any aggrieved or adversely affected party may maintain a de novo action ... to challenge any decision of such local government granting ... an application for ... a development order ... 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.

§ 163.3215(3), Fla. Stat.

7. The Second District Court of Appeal holds that the “pertinent language of the Consistency Statute [Section 163.3215(3)] is clear and unambiguous. The statute enunciates only three bases upon which a party may challenge a development order’s purported inconsistency with a comprehensive plan.” *Heine v. Lee Cty.*, 221 So. 3d 1254, 1257 (Fla. 2d DCA 2017). Section 163.3215(3) “limits the scope of claims to use, density, and intensity challenges only.” *Id.* at 1258. Challenges based upon any “other aspects of development permitted” fall outside the scope of this statutory claim. *Id.* Thus, pursuant to Section 163.3215(3), a plaintiff may only assert claims that allege inconsistency of the development order with a provision in the GMP related to the use or density or intensity of use on a particular piece of property.

8. Plaintiff alleges inconsistency or lack of compliance with numerous provisions of the Collier County Land Development Code (or “LDC”) and other documents extrinsic to the GMP. However, the LDC and those other documents extrinsic to the GMP are not incorporated into the GMP, *see* § 163.3177(1)(b), Fla. Stat., and an alleged violation of the LDC is not within the scope of Section 163.3215(3). *See* § 163.3215(3), Fla. Stat.; *Heine*, above; *see, also, e.g., Little*

*Club Condo. Ass'n v. Martin Cty.*, 259 So. 3d 864, 868 (Fla. 4th DCA 2018) (holding that “Section 163.3215(3) permits only a challenge to a county board action, ‘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.’ Land development regulations are not part of comprehensive plans.”) (quoting §§ 163.3215(3), Fla. Stat. and 163.3177(1), Fla. Stat.)).

9. Plaintiff also alleges violation of, or inconsistency with, various fiscal neutrality and traffic impact provisions. However, to the extent those provisions are found within the GMP, they do not relate to use, density, or intensity of use and are thus not within the scope of Section 163.3215(3). *See* § 163.3215(3), Fla. Stat.; *Heine*, above.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that the Motion is **GRANTED** as follows:

(1) Plaintiff’s claims that are based upon the Collier County Land Development Code or other materials extrinsic to the Growth Management Plan are not within the scope of Section 163.3215(3), Fla. Stat.;

(2) Plaintiff’s claims that are based upon Growth Management Plan provisions that do not relate to use, density, or intensity of use on the particular piece of property at issue, including but not limited to fiscal neutrality and traffic impacts, are not within the scope of Section 163.3215(3), Fla. Stat.; and

(3) Trial of this matter shall proceed within the scope of Section 163.3215(3) as consistent with this Order.

DONE and ORDERED in Collier County, Naples Florida, on 03 day of March, 2021.

  
\_\_\_\_\_  
Hon. Hugh D Hayes, Circuit Judge

Cc: All counsel of record via Clerk's E-portal



654-3937

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA

CONSERVANCY OF SOUTHWEST  
FLORIDA, INC.,

Case No: 11-2020-CA-000780-0001-XX

PLAINTIFF,

v.

COLLIER COUNTY, FLORIDA, and  
COLLIER ENTERPRISES MANAGEMENT, INC.,

DEFENDANTS.

---

AMENDED ORDER ON PLAINTIFF'S MOTION FOR REHEARING AND/OR  
CLARIFICATION OF ORDER GRANTING PARTIAL SUMMARY JUDGMENT

---

This matter is before the Court on Plaintiff Conservancy of Southwest Florida, Inc.'s *Motion for Rehearing and/or Clarification of Order Granting Partial Summary Judgment* [Doc. #380] (the "Motion"). The Court heard the matter on April 19, 2021. Having considered all submissions and the argument of the parties and the legal authority, and otherwise being fully advised in the premises, the Court finds as follows:

1. The Motion seeks rehearing and/or clarification of the Court's order dated March 3, 2021, which granted partial summary judgment in favor of Defendants ("Order").
2. The Order is sufficiently clear to apprise the parties of the proper scope of review under Section 163.3215(3), Fla. Stat., and *Heine v. Lee Cty.*, 221 So. 3d 1254 (Fla. 2d DCA 2017).
3. In Attachment A to the Motion, Plaintiff sets forth its claims in the Amended Complaint that it maintains remain triable in light of the Order. *See* Motion, Att. A (also attached to this order as "Att. A"). Because Plaintiff's Claims 1-6 and 8 (as listed in that Attachment A)

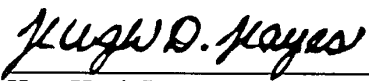
FILED 4/19/21 14:07:00 1

may fall within the scope of Section 163.3215(3), the Court can take evidence relating to said claims and make a determination as to which, if any, of those claims are within the scope of Section 163.3215(3) at trial.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that the Motion is **DENIED** as follows:

- (1) The Order is sufficiently clear to apprise the parties of the proper scope of claims under Section 163.3215(3), Florida Statutes; and
- (2) The Court will hear evidence of Plaintiff's Claims 1-6 and 8 as listed in Att. A, and will make a determination at trial as to which of those claims, if any, fall within the scope of Section 163.3215(3), Florida Statutes.

**DONE AND ORDERED** this 06 day of May, 2021.

  
\_\_\_\_\_  
Hon. Hugh D. Hayes  
Circuit Court Judge

**ATTACHMENT A**

#	Claim (GMP Provision)	Within the Scope of Section 163.3215(3)?  (YES / NO)
1	Rivergrass does not include “an interconnected sidewalk and pathway system serving all residential neighborhoods” and is not “designed to encourage pedestrian and bicycle circulation.” (RLSA Overlay Policy 4.7.2)	
2	Rivergrass lacks a “mixed-use village center to serve as the focal point for the community’s support services and facilities.” (RLSA Overlay Policy 4.7.2)	
3	Rivergrass is not “compact.” (RLSA Overlay Policies 4.2 and 1.2)	
4	Rivergrass’s perimeter fails to “provide a transition from higher density and intensity uses within the [village] to lower density and intensity uses on adjoining property,” such that the “edge” of the village is “well defined.” (RLSA Overlay Policy 4.11)	
5	Rivergrass fails to provide “a diversity of housing types.” (RLSA Overlay Policy 4.7.2)	
6	Rivergrass fails to provide the “required uses” and a “mix of uses.” (RLSA Overlay Policy 4.7.2, RLSA Overlay Attachment C)	
7	Rivergrass was approved without demonstrating compliance with LDC Stewardship District provisions relating to use, density, and/or intensity. (RLSA Overlay Policies 4.3 and 4.5)	
8	Rivergrass does not provide parks or public green spaces within neighborhoods. (RLSA Overlay Policy 4.7.2)	
9	Rivergrass fails to comply with the GMP’s traffic impact requirements. (RLSA Overlay Policies 4.14, 4.16; Transportation Element Policies 5.1, 5.18; Capital Improvements Element Policy 1.2)	<b>NO</b>
10	Rivergrass fails to comply with the GMP’s fiscal neutrality requirements. (RLSA Overlay Policy 4.18)	<b>NO</b>

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA

CONSERVANCY OF SOUTHWEST  
FLORIDA, INC.,

Case No: 11-2020-CA-000780-0001-XX

PLAINTIFF,

v.

COLLIER COUNTY, FLORIDA, and  
COLLIER ENTERPRISES MANAGEMENT, INC.,

DEFENDANTS.

---

ORDER GRANTING DEFENDANT CEM'S MOTION IN LIMINE

---

This matter is before the Court on Defendant Collier Enterprises Management, Inc.'s ("CEM") *Motion in Limine and Incorporated Memorandum of Law* filed on December 23, 2020 [Doc. #281] (the "Motion"). Defendant Collier County joined the Motion. Plaintiff Conservancy of Southwest Florida, Inc. ("Plaintiff") filed a response to the Motion opposing the exclusion of Collier County Planning Commissioner Edwin Fryer's testimony on March 12, 2021 [Doc. #382], and filed a response directed to the remainder of the Motion on March 15, 2021 [Doc. #389]. The Court heard the matter on March 28, 2021 (the "Hearing"). Having considered all submissions and the argument of the parties and the legal authority, and otherwise being fully advised in the premises, the Court finds as follows:

1. "The admission of evidence is a matter within the sound discretion of the trial court." *Sidran v. E.I. Dupont De Nemours & Co., Inc.*, 925 So. 2d 1040, 1042 (Fla. 3d DCA 2003). The test of admissibility is relevancy. *Dixie Bell Oil Co., Inc. v. Gold*, 275 So. 2d 19, 21 (Fla. 1973). "Evidence is relevant if it tends to prove or disprove a material fact at issue." *Brackin v.*

FILED 5/12/21 1404 Collier Co

1

*Boles*, 452 So. 2d 540, 545 (Fla. 1984); § 90.401, Fla. Stat. (relevant evidence is “evidence tending to prove or disprove a material fact”). Irrelevant evidence is inadmissible.

2. This proceeding is subject to de novo review. *See* § 163.3215(3), Fla. Stat.

3. The Court has the discretion to grant a motion in limine to exclude irrelevant and immaterial matters, and/or to exclude evidence when its probative value is outweighed by the danger of unfair prejudice. *Saunders v. Alois*, 604 So. 2d 18 (Fla. 4th DCA 1992); *see also* Section 90.401 (pertaining to the inadmissibility of irrelevant evidence); § 90.403, Fla. Stat. (pertaining to the inadmissibility of evidence for which the probative value is outweighed by the danger of unfair prejudice, or confusion of the issues).

4. By Order dated March 3, 2021 [Doc. #364], this Court partially granted Defendants’ Motion for Summary Judgment Regarding Consistency with the Adopted Comprehensive Plan (“PSJ Order”) and held: (a) Plaintiff’s claims that are based upon the Collier County Land Development Code (“LDC”) or other materials extrinsic to the Growth Management Plan (“GMP”) are not within the scope of Section 163.3215(3), Fla. Stat.; (b) Plaintiff’s claims that are based upon GMP provisions that do not relate to use, density, or intensity of use on the particular piece of property at issue, including but not limited to fiscal neutrality and traffic impacts, are not within the scope of Section 163.3215(3), Fla. Stat.; and (c) Trial of this matter shall proceed within the scope of Section 163.3215(3) as consistent with this Order. By Order dated April 24, 2021 [Doc. #475], this Court clarified that it will hear evidence of Plaintiff’s Claims 1-6 and 8 as listed in Attachment A to the Order.

5. In the Motion, Defendants seek to exclude evidence, argument and witness opinion of the following:

- a. The Collier County Land Development Code;
- b. Urban design and land planning materials that are extrinsic to the Collier County Growth Management Plan;
- c. Other developments or other jurisdictions;
- d. Collier County Planning Commission materials, including emails, reports, written descriptions of the basis for any Planning Commissioner's vote or recommendation concerning Rivergrass Village, and hearing or meeting transcripts;
- e. The testimony of Collier County Planning Commissioner Edwin S. Fryer;
- f. Interim emails, reports, and memos of Collier County staff concerning the Rivergrass SRA Village designation application and the County's review and approval of same;
- g. RLSA materials created or adopted after the Board of County Commissioners adopted Resolution 20-24;
- h. Fiscal neutrality or traffic impacts (including methodologies for same not approved by the County);<sup>1</sup>
- i. Any expert's testimony based upon research or analysis conducted after the completion of the expert's deposition;<sup>2</sup> and
- j. Opinion testimony regarding legal conclusions as to the Development Order's consistency with the GMP.<sup>3</sup>

---

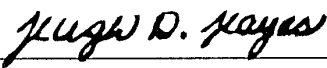
<sup>1</sup> The PSJ Order mooted this portion of Defendants' Motion because the Court held that claims relating to fiscal neutrality and traffic impacts are beyond the scope of Section 163.3215(3), Fla. Stat. and this Court's jurisdiction under same.

6. The specific exhibits and materials subject of the Motion and this Order are identified in the attached **Attachment A**.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that the Motion is **GRANTED** as follows:

- a) Except with respect to items 5(i) and 5(j) above, the Motion is granted and the materials identified in Attachment A shall not be admitted as evidence; the Court reserves judgment regarding the issue of whether testimony or argument regarding same is permissible.
- b) To the extent any party attempts to introduce exhibits or materials not listed in Attachment A, the Court shall undertake objections to said materials at trial; and
- c) The Court reserves judgment regarding the issue of whether experts will be permitted to testify that they rely upon evidence excluded herein.

DONE and ORDERED in Collier County, Naples Florida, on 11<sup>th</sup> day of May, 2021.

  
\_\_\_\_\_  
Hon. Hugh D. Hayes, Circuit Judge

Cc: All counsel of record via Clerk's E-portal

---

<sup>2</sup> In the Hearing, Counsel for CEM represented that this issue is moot and/or can be reserved for trial. The Court concurs.

<sup>3</sup> In the Hearing, Counsel for CEM represented that this issue could be reserved for trial. The Court concurs.



**ATTACHMENT A**

Trial Exhibit #	Document Description	Bates Number (if any)
CSWF_TREX_0000 01	Real Estate Research Corporation. Cost of Sprawl. U.S. Office of Policy Development and Research, CEQ, HUD, and EPA. US Printing Press. Washington, D.C. Apr. 1974.	
CSWF_TREX_0000 02	Krier, Leon: Houses, Palaces, Cities. AD Editions. London. 1984.	
CSWF_TREX_0000 03	Calthorpe, Peter: The Pedestrian Pocket, in Doug, Kelbaugh (ed.) Pedestrian Pocket Book, 1989.	
CSWF_TREX_0000 05	Duany, Andres, and Elizabeth Plater-Zyberk; Towns and Town Making Principles. Rizzoli. New York, NY. 1991.	
CSWF_TREX_0000 06	Jacobs, Allan. Great Streets. Massachusetts Institute of Technology Press. Cambridge, MA. 1993.	
CSWF_TREX_0000 07	Practical Issues in Adopting Local Impact Fees by Jerry Kolo and Todd J. Dicker. State and Local Government Review Vol. 25, No. 3 (Fall 1993): 197- 206.	
CSWF_TREX_0000 09	Ewing, Reid, Pedestrian- and Transit-Friendly Design: A Primer for Smart Growth	
CSWF_TREX_0000 15	Snyder, Ken, and Lori Bird. Paying the Costs of Sprawl: Using Fair-Share Costing to Control Sprawl. Dec. 1998.	CSWFL 0078901 - CSWFL 0078937
CSWF_TREX_0000 17	Crossroads, Hamlet, Village, Town. Design Characteristics of Transitional Neighborhoods, Old and New, PAS-Report-487-488	
CSWF_TREX_0000 18	Duany, Andres, Elizabeth Plater-Zyberk, and Jeff Speck; Suburban Nation: The Rise of Sprawl and the Decline of the American Dream. Farrar, Strauss and Giroux. New York, NY. 2000.	
CSWF_TREX_0000 19	Michael Corbett and Judy Corbett. Designing Sustainable Communities: Learning From Village Homes. Island Press. Washington, D.C. 2000.	
CSWF_TREX_0000 20	Collier County Community Character Plan	
CSWF_TREX_0000 21	Robert Bruchell, George Lowenstein, William Dolphin and Catherine Galley. Cost of Sprawl - 2000. Transportation Cooperative Research Program (TCRP) Report 74. National Academy Press. Washington, D.C. 2002.	
CSWF_TREX_0000 27	Schwanke, Dean, et al; Mixed-Use Development Handbook. 2nd Edition. Washington, D.C.: ULI - the Urban Land Institute, 2003.	

Trial Exhibit #	Document Description	Bates Number (if any)
CSWF_TREX_0000 32	City of Naples, City Council Special Meeting re Hamilton Harbor	
CSWF_TREX_0000 34	L. Carson Bise II & Paul S. Tischler, Dealing with the Cost of Growth: From Soup to Nuts, presentation for the 2006 ICMA Conference	
CSWF_TREX_0000 37	L. Carson Bise II, Fiscal Impact Analysis: How Today's Decisions Affect Tomorrow's Budgets, ICMA Press IQ Report, Vol. 39, No. 5 (2007)	
CSWF_TREX_0000 38	Moore, Terry, and Paul Thorsnes, with Bruce Appleyard. The Transportation/Land Use Connection. American Planning Association PAS Report #546/547. June 2007.	
CSWF_TREX_0000 39	VA DOT, Secondary Street Acceptance Requirements Presentation	
CSWF_TREX_0000 48	Steuteville, Robert, and Phillip Langdon; New Urbanism Best Practices Guide. 4th Edition. New Urban News Publishing. 2009.	
CSWF_TREX_0000 49	Morris, Marya; Smart Codes: Model Land-Development Regulations. Planning Advisory Service Report from the American Planning Association. 2009.	
CSWF_TREX_0000 50	Dunham-Jones, Ellen, and June Williamson. Retrofitting Suburbia: Urban Design Solutions for Redesigning Suburbs. John Wiley & Sons. Hoboken, NJ, 2009.	
CSWF_TREX_0000 52	Mortensen, Andrew. Street and Non-Motorized Connectivity. Memorandum to ECONorthwest. July 10, 2009 ( <a href="http://olympiawa.gov/~media/Files/PublicWorks/Transportation/TransportationMobilityStrategy/TMSAppendixHConnnectivity.pdf?la=en">http://olympiawa.gov/~media/Files/PublicWorks/Transportation/TransportationMobilityStrategy/TMSAppendixHConnnectivity.pdf?la=en</a> )	
CSWF_TREX_0000 53	Malizia, Emil. Best and Worst Methods of Calculating Impact Fees. International City/County Managers Association publication Public Management. Sept. 2009.	
CSWF_TREX_0000 54	Malizia, Emil. Impact Fee Methodologies: Protecting Your Community From Controversy. Univ. of N.C. at Chapel Hill. Nov. 6, 2009.	
CSWF_TREX_0000 55	Designing Walkable Urban Thoroughfares: A Context Sensitive Approach. An Institute of Transportation Engineers, 2nd Printing. Publication #RP-036A Washington, D.C.: 2010.	

<b>Trial Exhibit #</b>	<b>Document Description</b>	<b>Bates Number (if any)</b>
CSWF_TREX_0000 56	ITE Designing Walkable Urban Thoroughfares - A Context Sensitive Approach	
CSWF_TREX_0000 59	L. Carson Bise II, Fiscal Impact Analysis: Methodologies for Planners, American Planning Association PAS Report Number 561	
CSWF_TREX_0000 60	Collier County 2010 Fire/Rescue Services Impact Fee Update Study: Ochopee and Isles of Capri Fire Control and Rescue Districts Final Report	
CSWF_TREX_0000 61	FDOT, Traditional Neighborhood Handbook	
CSWF_TREX_0000 63	Speck, Jeff; Walkable City: How Downtown Can Save America, One Step at a Time. Farrar, Strauss and Giroux. New York, NY. 2012.	
CSWF_TREX_0000 64	Ave Maria Fiscal Impact Analysis Model (FIAM) Presentation, presented at BCC Board Meeting	
CSWF_TREX_0000 67	Montgomery, Charles; Happy City: Transforming Our Lives Through Urban Design. Farrar, Strauss and Giroux. New York, NY. 2013.	
CSWF_TREX_0000 69	Dwayne Pierce Guthrie and Carson Bise II; Next-Generation Transportation Impact Fees. American Planning Association PAS Memo. Jan./Feb. 2015.	
CSWF_TREX_0000 72	AECOM - Sarasota Fiscal Neutrality Analysis	
CSWF_TREX_0000 78	DPPFG - LT Ranch 2050 Village Fiscal Neutrality Analysis for Sarasota County, FL & Sarasota County School District, FL	
CSWF_TREX_0000 79	City of Rochester, MN. Investment Strategies for Better Streets. Pavement management report presented Aug. 2016.	
CSWF_TREX_0000 85	DPPFG - Rural Lands West Economic Assessment for Collier County, FL, & Collier County School District, FL	
CSWF_TREX_0000 88	Speck, Jeff; Walkable City Rules. Island Press. Washington, D.C. 2018.	
CSWF_TREX_0000 89	Urban Street Design Guide. 2nd Edition. Washington, D.C.: ULI - the National Association of City Transportation Officials, New York City, NY. Island Press: 2018.	
CSWF_TREX_0000 96	Ltr. from Nick Casalanguida, Ofc. of County Manager, to Donald Huffner, Collier Enterprises Management, Inc., re Rural Lands West (RLW) Developer Agreement Status	

Trial Exhibit #	Document Description	Bates Number (if any)
CSWF_TREX_00100	Kavanagh, Shayne, and Vincent Reitano. Financial Foundations For Thriving Communities. Government Finance Officers Association of the United States and Canada. Chicago, IL. 2019.	
CSWF_TREX_00101	Foot Traffic Ahead: Ranking Walkable Urbanism in America's Largest Metros. By Tracy Hadden Loh, PhD, Christopher B. Leinberger, and Jordan Chafetz. Center for Real Estate and Urban Analysis at The George Washington University. 2019.	
CSWF_TREX_00102	Conservancy of Southwest Florida, Critique and Recommendations of Collier County's Rural Lands Stewardship Area Program: 2018-2019 RLSA Restudy	
CSWF_TREX_00103	Ranadip Bose and Fran Lefor Rood. The Nexus Between Land Use and Fiscal Balance. American Planning Association Zoning Practice: Fiscal Analysis. Issue Number 1. Jan. 2019.	
CSWF_TREX_00105	Ltr. from P. Utter to M. Bosi re withdrawal of Rural Lands West SRA application	
CSWF_TREX_00110	Email from Michael Bosi to Corby Schmidt and David Weeks re 19-044, Rivergrass Village SRA	CSWFL 0016772 - CSWFL 0016773
CSWF_TREX_00112	Email from Michael Sawyer re Comments to Rivergrass Village SRA Document	
CSWF_TREX_00114	Email from N. Gundlach to C. Schmidt, cc: M. Bosi, re Rivergrass Village Review	CSWFL 0017608 - CSWFL 0017609
CSWF_TREX_00115	Attachment to Email from N. Gundlach to C. Schmidt, cc: M. Bosi, re Rivergrass Village Review (Rivergrass Village Submission #1, Staff Review - Community and Human Services, 03/05/19, Cormac Giblin, AICP - Housing and Grand Development Manager)	CSWFL 0017610 - CSWFL 0017611
CSWF_TREX_00116	Email from N. Gundlach to C. Schmidt re Rivergrass Village Review	CSWFL 0017605 - CSWFL 0017606
CSWF_TREX_00117	Consistency Review Memorandum - FLUE Consistency Review of Proposed Stewardship Receiving Area	Rivergrass_AR_0 06344 - 006361
CSWF_TREX_00119	RLSA Restudy Public Meeting - Consensus Workshop	
CSWF_TREX_00121	Collier County Memo re DCA Land Values; Proposed Hyde Park; Rivergrass Village Lands	

<b>Trial Exhibit #</b>	<b>Document Description</b>	<b>Bates Number (if any)</b>
CSWF_TREX_0001 23	Collier County Growth Mgmt. Dep't, Rural Lands Stewardship Area Overlay Restudy White Paper	
CSWF_TREX_0001 24	Collier County Growth Mgmt. Dep't, Rural Lands Stewardship Area Overlay Restudy White Paper	CSWFL 0000970 - CSWFL 0001200
CSWF_TREX_0001 29	Emails between Cormac Giblin and Nancy Gundlach re CEM Response to Cormac Giblin Housing Review	CSWFL 0021222 - CSWFL 0021223
CSWF_TREX_0001 31	Urban3. City of Lancaster, Phase 3 Analysis, Appendix: Impact Fee Maps. July 2019.	
CSWF_TREX_0001 33	Urban3. City of Lancaster, A Path to Financial Resiliency Through Updated Impact Fees. July 31, 2019.	
CSWF_TREX_0001 37	Email from Cormac Giblin to Thaddeus Cohen, et al., re Rivergrass Village SRA - Expedited Hearing Date Discussion (discussing affordable housing)	CSWFL 0025221 - CSWFL 0025222
CSWF_TREX_0001 44	Email from Corby Schmidt re Revisions to Rivergrass Consistency Review Memorandum	
CSWF_TREX_0001 45	Staff Report from Zoning Division to CCPC (Hearing Date 9/19/2019)	Rivergrass_AR_0 14899 - 014938
CSWF_TREX_0001 46	Consistency Review Memorandum - FLUE Consistency Review of Proposed Stewardship Receiving Area	Rivergrass_AR_0 15033 - 015048
CSWF_TREX_0001 50	Collier County, Collier County Planning Commission Agenda Packet	Rivergrass_AR_0 13866 - 016045
CSWF_TREX_0001 51	Collier County Planning Commission Hearing Transcript	Rivergrass_AR_0 07283 - 007372
CSWF_TREX_0001 52	Collier Enterprises Management, Rivergrass Village SRA Presentation to CCPC	Rivergrass_AR_0 16150 - 016224
CSWF_TREX_0001 55	Collier County Road Impact Fee Update Study, Final Report	
CSWF_TREX_0001 56	Tindale Oliver, Collier County Road Impact Fee Update Study, prepared for Collier County Growth Management Division Planning & Regulation, Final Report	
CSWF_TREX_0001 57	Collier County, Collier County Planning Commission Agenda Packet	Rivergrass_AR_0 16046 - 019596
CSWF_TREX_0001 58	Collier County Planning Commission Hearing Transcript	Rivergrass_AR_0 07373 - 007483

<b>Trial Exhibit #</b>	<b>Document Description</b>	<b>Bates Number (if any)</b>
CSWF_TREX_0001 59	Collier County, Collier County Planning Commission Agenda Packet	Rivergrass_AR_0 19597 - 022774
CSWF_TREX_0001 60	Collier County Planning Commission Hearing Transcript	Rivergrass_AR_0 07484 - 007538
CSWF_TREX_0001 61	Reasons for Vote of Planning Commissioner Edwin S. Fryer Against Rivergrass Village SRA Application	Rivergrass_AR_0 07787 - 007788
CSWF_TREX_0001 63	Consistency Review Memorandum - FLUE Consistency Review of Proposed Stewardship Receiving Area	Rivergrass_AR_0 07603 - 007615
CSWF_TREX_0001 64	Email from David Weeks to Nancy Gundlach, cc: Corby Schmidt, re Revised Rivergrass Staff Report is attached (Revisions to Rivergrass Consistency Review Memorandum)	CSWFL 0065951
CSWF_TREX_0001 65	Attachment to Email from David Weeks to Nancy Gundlach, cc: Corby Schmidt, re Revised Rivergrass Staff Report is attached (Consistency Review Memorandum)	CSWFL 0065952 - CSWFL 0065964
CSWF_TREX_0001 66	County Attorney Comments to Planning Staff Report on Rivergrass Village	CSWFL 0013177 - CSWFL 0013213
CSWF_TREX_0001 68	Email from Nancy Gundlach to April Olson re Rivergrass CCPC form	
CSWF_TREX_0001 69	Email from Nancy Gundlach to David Weeks re language change in Staff Report	CSWFL 0054032
CSWF_TREX_0001 70	Email from Ray Bellows to Desiree Hart re Rivergrass Team Presentation - for brief review (Revisions to Planning Staff Presentation to BCC)	CSWFL 0054462 - CSWFL 0054463
CSWF_TREX_0001 71	Attachment to Email from Ray Bellows to Desiree Hart re Rivergrass Team Presentation - for brief review (Rivergrass Village SRA Planning Staff Presentation to BCC)	CSWFL 0054464 - CSWFL 0054493
CSWF_TREX_0001 73	Email from Nancy Gundlach re Revisions to Planning Staff Report	
CSWF_TREX_0001 82	Marohn, Charles; Strong Towns: A Bottom-up Revolution to Rebuild American Prosperity. John Wiley & Sons. Hoboken, NJ, 2020.	
CSWF_TREX_0001 85	Email from Rich Yovanovich re Revisions to Rivergrass Landowner Agreement and Village ROWs	
CSWF_TREX_0001 86	Hyde Park Village SRA Development Document	

<b>Trial Exhibit #</b>	<b>Document Description</b>	<b>Bates Number (if any)</b>
CSWF_TREX_0001 88	Email from Trinity Scott re Rivergrass Companion Developer Agreement	
CSWF_TREX_0001 94	Planning Staff Presentation to BCC on Rivergrass Village	Rivergrass_AR_0 08058 - 008088
CSWF_TREX_0001 98	Email from Cormac Giblin re ESP Housing Fund	CSWFL 0076214 - CSWFL 0076216
CSWF_TREX_0002 01	Email thread re Rivergrass SRA - final resolution	CSWFL 0076395 - CSWFL 007639
CSWF_TREX_0002 02	Email from Cormac Giblin to Nancy Gundlach, et al., re Rivergrass SRA-final resolution (Revisions to Housing Provisions in Rivergrass Village SRA Development Document)	CSWFL 0076490 - CSWFL 0076493
CSWF_TREX_0002 03	Email from Nancy Gundlach to Cormac Giblin re Rivergrass SRA-final resolution	CSWFL 0076494 - CSWFL 0076497
CSWF_TREX_0002 05	Hyde Park Village Economic Assessment for Collier Couty, Collier County Schools, and North Collier Fire & Rescue	
CSWF_TREX_0002 06	Collier County Planning Commission Hearing Transcript re Hyde Park SRA	
CSWF_TREX_0002 08	Collier County Water & Wastewater Impact Fee Rate Schedule	
CSWF_TREX_0002 09	Impact Fee Administration, Collier County Commercial Impact Fees: Road, Water and Wastewater Changes	
CSWF_TREX_0002 10	Impact Fee Administration, Collier County Residential Impact Fees: Road, Water and Wastewater Changes	
CSWF_TREX_0002 13	Home Builders Ass'n of W. Fla. V. Bd. of Cnty. Comm'rs, Santa Rosa Cnty, Fla. , Transcript of Video Conference Hearing on Verified Motion for Temporary Injunction, Vol. I	
CSWF_TREX_0002 15	Email from A. Jenkins to A. Olson re: Conservancy's Comments on RLSA Proposed Amendments and 2020 Stewardship Credit Analysis	
CSWF_TREX_0002 18	Planning Staff Consistency Review Memorandum for Bellmar Village SRA	
CSWF_TREX_0002 21	Conservancy of Southwest Florida, Important White Paper Recommendations Absent in the RLSA GMP Amendments	



<b>Trial Exhibit #</b>	<b>Document Description</b>	<b>Bates Number (if any)</b>
CSWF_TREX_0002 23	Planning Staff Consistency Review Memorandum for Longwater Village SRA	
CSWF_TREX_0002 27	Stewardship Receiving Area (SRA) Credit Use and Reconciliation Application by Collier Enterprises Management, Inc. for Bellmar Village SRA	
CSWF_TREX_0002 31	Collier County Planning Commission Hearing Transcript	
CSWF_TREX_0002 41	Letter from A. Olson & N. Johnson (Conservancy) to B. Saunders (Collier County Board of County Commissioners) re RLSA Amendment Process	
CSWF_TREX_0002 43	Letter from League of Women Voters of Collier County to B. Saunders (Collier County Board of Commissioners) re Concerns about the RLSA Amendment Process	
CSWF_TREX_0002 45	Email from J. Klatzkow (Collier County) to N. Johnson (Conservancy), et al., re Response to Issues Raised	
CSWF_TREX_0002 54	Rural Lands West Sufficiency Comments Economic Assessment 2nd Sufficiency Review - Planning	
CSWF_TREX_0002 94	Collier County Public Schools, Final Budget 2020- 2021	
CSWF_TREX_0002 96	Charter for the Congress for the New Urbanism ( <a href="https://www.cnu.org/who-we-are/charter-new-urbanism">https://www.cnu.org/who-we-are/charter-new-urbanism</a> )	
CSWF_TREX_0003 18	Conventional Development in Coastal Urban Area Between Immokalee and Livingston Roads	CSWFL 0078898

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA

CONSERVANCY OF SOUTHWEST  
FLORIDA, INC.,

PLAINTIFF,

v.

COLLIER COUNTY, FLORIDA, and  
COLLIER ENTERPRISES MANAGEMENT,  
INC.,

DEFENDANTS.

Case No. 11-2020-CA-000780-0001-XX

**JOINT PRETRIAL STIPULATION**

Pursuant to this Court's Amended Revised Agreed Case Management Plan and Order (via Order Approving Adjustments to the Revised Agreed Case Management Plan executed on October 5, 2020 (Dkt. #69)), Plaintiff Conservancy of Southwest Florida, Inc. ("Conservancy") and Defendants Collier County, Florida ("County") and Collier Enterprises Management, Inc. ("CEM") respectfully submit the following Joint Pretrial Stipulation. This Joint Pretrial Stipulation, including all recitals, stipulations of fact or law, and any agreements herein, is limited to matters in the above-captioned case for the January 19, 2021, trial setting only, and cannot be used or enforced in any re-trial or continued trial of this case, or any other case.

**I. STIPULATED FACTS**

The following stipulated facts are admitted and will not require proof at trial:

1. Plaintiff brings this action pursuant to § 163.3215, Fla. Stat., alleging that Collier County Board of County Commissioners Resolution 20-24 approving Rivergrass Village Stewardship Receiving Area application (hereinafter "Rivergrass Village Development

Order”) materially alters the use, density, and intensity of use of land in a manner that is inconsistent with the Collier County Growth Management Plan (“GMP”).

2. The Rivergrass Village Development Order is a development order within the meaning of the Community Planning Act. § 163.3164(15), Fla. Stat.
3. Pursuant to §163.3215(3), Fla. Stat., Plaintiff filed its Complaint on March 9, 2020.
4. Plaintiff, the Conservancy, is a Florida not-for-profit corporation.
5. Defendant Collier County is a subdivision of the State of Florida, created and authorized pursuant to the laws and Constitution of the State of Florida.
6. Collier County has adopted the Growth Management Plan (“GMP”) in accordance with the Community Planning Act, § 163.3161 *et seq.*, Fla. Stat.
7. Collier County’s GMP is structured into several elements, including a Future Land Use Element (“FLUE”), Transportation Element, and Capital Improvements Element.
8. In 2002, Collier County developed and incorporated the Rural Lands Stewardship (“RLSA”) program into the FLUE.
9. Under the RLSA program, lands within the RLSA Overlay may be designated as Stewardship Receiving Areas (“SRAs”)—areas where future development exceeding baseline zoning can be proposed—in exchange for credits earned through the designation of Stewardship Sending Areas (“SSA”)—areas determined too environmentally sensitive for urban development.
10. One of the purposes of the RLSA is to direct incompatible uses away from wetlands and upland habitat.
11. One of the purposes of the RLSA is to discourage urban sprawl.

12. The RLSA Overlay Policies in the GMP establish the type of SRAs designated and the specific requirements that must be followed for each type of SRA, including Villages like that proposed in the Rivergrass SRA Application.
13. The RLSA Overlay Policies are implemented through regulations in the Collier County Land Development Code, codified under Section 4.08.00 *et seq.*
14. The Rivergrass Village SRA comprises 997.53 acres, located both north and south of Oil Well Road and just east of Desoto Boulevard in eastern Collier County.
15. The Collier County Planning Commission (the “Planning Commission”) is responsible for submitting a recommendation to approve or deny proposed SRAs to the Collier County Board of County Commissioners (“BCC”).
16. The BCC ultimately approves or denies a proposed SRA.
17. The property to be developed as Rivergrass Village is located south of 45th Avenue NE and north of 26th Avenue NE, all east of DeSoto Boulevard in Sections 10, 14, 15, 22, 23, and 27, Township 48 South, Range 28 East, Collier County, Florida.
18. CEM first submitted its development plan for Rivergrass Village for the County’s review in January 2019.
19. On January 28, 2020, the Collier County Board of County Commissioners, by a vote of 3 to 2, approved Resolution No. 20-24 designating the proposed Rivergrass Village as a SRA.
20. Resolution No. 20-24 was filed and rendered by the Collier County Clerk on February 7, 2020.
21. In conjunction with adopting Resolution 20-24, the BCC approved and entered into a Landowner Agreement for Rivergrass Village dated January 22, 2020.

22. Rivergrass Village will be bisected by Oil Well Road, which has a current speed limit of 55 miles per hour. The segment of Oil Well Road that will divide Rivergrass Village is planned for expansion from two lanes to six lanes.
23. Rivergrass Village's mixed-use Village Center will be located immediately south of Oil Well Road on the west side of the development.
24. The BCC approved the Rivergrass Development Order along with 16 requested deviations.
25. The Rivergrass Development Order allows for up to 90% of dwelling units in Rivergrass Village to be built as single-family homes and requires that a minimum of 10% of dwelling units be multi-family homes.
26. CEM submitted a Transportation Impact Statement ("TIS") for the Rivergrass Village SRA.
27. Section I of the Rivergrass TIS identified four roadway segments that are projected to be deficient under the County's adopted level of service standards before the Rivergrass Development is complete.
28. Section II of the Rivergrass TIS identified two intersections that would be impacted by the Rivergrass development.
29. Collier Enterprises developed a Fair Share Mitigation Report proposing intersection improvement projects and assessing Collier Enterprise's fair share of the cost of implementing the improvement projects.
30. Collier Enterprises submitted an economic assessment of Rivergrass Village (the "Economic Assessment") prepared by its consultant, Development Planning and Financial Group, Inc. ("DPFG").

31. The County retained its own consultant, Jacobs Engineering Group Inc. (“Jacobs”), to conduct a peer review of DDPFG’s Economic Assessment.
32. Prior to submission of the Rivergrass SRA designation application to the County, the County decided to expand the Collier County Water Sewer District’s (“CCWSD’s”) service area in eastern Collier County to include the Rivergrass area, among others.
33. Collier County and Collier Enterprises have entered into an Interlocal Agreement pursuant to which CCWSD will construct new infrastructure for providing the expanded service.

**II. Disputed Issues of Law and Fact<sup>1</sup>**

1. Whether the Conservancy is an “aggrieved or adversely affected party” pursuant to § 163.3215(2).
2. Whether the Conservancy has alleged an interest that is “protected or furthered by the local comprehensive plan.” Fla. Stat. Ann. § 163.3215(2).
3. Whether the Conservancy’s interests “exceed[] in degree the general interest in community good shared by all persons.” Fla. Stat. Ann. § 163.3215(2).
4. Whether the Conservancy will suffer an adverse effect to the aforementioned interests from approval of the Rivergrass Village Development Order.
5. Whether the Conservancy’s claims challenging the Rivergrass Village Development Order are within the scope of the § 163.3215(3), Fla. Stat. cause of action.

---

<sup>1</sup> CEM agrees that items 1-6 are disputed issues of law or fact properly within the scope of this action. However, CEM disagrees that the remaining listed items are at issue in this action because it contends that they are outside the scope of § 163.3215(3) or are otherwise inapplicable.

6. Whether the Rivergrass Development Order is consistent with the County's GMP provisions for use, density, and intensity of use within the meaning of § 163.3215(3), Fla. Stat.<sup>2</sup>
7. Whether claims under § 163.3215(3), Fla. Stat. must relate to use, density, or intensity of use and, if so, which provisions of the County's GMP relate to use, density, or intensity of use.
8. Whether the Rivergrass Village Development Order is consistent with mandatory GMP provisions setting forth all requirements that apply to SRA Villages, including, but not limited to:
  - a. RLSA Overlay Policy 4.2 (requiring SRAs to be compact);
  - b. RLSA Overlay Policy 4.7.2 (requiring SRA Villages, among other things, to include a "diversity of housing types and mix of uses"; "a mixed-use village center to serve as serve as the focal point for the community's support services and facilities"; a design that encourages "pedestrian and bicycle circulation by including an interconnected sidewalk and pathway system serving all residential neighborhoods");
  - c. RLSA Overlay Policy 4.11 (requiring "a transition from higher density and intensity uses within the SRA to lower density and intensity uses on adjoining property" and "well defined" edges designed to be compatible with adjoining property);

---

<sup>2</sup> The Conservancy disagrees with this characterization of a disputed issue of law or fact and has restated what it understands to be a more accurate characterization in Paragraph 7.

- d. Attachment C of the RLSA Overlay (identifying characteristics of Village SRAs).
9. Whether Rivergrass Village Development Order is consistent with RLSA Overlay Policy 4.3, which states the “basis for approval shall be a finding of consistency with the policies of the Overlay, including required suitability criteria set forth herein, compliance with the LDC Stewardship District, and assurance that the applicant has acquired or will acquire sufficient Stewardship Credits to implement the SRA uses.”
  10. Whether the Rivergrass Village Development Order is consistent with RLSA Overlay Policy 4.5, which requires an SRA master plan to demonstrate compliance with “all applicable policies of the Overlay and the LDC Stewardship District” and that it is “designed so that incompatible land uses are directed away from wetlands and critical habitat identified as FSAs and HSAs on the Overlay Map.”
  11. Whether the Rivergrass Village Development Order complies with the mandatory provisions of the LDC implementing the RLSA Overlay setting forth the requirements for SRA Villages including but not limited to:
    - a. LDC § 4.08.07 C.2 (setting forth same requirements as RLSA Overlay Policy 4.7.2);
    - b. LDC § 4.08.07 J.1 (Table B) (identifying characteristics of Village SRAs);
    - c. LDC § 4.08.07 J.2.b (requiring a transportation network that provides for a “high level of mobility” through a design “that respects the



pedestrian and accommodates the automobile”); *see also* LDC § 4.08.07

J.3.b.;

- d. LDC § 4.08.07 J.3.a.i. (requiring a “mixed-use village center to serve as the focal point for the community’s support services and facilities”);
- e. LDC § 4.08.07 J.3.a.ii (requiring a “compact, pedestrian-friendly” design);
- f. LDC § 4.08.07 J.3.a.iii. (requiring “interconnected street system designed to disperse and reduce the length of automobile trips”);
- g. LDC § 4.08.07 J.3.a.iv. (requiring a “range of housing types and price levels to accommodate diverse ages and incomes”);
- h. LDC § 4.08.07 J.3.a.v. (requiring a “progressive rural to urban continuum with the greatest density, intensity and diversity occurring within the village center, to the least density, intensity and diversity occurring within the Neighborhood Edge”);
- i. LDC § 4.08.07 J.3.a.vi. (requiring “sufficient transition to the adjoining use”);
- j. LDC § 4.08.07 J.3.c (requiring a “range of active and passive parks, squares and playgrounds”).

12. Whether the Rivergrass Village Development Order is consistent with RLSA Policy 4.18, which requires, among other things, a demonstration of fiscal neutrality at the horizon year based on a public facilities impact assessment, as identified LDC § 4.08.07K.

13. Whether the Rivergrass Village Development Order is consistent with RLSA Overlay Policies 4.14 and 4.16, which require, among other things, a demonstration that Rivergrass Village's transportation network will be adequate to service the proposed SRA.
14. Whether the Rivergrass Village Development Order is consistent with Transportation Element Policies 5.1 and 5.7.
15. Whether the Rivergrass Development Order is consistent with Transportation Element Policy 5.8 which, among other things, requires compliance with Section 163.3180(5)(h), Florida Statutes.
16. Whether the Rivergrass Village Development Order is consistent with Transportation Element Policy 8.2, which, among other things, requires compliance with LDC § 6.02.00 *et seq.*
17. Whether the Rivergrass Village Development Order complies with the provisions set forth in LDC § 6.02.00 *et seq.*
18. Whether the Rivergrass Village Development Order is consistent with Capital Improvements Element Policy 1.2.

Dated: December 4, 2020

By: /s/ Brian D. Israel

Brian Israel  
PHV No. 1022075  
ARNOLD & PORTER KAYE SCHOLER LLP  
601 Massachusetts Ave., N.W.  
Washington, DC 20001  
Phone: (202) 942-5000  
Fax: (202) 942-5999  
[Brian.Israel@arnoldporter.com](mailto:Brian.Israel@arnoldporter.com)

*Counsel for Conservancy of Southwest Florida,  
Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of December, 2020, a true and correct copy of the foregoing was filed using the Florida Court E-Filing Portal and served on the following counsel of record via electronic mail:

*Co-Counsel for Conservancy of Southwest Florida, Inc.:*

J. Michael Coleman, Esq.  
Robert A. Bernstein, Esq.  
COLEMAN, HAZZARD, TAYLOR, KLAUS, DOUPÉ & DIAZ, P.A.  
4099 Tamiami Trail North  
Suite 201  
Naples, FL 34103  
Phone: (239) 298-5200  
[mcoleman@chtlegal.com](mailto:mcoleman@chtlegal.com)  
[rbernstein@chtlegal.com](mailto:rbernstein@chtlegal.com)  
[service@chtlegal.com](mailto:service@chtlegal.com)

*Counsel for Collier County:*

Jeffrey A. Klatzkow, Esq.  
Colleen Green  
COLLIER ATTORNEY'S OFFICE  
3299 Tamiami Trail E., Suite 800  
Naples, FL 34112  
Phone: (239) 252-8400  
[Jeff.Klatzkow@colliercountyfl.gov](mailto:Jeff.Klatzkow@colliercountyfl.gov)  
[Colleengreene@colliercountyfl.gov](mailto:Colleengreene@colliercountyfl.gov)

Gregory N. Woods, Esq.  
Jessica F. Tolin  
WOODS, WEIDENMILLER, MICHETTI &  
RUDNICK LLP  
9045 Strada Stell Court, Suite 400  
Naples, FL 34109  
Phone: (239) 325-4070  
[gwoods@lawfirmnaples.com](mailto:gwoods@lawfirmnaples.com)  
[jtolin@lawfirmnaples.com](mailto:jtolin@lawfirmnaples.com)

*Counsel for Collier Enterprises Management, Inc.*

Glenn Burhans, Jr.  
Reggie Bouthillier, Jr.  
Bridget Smitha  
STEARNS, WEAVER, MILLER,  
WEISSLER ALHADEFF & SITTERSON,  
P.A.  
106 East College Avenue, Suite 700  
Tallahassee, FL 32301  
Phone: (850) 329-4850  
[gburhans@stearnsweaver.com](mailto:gburhans@stearnsweaver.com)  
[rbouthillier@stearnsweaver.com](mailto:rbouthillier@stearnsweaver.com)

Jacob T. Cremer  
STEARNS, WEAVER, MILLER,  
WEISSLER ALHADEFF & SITTERSON,  
P.A.  
401 E. Jackson Street, Suite 2100  
Tampa, FL 33602  
Phone: (813) 223-4800  
[jcremer@stearnsweaver.com](mailto:jcremer@stearnsweaver.com)

[bsmitha@stearnsweaver.com](mailto:bsmitha@stearnsweaver.com)

Richard D. Yovanovich  
COLEMAN, YOVANOVICH & KOESTER,  
P.A.  
4001 Tamiami Trail North, Suite 300  
Naples, FL 34103  
Phone: (239) 435-3535  
[ryovanovich@cyklawfirm.com](mailto:ryovanovich@cyklawfirm.com)

Dated: December 4, 2020

*/s/ Brian Israel*

---

Brian Israel  
PHV No. 1022075  
ARNOLD & PORTER KAYE SCHOLER LLP  
601 Massachusetts Ave., N.W.  
Washington, DC 20001  
Phone: (202) 942-5000  
Fax: (202) 942-5999  
[Brian.Israel@arnoldporter.com](mailto:Brian.Israel@arnoldporter.com)

*Counsel for Conservancy of Southwest  
Florida, Inc.*

**COLLIER COUNTY  
GROWTH MANAGEMENT PLAN**

**FUTURE LAND USE ELEMENT**

Prepared by  
Collier County Planning and Zoning Department  
Comprehensive Planning Section

Prepared for  
COLLIER COUNTY BOARD OF COUNTY COMMISSIONERS  
Adopted October, 1997

Trinity Scott  
Exhibit\_1  
8/31/2020

### C. UNDERLYING CONCEPTS

The land use strategy established by this Element is based on a series of concepts, which emerge from the foundation cited earlier. The policy direction and implementation mechanisms closely relate to these underlying concepts.

#### Protection of Natural Resource Systems

*[reflects merger of Ordinance No. 2002-32 and 2002-54]*

- (VI) Collier County is situated in a unique, sensitive and intensely interactive physical environment. Natural resources are abundant: a subtropical climate with annual wet and dry seasons; enormous groundwater productivity; vast wetland areas; large ranges of habitat with diverse and unique flora and fauna, including many species that are Federally and/or State listed, warranting special protection; extensive and highly productive estuarine systems; and, many miles of sandy beach. In addition to their habitat value, these natural resources perform functions that are vital to the health, safety and welfare of the human population of the County, and serve as a powerful magnet to attract and retain visitors and residents. Therefore, protection and management of natural resources for long-term viability is essential to support the human population, ensure a high quality of life, and facilitate economic development. Important to this concept is management of natural resources on a system-wide basis.

The Future Land Use Element is designed to protect and manage natural resource systems in several ways:

- Urban Designated Areas on the Future Land Use Map are located and configured to guide concentrated population growth and intensive land development away from areas of great sensitivity and toward areas more tolerant to development.
- Within the Urban Designated Areas this Element encourages Planned Unit Development zoning and assigns maximum permissible residential density based on the gross land area. Through site plan review procedures in the Land Development Regulations (LDRs), development is guided to the portions of the property that are of lesser environmental quality, thus, in effect, constituting an on-site transfer or clustering of development rights.
- A broader “off-site” Transfer of Development Rights (TDR) provision and Stewardship Credit System, set forth in this Element and primarily applicable to the Rural Fringe Mixed Use District and Rural Lands Stewardship Area is a key component of the County’s overall strategy to direct incompatible land and uses away from important natural resources, including large connected wetland systems and listed species and their habitat.
- An Area of Critical State Concern Overlay is included on the Future Land Use Map to ensure implementation of all applicable Land Development Regulations in the Okaloacoochee Slough, Big Cypress Swamp, Fakahatchee Strand and Ten Thousand Islands areas.
- The County has designated several Natural Resource Protection Area (NRPA) overlays within the Rural Fringe Mixed Use District. The County has also designated Flowway Stewardship Areas (FSAs) and Habitat Stewardship Areas (HSAs) within the Rural Lands Stewardship Overlay. These areas are intended to maintain the connection between, and the preservation of, large connected wetland systems and critical habitat areas for listed species by allowing very limited land uses and through high native vegetation preservation standards and buffers from adjacent land uses. These overlay areas are primarily located within the Rural Fringe Mixed Use District and the Rural Lands Stewardship Overlay where these large connected wetlands systems and habitat areas occur.
- The County has designated Water Retention Areas (WRAs) within the Rural Lands Stewardship Overlay for the further protection of surface water quality and quantity and protection of habitat for listed species.

(VII) = Plan Amendment by Ordinance No. 2002-54 on October 22, 2002

- The County's Land Development Regulations provide standards for protection of groundwater, particularly in close vicinity to public water supply wells by implementing policies set forth in the Natural Groundwater Aquifer Recharge Element.
- Natural resources are also protected through close spatial and temporal coordination of land development with the availability of adequate infrastructure (public or private facilities) to ensure optimized accommodation of human impacts, particularly in relation to water supply, sewage treatment, and management of solid waste. This coordination is accomplished through the provision of public facilities as detailed in the Capital Improvement and Public Facility Elements and through the Level of Service Standards (LOS) found herein.

Of crucial importance to the relationship between natural resources and land use is the completion and implementation of multi-objective watershed management plans as described in the Drainage Element. Water is the greatest integrator of the physical environment in that it links together dynamic ecological and human systems. Therefore, the watershed management plan must take into account not only the need for drainage and flood protection but also the need to maintain water table levels and an approximation of natural discharge to estuaries. The watershed management plans will have implications for both water management and land use practices.

(VII)(XXXVII)

#### **Coordination of Land Use and Public Facilities**

At the heart of Florida's Community Planning Act (Chapter 163, Florida Statutes) is the requirement that adequate service by public facilities must be available at the time of demand by new development. This requirement is achieved by spatial coordination of public facilities with land uses through the Future Land Use Map; and temporal coordination through LOS standards. The LOS standards are binding - no final local Development Order may be issued which is not consistent with the Concurrency Management System. Binding LOS standards have been established for roads, water supply, sewage treatment, water management, solid waste and parks. While the standards in the Capital Improvement and Public Facility Elements serve to guide public provision of infrastructure, within the context of the Future Land Use Element the standards serve to assure the availability of adequate facilities, whether public or private.

The Urban Service Area concept manifested in this Element is crucial to successful coordination of land development and the provision of adequate public facilities. It is within Urban Designated Areas on the Future Land Use Map that the more intensive Zoning Districts are permissible, thus the more intensive land uses. Since Urban Designated Areas are where intensive land uses are guided, it is also where fiscal resources are primarily concentrated for the provision of roads, water supply, sewage treatment and water management. Nevertheless, facilities and services such as parks, schools, emergency and other essential services, and improvements to the existing road network are anticipated outside of the Urban Designated Area, primarily within the areas known as North Golden Gate Estates and the Rural Fringe Mixed Use District. In the case of designated Receiving Lands within the Rural Fringe Mixed Use District, in order to protect natural resources and private property rights, extension of central sewer and water is permitted in order to: support the TDR program; allow for maximum utilization of clustering of allowable residential density; foster the development of rural villages; and, as an incentive to encourage the use of other innovative planning techniques. It is important that the Urban Designated Area not be so large that public facilities cannot be efficiently and effectively planned for and delivered; and not be so small that the supply of land available for development is extremely limited with resultant lack of site selection options and competition leading to elevated land prices. It is also important that the time frames for land use and public facility planning be coordinated as discussed later in this Overview.

(XXXVII) = Plan Amendment by Ordinance No. 2015-08 on January 27, 2015

District (SFWMD) permits applicable to each WRA. WRAs can also be permitted to provide such functions for new uses of land allowed within the Overlay. WRAs may be incorporated into a SRA master plan to provide water management functions for properties within such SRA, but are not required to be designated as a SRA in such instances. WRA boundaries are understood to be approximate and are subject to refinement in accordance with SFWMD permitting.

(VII) **Policy 3.14:**

During permitting to serve new uses, additions and modifications to WRAs may be required or desired, including but not limited to changes to control elevations, discharge rates, storm water pre-treatment, grading, excavation or fill. Such additions and modifications shall be allowed subject to review and approval by the SFWMD in accordance with best management practices. Such additions and modifications to WRAs shall be designed to ensure that there is no net loss of habitat function within the WRAs unless there is compensating mitigation or restoration in other areas of the Overlay that will provide comparable habitat function. Compensating mitigation or restoration for an impact to a WRA contiguous to the Camp Keais Strand or Okaloacoochee Slough shall be provided within or contiguous to that Strand or Slough.

(VII) **Group 4 – Policies to enable conversion of rural lands to other uses in appropriate locations, while discouraging urban sprawl, and encouraging development that utilizes creative land use planning techniques by the establishment of Stewardship Receiving Areas.**

(VII) **Policy 4.1:**

Collier County will encourage and facilitate uses that enable economic prosperity and diversification of the economic base of the RLSA. Collier County will also encourage development that utilizes creative land use planning techniques and facilitates a compact form of development to accommodate population growth by the establishment of Stewardship Receiving Areas (SRAs). Incentives to encourage and support the diversification and vitality of the rural economy such as flexible development regulations, expedited permitting review, and targeted capital improvements shall be incorporated into the LDC Stewardship District.

(VII)(XXXVII) **Policy 4.2:**

All privately owned lands within the RLSA which meet the criteria set forth herein are eligible for designation as a SRA, except land delineated as a FSA, HSA, WRA or land that has been designated as a Stewardship Sending Area. Land proposed for SRA designation shall meet the suitability criteria and other standards described in Group 4 Policies. Due to the long-term vision of the RLSA Overlay, extending to a horizon year of 2025, and in accordance with the guidelines established in Section 163.3168(2), Florida Statutes, the specific location, size and composition of each SRA cannot and need not be predetermined in the GMP. In the RLSA Overlay, lands that are eligible to be designated as SRAs generally have similar physical attributes as they consist predominately of agriculture lands which have been cleared or otherwise altered for this purpose. Lands shown on the Overlay Map as eligible for SRA designation include approximately 74,500 acres outside of the ACSC and 18,300 acres within the ACSC. Approximately 2% of these lands achieve an Index score greater than 1.2. Because the Overlay requires SRAs to be compact, mixed-use and self sufficient in the provision of services, facilities and infrastructure, traditional locational standards normally

(XXXVII) = Plan Amendment by Ordinance No. 2015-08 on January 27, 2015



applied to determine development suitability are not relevant or applicable to SRAs. Therefore the process for designating a SRA follows the principles of the Rural Lands Stewardship Act as further described herein.

(VI)(XLIV) **Policy 4.3:**

Land becomes designated as a SRA upon petition by a property owner to Collier County seeking such designation and the adoption of a resolution by the BCC granting the designation. The petition shall include a SRA master plan as described in Policy 4.5. The basis for approval shall be a finding of consistency with the policies of the Overlay, including required suitability criteria set forth herein, compliance with the LDC Stewardship District, and assurance that the applicant has acquired or will acquire sufficient Stewardship Credits to implement the SRA uses. The County has adopted LDC amendments to establish the procedures and submittal requirements for designation as a SRA, providing for consideration of impacts, including environmental and public infrastructure impacts, and for public notice of and the opportunity for public participation in any consideration by the BCC of such a designation.

(VII)(XLIV) **Policy 4.4:**

Collier County will update the Overlay Map to delineate the boundaries of each approved SRA. Such updates shall be incorporated into the adopted Overlay Map during the EAR based amendment process when it periodically occurs, or sooner at the discretion of the Board of County Commissioners.

(VII) **Policy 4.5:**

To address the specifics of each SRA, a master plan of each SRA will be prepared and submitted to Collier County as a part of the petition for designation as a SRA. The master plan will demonstrate that the SRA complies with all applicable policies of the Overlay and the LDC Stewardship District and is designed so that incompatible land uses are directed away from wetlands and critical habitat identified as FSAs and HSAs on the Overlay Map.

(VII)(X)(XXX)

**Policy 4.6:**

SRA characteristics shall be based upon innovative planning and development strategies referenced in Section 163.3168(2), Florida Statutes. These planning strategies and techniques include urban villages, new towns, satellite communities, area-based allocations, clustering and open space provisions, and mixed-use development that allow the conversion of rural and agricultural lands to other uses while protecting environmentally sensitive areas, maintaining the economic viability of agricultural and other predominantly rural land uses, and providing for the cost-efficient delivery of public facilities and services. Such development strategies are recognized as methods of discouraging urban sprawl.

(VII)(XV)(XXXVII)(XLXII)

**Policy 4.7:**

There are four specific forms of SRA permitted within the Overlay. These are Towns, Villages, Hamlets, and Compact Rural Development (CRD). The Characteristics of Towns, Villages, Hamlets, and CRD are set forth in Attachment C and are generally described in Policies 4.7.1, 4.7.2, 4.7.3 and 4.7.4. Collier County shall establish more specific regulations, guidelines and standards within the LDC Stewardship District to guide the design and development of SRAs to include innovative planning and development strategies as set forth in Section 163.3168(2), Florida Statutes. The size and base density of each form shall be consistent with the standards

(XLXII) = Plan Amendment by Ordinance No. 2018-59 on December 11, 2018

set forth on Attachment C. The maximum base residential density as set forth in Attachment C may only be exceeded through the density blending process as set forth in density and intensity blending provision of the Immokalee Area Master Plan or through the affordable housing density bonus as referenced in the Density Rating System of the Future Land Use Element. The base residential density is calculated by dividing the total number of residential units in a SRA by the overall area therein. The base residential density does not restrict net residential density of parcels within a SRA. The location, size and density of each SRA will be determined on an individual basis during the SRA designation review and approval process.

(VII)(XV)

**Policy 4.7.1:**

Towns are the largest and most diverse form of SRA, with a full range of housing types and mix of uses. Towns have urban level services and infrastructure that support development that is compact, mixed use, human scale, and provides a balance of land uses to reduce automobile trips and increase livability. Towns shall be not less than 1,000 acres or more than 4,000 acres and are comprised of several villages and/or neighborhoods that have individual identity and character. Towns shall have a mixed-use town center that will serve as a focal point for community facilities and support services. Towns shall be designed to encourage pedestrian and bicycle circulation by including an interconnected sidewalk and pathway system serving all residential neighborhoods. Towns shall have at least one community park with a minimum size of 200 square feet per dwelling unit in the Town.

(XV)

Towns shall also have parks or public green spaces within neighborhoods. Towns shall include both community and neighborhood scaled retail and office uses, in a ratio as provided in Policy 4.15. Towns may also include those compatible corporate office and light industrial uses as those permitted in the Business Park and Research and Technology Park Subdistricts of the FLUE. Towns shall be the preferred location for the full range of schools, and to the extent possible, schools and parks shall be located abutting each other to allow for the sharing of recreational facilities. Design criteria for Towns shall be included in the LDC Stewardship District. Towns shall not be located within the ACSC.

(VI)

**Policy 4.7.2:**

Villages are primarily residential communities with a diversity of housing types and mix of uses appropriate to the scale and character of the particular village. Villages shall be not less than 100 acres or more than 1,000 acres. Villages are comprised of residential neighborhoods and shall include a mixed-use village center to serve as the focal point for the community's support services and facilities. Villages shall be designed to encourage pedestrian and bicycle circulation by including an interconnected sidewalk and pathway system serving all residential neighborhoods. Villages shall have parks or public green spaces within neighborhoods. Villages shall include neighborhood scaled retail and office uses, in a ratio as provided in Policy 4.15. Villages are an appropriate location for a full range of schools. To the extent possible, schools and parks shall be located adjacent to each other to allow for the sharing of recreational facilities. Design criteria for Villages shall be included in the LDC Stewardship District.

(VII)

**Policy 4.7.3:**

Hamlets are small rural residential areas with primarily single-family housing and limited range of convenience-oriented services. Hamlets shall be not less than 40 or more than 100 acres. Hamlets will serve as a more compact alternative to traditional five-acre lot rural subdivisions currently allowed in the baseline standards. Hamlets shall have a public green space for

(XLXII) = Plan Amendment by Ordinance No. 2018-59 on December 11, 2018

neighborhoods. Hamlets include convenience retail uses, in a ratio as provided in Attachment C. Hamlets may be an appropriate location for pre-K through elementary schools. Design criteria for Hamlets shall be included in the LDC Stewardship District. To maintain a proportion of Hamlets to Villages and Towns, not more than 5 Hamlets, in combination with CRDs of 100 acres or less, may be approved as SRAs prior to the approval of a Village or Town, and thereafter not more than 5 additional Hamlets, in combination with CRDs of 100 acres or less, may be approved for each subsequent Village or Town.

(VII) **Policy 4.7.4:**

Compact Rural Development (CRD) is a form of SRA that will provide flexibility with respect to the mix of uses and design standards, but shall otherwise comply with the standards of a Hamlet or Village. A CRD may include, but is not required to have permanent residential housing and the services and facilities that support permanent residents. An example of a CRD is an ecotourism village that would have a unique set of uses and support services different from a traditional residential village. It would contain transient lodging facilities and services appropriate to eco-tourists, but may not provide for the range of services that necessary to support permanent residents. Except as described above, a CRD will conform to the characteristics of a Village or Hamlet as set forth on Attachment C based on the size of the CRD. As residential units are not a required use, those goods and services that support residents such as retail, office, civic, governmental and institutional uses shall also not be required, however for any CRD that does include permanent residential housing, the proportionate support services listed above shall be provided in accordance with Attachment C. To maintain a proportion of CRDs of 100 acres or less to Villages and Towns, not more than 5 CRDs of 100 acres or less, in combination with Hamlets, may be approved as SRAs prior to the approval of a Village or Town, and thereafter not more than 5 additional CRDs of 100 acres or less, in combination with Hamlets, may be approved for each subsequent Village or Town. There shall be no more than 5 CRDs of more than 100 acres in size. The appropriateness of this limitation shall be reviewed in 5 years pursuant to Policy 1.22.

(VII)(X) **Policy 4.8:**

An SRA may be contiguous to a FSA or HSA, but shall not encroach into such areas, and shall buffer such areas as described in Policy 4.13. A SRA may be contiguous to and served by a WRA without requiring the WRA to be designated as a SRA in accordance with Policy 3.12 and 3.13.

(VII) **Policy 4.9:**

A SRA must contain sufficient suitable land to accommodate the planned development in an environmentally acceptable manner. The primary means of directing development away from wetlands and critical habitat is the prohibition of locating SRAs in FSAs, HSAs, and WRAs. To further direct development away from wetlands and critical habitat, residential; commercial, manufacturing/light industrial, group housing, and transient housing, institutional, civic and community service uses within a SRA shall not be sited on lands that receive a Natural Resource Index value of greater than 1.2. In addition, conditional use essential services and governmental essential services, with the exception of those necessary to serve permitted uses and for public safety, shall not be sited on lands that receive a Natural Resource Index value of greater than 1.2. The Index value of greater than 1.2 represents those areas that have a high natural resource value as measured pursuant to Policy 1.8. Less than 2% of potential SRA land achieves an Index score of greater than 1.2.

(X) = Plan Amendment by Ordinance No. 2003-43 on September 9, 2003

- (VII) **Policy 4.10:**  
Within the RLSA Overlay, open space, which by definition shall include public and private conservation lands, underdeveloped areas of designated SSAs, agriculture, water retention and management areas and recreation uses, will continue to be the dominant land use. Therefore, open space adequate to serve the forecasted population and uses within the SRA is provided. To ensure that SRA residents have such areas proximate to their homes, open space shall also comprise a minimum of thirty-five percent of the gross acreage of an individual SRA Town, Village, or those CRDs exceeding 100 acres. Lands within a SRA greater than one acre with Index values of greater than 1.2 shall be retained as open space. As an incentive to encourage open space, such uses within a SRA, located outside of the ACSC, exceeding the required thirty-five percent shall not be required to consume Stewardship Credits.
- (VII) **Policy 4.11:**  
The perimeter of each SRA shall be designed to provide a transition from higher density and intensity uses within the SRA to lower density and intensity uses on adjoining property. The edges of SRAs shall be well defined and designed to be compatible with the character of adjoining property. Techniques such as, but not limited to setbacks, landscape buffers, and recreation/open space placement may be used for this purpose. Where existing agricultural activity adjoins a SRA, the design of the SRA must take this activity into account to allow for the continuation of the agricultural activity and to minimize any conflict between agriculture and SRA uses.
- (VII) **Policy 4.12:**  
Where a SRA adjoins a FSA, HSA, WRA or existing public or private conservation land delineated on the Overlay Map, best management and planning practices shall be applied to minimize adverse impacts to such lands. SRA design shall demonstrate that ground water table draw down or diversion will not adversely impact the adjacent FSA, HSA, WRA or conservation land. Detention and control elevations shall be established to protect such natural areas and be consistent with surrounding land and project control elevations and water tables.
- (VII) **Policy 4.13:**  
Open space within or contiguous to a SRA shall be used to provide a buffer between the SRA and any adjoining FSA, HSA, or existing public or private conservation land delineated on the Overlay Map. Open space contiguous to or within 300 feet of the boundary of a FSA, HSA, or existing public or private conservation land may include: natural preserves, lakes, golf courses provided no fairways or other turf areas are allowed within the first 200 feet, passive recreational areas and parks, required yard and set-back areas, and other natural or man-made open space. Along the west boundary of the FSAs and HSAs that comprise Camp Keais Strand, i.e., the area south of Immokalee Road, this open space buffer shall be 500 feet wide and shall preclude golf course fairways and other turf areas within the first 300 feet.
- (VII) **Policy 4.14:**  
The SRA must have either direct access to a County collector or arterial road or indirect access via a road provided by the developer that has adequate capacity to accommodate the proposed development in accordance with accepted transportation planning standards. No SRA shall be approved unless the capacity of County collector or arterial road(s) serving the SRA is demonstrated to be adequate in accordance with the Collier County Concurrency

(VII) = Plan Amendment by Ordinance No. 2002-54 on October 22, 2002

Management System in effect at the time of SRA designation. A transportation impact assessment meeting the requirements of Section 2.7.3 of the LDC, or its successor regulation shall be prepared for each proposed SRA to provide the necessary data and analysis.

(VI)(XIII)

**Policy 4.15.1:**

SRAs are intended to be mixed use and shall be allowed the full range of uses permitted by the Urban Designation of the FLUE, as modified by Policies 4.7, 4.7.1, 4.7.2, 4.7.3, 4.7.4 and Attachment C. An appropriate mix of retail, office, recreational, civic, governmental, and institutional uses will be available to serve the daily needs and community wide needs of residents of the RLSA. Depending on the size, scale, and character of a SRA, such uses may be provided either within the specific SRA, within other SRAs in the RLSA or within the Immokalee Urban Area. By example, each Village or Town shall provide for neighborhood retail/office uses to serve its population as well as appropriate civic and institutional uses, however, the combined population of several Villages and Hamlets may be required to support community scaled retail or office uses in a nearby Town. Standards for the minimum amount of non-residential uses in each category are set forth in Attachment C, and shall be also included in the Stewardship LDC District.

(XIII)

**Policy 4.15.2:**

The Board of County Commissioners (BCC) may, as a condition of approval and adoption of an SRA development, require that suitable areas for parks, schools, and other public facilities be set aside, improved, and/or dedicated for public use. When the BCC requires such a set aside for one or more public facilities, the set aside shall be subject to the same provisions of the LDC as are applicable to public facility dedications required as a condition for PUD rezoning.

(XIII)

**Policy 4.15.3:**

Applicants for SRA designation shall coordinate with Collier County School Board staff to allow planning to occur to accommodate any impacts to the public schools as a result of the SRA. As a part of the SRA application, the following information shall be provided:

1. Number of residential units by type;
2. An estimate of the number of school-aged children for each type of school impacted (elementary, middle, high school); and
3. The potential for locating a public educational facility or facilities within the SRA, and the size of any sites that may be dedicated, or otherwise made available for a public educational facility.

(VII)(XIII)(XV)(XLIV)

**Policy 4.16:**

A SRA shall have adequate infrastructure available to serve the proposed development, or such infrastructure must be provided concurrently with the demand. The level of infrastructure provided will depend on the form of SRA development, accepted civil engineering practices, and LDC requirements. The capacity of infrastructure necessary to serve the SRA at build-out must be demonstrated during the SRA designation process. Infrastructure to be analyzed includes transportation, potable water, wastewater, irrigation water, stormwater management, and solid waste. Transportation infrastructure is discussed in Policy 4.14. Centralized or decentralized community water and wastewater utilities are required in Towns, Villages, and those CRDs exceeding one hundred (100) acres in size, and may be required in CRDs that are one hundred (100) acres or less in size, depending upon the permitted uses approved

(XLIV) = Plan Amendment by Ordinance No. 2017-22 on June 13, 2017

within the CRD. Centralized or decentralized community water and wastewater utilities shall be constructed, owned, operated and maintained by a private utility service, the developer, a Community Development District, the Immokalee Water Sewer Service District, Collier County, or other governmental entity. Innovative alternative water and wastewater treatment systems such as decentralized community treatment systems shall not be prohibited by this Policy provided that they meet all applicable regulatory criteria. Individual potable water supply wells and septic systems, limited to a maximum of 100 acres of any Town, Village or CRD of 100 acres are permitted on an interim basis until services from a centralized/decentralized community system are available. Individual potable water supply wells and septic systems are permitted in Hamlets and may be permitted in CRDs of 100 acres or less in size.

(XIII) **Policy 4.17:**

The BCC will review and approve SRA designation applications in accordance with the provisions of Policy 1.1.2 of the Capital Improvement Element of the GMP for Category A public facilities. Final local development orders will be approved within a SRA designated by the BCC in accordance with the Concurrency Management System of the GMP and LDC in effect at the time of final local development order approval.

(XIII)(XV)(XLIV)(XLXII)

**Policy 4.18:**

The SRA will be planned and designed to be fiscally neutral or positive to Collier County at the horizon year based on a public facilities impact assessment, as identified in LDC 4.08.07.K. The BCC may grant exceptions to this Policy to accommodate affordable housing, as it deems appropriate. Techniques that may promote fiscal neutrality such as Community Development Districts, and other special districts, shall be encouraged. At a minimum, the assessment shall consider the following public facilities and services: transportation, potable water, wastewater, irrigation water, stormwater management, solid waste, parks, law enforcement, and schools. Development phasing, developer contributions and mitigation, and other public/private partnerships shall address any potential adverse impacts to adopted levels of service standards.

(VII)(XIII)(XLIV)

**Policy 4.19:**

Eight (8) credits shall be required for each acre of land included in a SRA, except for open space in excess of the required thirty-five percent as described in Policy 4.10 or for land that is designated for a public benefit use described in Policy 4.19. In order to promote compact, mixed use development and provide the necessary support facilities and services to residents of rural areas, the SRA designation entitles a full range of uses, accessory uses and associated uses that provide a mix of services to and are supportive to the residential population of a SRA, as provided for in Policies 4.7, 4.15 and Attachment C. Such uses shall be identified, located and quantified in the SRA master plan.

(VII)(XIII)(XLIV)

**Policy 4.20:**

The acreage of a public benefit use shall not count toward the maximum acreage limits described in Policy 4.7. For the purpose of this Policy, public benefit uses include: public schools (preK-12) and public or private post secondary institutions, including ancillary uses; community parks exceeding the minimum acreage requirements of Attachment C, municipal golf courses; regional parks; and governmental facilities excluding essential services as defined in the LDC. The location of public schools shall be coordinated with the Collier County School Board, based on the interlocal agreement, 163.3177 F.S. and in a manner consistent

(XLXII) = Plan Amendment by Ordinance No. 2018-59 on December 11, 2018

with 235.193 F.S. Schools and related ancillary uses shall be encouraged to locate in or proximate to Towns, Villages, and Hamlets subject to applicable zoning and permitting requirements.

(VII)(XIII)(XLIV)

**Policy 4.21:**

Lands within the ACSC that meet all SRA criteria shall also be restricted such that credits used to entitle a SRA in the ACSC must be generated exclusively from SSAs within the ACSC. Further, the only form of SRA allowed in the ACSC east of the Okaloacoochee Slough shall be Hamlets and CRDs of 100 acres or less and the only form of SRA allowed in the ACSC west of the Okaloacoochee Slough shall be Villages and CRDs of not more than 300 acres and Hamlets. Provided, however, that two Villages or CRDs of not more than 500 acres each, exclusive of any lakes created prior to the effective date of this amendment as a result of mining operations, shall be allowed in areas that have a frontage on State Road 29 and that, as of the effective date of these amendments, had been predominantly cleared as a result of Ag Group I or Earth Mining or Processing Uses. This Policy is intended to assure that the RLSA Overlay is not used to increase the development potential within the ACSC but instead is used to promote a more compact form of development as an alternative to the Baseline Standards already allowed within the ACSC. No policy of the RLSA Overlay shall take precedence over the Big Cypress ACSC regulations and all regulations therein shall apply.

(VII) **Group 5 – Policies that protect water quality and quantity and the maintaining of the natural water regime and protect listed animal and plant species and their habitats on land that is not voluntarily included in the Rural Lands Stewardship Area program.**

(VII) **Policy 5.1:**

To protect water quality and quantity and maintenance of the natural water regime in areas mapped as FSAs on the Overlay Map prior to the time that they are designated as SSAs under the Stewardship Credit Program. Residential Uses, General Conditional Uses, Earth Mining and Processing Uses, and Recreational Uses (layers 1-4) as listed in the Matrix shall be eliminated in FSAs. Conditional use essential services and governmental essential services, except those necessary to serve permitted uses or for public safety, shall only be allowed in FSAs with a Natural Resource Stewardship Index value of 1.2 or less. Where practicable, directional-drilling techniques and/or previously cleared or disturbed areas shall be utilized for oil or gas extraction in FSAs in order to minimize impacts to native habitats. Asphaltic and concrete batch making plants shall be prohibited in areas mapped as HSAs. The opportunity to voluntarily participate in the Stewardship Credit Program, as well as the right to sell conservation easements or a free or lesser interest in the land, shall constitute compensation for the loss of these rights.

(VII) **Policy 5.2:**

To protect water quality and quantity and maintenance of the natural water regime and to protect listed animal and plant species and their habitats in areas mapped as FSAs, HSAs, and WRAs on the Overlay Map that are within the ACSC, all ACSC regulatory standards shall apply, including those that strictly limit non-agricultural clearing.

(VII) **Policy 5.3:**

To protect water quality and quantity and maintenance of the natural water regime and to protect listed animal and plant species and their habitats in areas mapped as FSAs, HSAs, and WRAs on the Overlay Map that are not within the ACSC, if a property owner proposes

(XLIV) = Plan Amendment by Ordinance No. 2017-22 on June 13, 2017

**Attachment C**  
**Collier County RLSA Overlay**  
**Stewardship Receiving Area Characteristics**

Typical Characteristics	Town*	Village	Hamlet	Compact Rural Development	
Size (Gross Acres)	1,000-4,000 acres	100-1,000 acres**	40-100 acres**	100 Acres or less**	Greater Than 100 Acres**
Residential Units (DUs) per gross acre base density	1-4 DUs per gross acre***	1-4 DUs per gross acre***	1/2 -2 DU per gross acre***	1/2 -2 DU per gross acre***	1-4 DUs per gross acre***
Residential Housing Styles	Full range of single family and multi-family housing types, styles, lot sizes	Diversity of single family and multi-family housing types, styles, lot sizes	Single Family and limited multi-family.	Single Family and limited multi-family ****	Single Family and limited multi-family ****
Maximum Floor Area Ratio or Intensity	Retail & Office - .5 Civic/Governmental/Institution - .6 Manufacturing/Light Industrial - .45 Group Housing - .45 Transient Lodging - 26 upa net	Retail & Office - .5 Civic/Governmental/Institution - .6 Group Housing - .45 Transient Lodging - 26 upa net	Retail & Office - .5 Civic/Governmental/Institution - .6 Group Housing - .45 Transient Lodging - 26 upa net	Retail & Office - .5 Civic/Governmental/Institution - .6 Group Housing - .45 Transient Lodging - 26 upa net	Retail & Office - .5 Civic/Governmental/Institution - .6 Group Housing - .45 Transient Lodging - 26 upa net
Goods and Services	Town Center with Community and Neighborhood Goods and Services In Town and Village Centers: Minimum 65 SF gross building area per DU; Corporate Office, Manufacturing, and Light Industrial	Village Center with Neighborhood Goods and Services In Village Centers: Minimum 25 SF gross building area per DU	Convenience Goods and Services: Minimum 10 SF gross building area per DU	Convenience Goods and Services: Minimum 10 SF gross building area per DU	Village Center with Neighborhood Goods and Services In Village Centers: Minimum 25 SF gross building area per DU
Water and Wastewater	Centralized or decentralized community treatment system <u>Interim Well and Septic</u>	Centralized or decentralized community treatment systems <u>Interim Well and Septic</u>	Individual Well and Septic System; <u>Centralized or decentralized community treatment system</u>	Individual Well and Septic System; <u>Centralized or decentralized community treatment system</u>	Centralized or decentralized community treatment systems <u>Interim Well and Septic</u>
Recreation and Open Spaces	Community Parks (200 SF/DU) Parks & Public Green Spaces w/n Neighborhoods <u>Active Recreation/Golf Courses</u> Lakes Open Space Minimum 35% of SRA	Parks & Public Green Spaces w/n Neighborhoods (minimum 1% of gross <del>area</del> ) <u>Active Recreation/Golf Courses</u> Lakes Open Space Minimum 35% of SRA	Public Green Space for Neighborhoods (minimum 1% of gross acres)	Public Green Space for Neighborhoods (minimum 1% of gross acres)	Parks & Public Green Spaces w/n Neighborhoods (minimum 1% of gross <del>area</del> ) <u>Active Recreation/Golf Courses</u> Lakes Open Space Minimum 35% of SRA
Civic, Governmental and Institutional Services	Wide Range of Services - minimum 15 SF/DU <u>Full Range of Schools</u>	Moderate Range of Services - minimum 10 SF/DU; <u>Full Range of Schools</u>	<u>Limited Services</u> <u>Pre-K through Elementary Schools</u>	<u>Limited Services</u> <u>Pre-K through Elementary Schools</u>	<u>Moderate Range of Services - minimum 10 SF/DU</u> <u>Pre-K through Elementary Schools</u>
Transportation	Auto - Interconnected system of collector and local roads; required connection to collector or arterial Interconnected sidewalk and pathway system County Transit Access	Auto - Interconnected system of collector and local roads; required connection to collector or arterial Interconnected sidewalk and pathway system <u>Equestrian Trails</u> <u>County Transit Access</u>	Auto - Interconnected system of local roads Pedestrian Pathways <u>Equestrian Trails</u>	Auto - Interconnected system of local roads Pedestrian Pathways <u>Equestrian Trails</u>	Auto - Interconnected system of collector and local roads; required connection to collector or arterial Interconnected sidewalk and pathway system <u>Equestrian Trails</u> <u>County Transit Access</u>

\* - Towns are prohibited within the ACSC, per policy 4.7.1 of the Goals, Objectives, and Policies.  
\*\* - Villages, Hamlets, and Compact Rural Developments within the ACSC are subject to location and size limitations, per policy 4.2.1, and are subject to Chapter 28-25, FAC.  
\*\*\* - Density can be increased beyond the base density through the Affordable Housing Density Bonus or through the density blending provision, per policy 4.7.  
\*\*\*\* - Those CRDs that include single or multi-family residential uses shall include proportionate support services.  
Underlined uses are not required uses.

RLSA 03/20/2020

© 2019, DARRYL L. LAMBERT

**Charles Gauthier**  
**Exhibit\_102**  


---

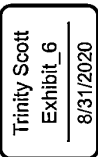
**11/6/2020**



4.08.07 - SRA Designation

SRA designation is intended to encourage and facilitate uses that enable economic prosperity and diversification of the economic base of the RLSA District, and encourage development that utilizes creative land use planning techniques and facilitates a compact form of development to accommodate population growth by the establishment of SRAs. Stewardship Credits generated from SSAs are exchanged for additional residential or non-residential entitlements in an SRA on a per acre basis as set forth herein. Density and intensity within the RLSA District shall not be increased beyond the Baseline Standards except through the provisions of the Stewardship Credit System, the affordable housing density Bonus as referenced in the density Rating System of the FLUE, and the density and intensity blending provision of the Immokalee Area Master Plan. The procedures for the establishment and transfer of Credits and SRA designation are set forth herein. Credits can be transferred only to lands within the RLSA District that meet the defined suitability criteria and standards set forth herein. Land becomes designated as an SRA on the date that the SRA Credit Agreement becomes effective pursuant to Section 4.08.07 D.11. Any change in the residential density or non-residential intensity of land use on a parcel of land located within an SRA shall be specified in the resolution, which shall reflect the total number of transferable Credits assigned to the parcel of land.

- A. Lands Within the RLSA District that can be Designated as SRAs. All privately owned lands within the RLSA District that meet the suitability criteria contained herein may be designated as SRA, except lands delineated on the RLSA Overlay Map as FSA, HSA, or WRA, or lands already designated as an SSA. WRAs may be located within the boundaries of an SRA and may be incorporated into an SRA Master Plan to provide water management functions for properties within such SRA, subject to all necessary permitting requirements.
1. Suitability Criteria. The following suitability criteria are established to ensure consistency with the Goals, Objectives, and Policies of the RLSA Overlay.
    - a. An SRA must contain sufficient suitable land to accommodate the planned development .
    - b. Residential, commercial, manufacturing/light industrial, group housing , and transient housing, institutional, civic and community service uses within an SRA shall not be sited on lands that receive a Natural Resource Index value of greater than 1.2.
    - c. Conditional use essential services and governmental essential services , with the exception of those necessary to serve permitted uses and for public safety, shall not be sited on land that receives a Natural Resource Index value of greater than 1.2, regardless of the size of the land or parcel .
    - d. Lands or parcels that are greater than one acre and have an Index Value greater than 1.2 shall be retained as open space and maintained in a predominantly natural vegetated state.
    - e. Open space shall also comprise a minimum of thirty-five percent of the gross acreage of an individual SRA Town, Village, or those CRDs exceeding 100 acres. Gross acreage includes only that area of development within the SRA that requires the consumption of Stewardship Credits.
    - f. As an incentive to encourage open space , open space on lands within an SRA located outside of the ACSC that exceeds the required thirty-five percent retained open space shall not be required to consume Stewardship Credits.
    - g. An SRA may be contiguous to an FSA or HSA, but shall not encroach into such areas, and shall buffer such areas as described in Section 4.08.07 J.6. An SRA may be contiguous to, or encompass a WRA.
    - h. The SRA must have either direct access to a County collector or arterial road or indirect access via a road provided by the developer that has adequate capacity to accommodate the proposed development in accordance with accepted transportation planning standards.
  2. SRAs Within the ACSC. SRAs are permitted within the ACSC subject to limitations on the number, size, location, and form of SRA described herein. Nothing within this Section shall be construed as an exemption of an SRA from any and all limitations and regulations applicable to lands within the ACSC. Lands within the ACSC that meet all SRA suitability criteria shall also be restricted such that credits used to entitle an SRA in the ACSC must be generated exclusively from SSAs within the ACSC. No early entry bonus credits can be used to entitle an SRA within the ACSC.
    - a. The only forms of SRA allowed in the ACSC east of the Okaloacoochee Slough shall be Hamlets and CRDs of 100 acres or less and the only forms of SRA allowed in the ACSC west of the Okaloacoochee Slough shall be Villages and CRDs of not more than 300 acres and Hamlets. Provided, however, two SRAs, consisting of any combination of Villages or CRDs of not more than 500 acres each, exclusive of any lakes created prior to the effective date of this amendment as a result of mining operations, shall be allowed in areas that have a frontage on State Road 29 and that, as of the effective date of the RLSA Overlay, had been predominantly cleared as a result of Ag Group I (Layer 5) or Earth Mining or Processing Uses (Layer 3).
    - b. The Town form of an SRA shall not be located within the ACSC.
- B. Establishment and Transfer of Stewardship Credits. The procedures for the establishment and transfer of Credits and SRA designation are set forth herein. Stewardship Credits will be exchanged for additional residential or non-residential entitlements in an SRA on a per acre basis, as described in Section 4.08.07 B.2. Stewardship density and intensity will thereafter differ from the Baseline Standards.
1. Transfer of Credits. The transfer or use of Stewardship Credits shall only be in a manner as provided for herein.
    - a. Stewardship Credits generated from any SSA may be transferred to entitle any SRA, except where the SRA is within the ACSC, in which case only Stewardship Credits that have been generated from an SSA within the ACSC can be used to entitle such SRA. No early entry bonus credits can be used to entitle an SRA within the ACSC.
    - b. Credits can be transferred only to lands within the RLSA that meet the defined suitability criteria and standards set forth herein.
    - c. Stewardship Credits may be transferred between different parcels or within a single parcel , subject to compliance with all applicable provisions of these policies. Residential clustering shall only occur within the RLSA District through the use of the Stewardship Credit System, and other forms of residential clustering shall not be permitted.
    - d. Stewardship Credits may be acquired from any credit holder and transferred to an SRA subject to the limitations contained in this Section.
    - e. Stewardship Credits may be acquired from a Stewardship Credit Trust established pursuant to Section 4.08.04 B., and transferred to an SRA subject to the limitations contained in this Section.
  2. Stewardship Credit Exchange. Stewardship Credits shall be exchanged for additional residential or non-residential entitlements in an SRA on a per acre basis at a rate of eight (8) Stewardship Credits per gross acre. Lands within an SRA greater than one acre, with Index Values of greater than 1.2, shall be retained as open space and maintained in a predominantly natural, vegetated state. Any such lands within an SRA located outside of the ACSC exceeding the required thirty-five (35) percent shall not be required to consume Stewardship Credits.





Ft. of lot area, inclusive of street trees. Plantings shall be in planting areas, raised planters, or planter boxes in the front of the building .  
Minimum of turf grass for the remainder of the property.

- g) General signage requirements shall be as provided for in section 5.06.00.
  - h) Signage within Neighborhood Goods and Service Zones shall be as provided for in section 5.06.00.
  - i) Streets shall adhere to J.1.b and Figures 5, 6, 7, 8, or 10. At a minimum all proposed streets must include sidewalks on both sides of the street , parallel to the right-of-way , and a 5 Ft. streetscape area between the back of curb and the sidewalk .
- iv. Neighborhood Edge (optional). Neighborhood Edge is predominately a single-family residential neighborhood. This zone has the least intensity and diversity within the Town. The mix of uses is limited. Residential lots are larger and more open space is evident. The Neighborhood Edge may be used to provide a transition to adjoining rural land uses. The following standards shall apply with the Neighborhood Edge:
- a) The permitted uses within the Neighborhood Edge are residential, parks, open space , golf courses, schools, essential services , and accessory uses .
  - b) Building heights shall not exceed 2 stories.
  - c) Lots shall have a minimum area of 5,000 square feet with lot dimensions and setbacks to be further defined with the SRA development Document.
  - d) The perimeter of each block may not exceed 5,000 feet, unless an alley or pathway provides through access , or the block includes water bodies or public facilities.
  - e) Parking space requirements and design are the same as in the Town Core, inclusive of garage spaces, with provision for an additional parking space if an accessory dwelling unit is built.
  - f) Landscaping shall include a minimum of 100 Sq. Ft. of shrub planting per lot , with plantings in planting areas, raised planters, or planter boxed in the front of the dwelling and a minimum of turf grass for the remainder of the property.
  - g) Streets shall adhere to J.1.b. and to Figures 9, 11, 12, 13, 14, 15, 16, 17, or 18. At a minimum all proposed streets must include a 10-foot pathway on one side of the street with an 8-foot streetscape area between the edge of curb and the pathway .
- v. Special District (optional). The Special District is intended to provide for uses and development standards not otherwise provided for within the Context Zones. Special Districts would be primarily single use districts, such as universities, business parks, medical parks and resorts that require unique development standards to ensure compatibility with surrounding neighborhoods. The location of Special Districts shall be illustrated on the SRA Master Plan, and uses and development standards shall be defined in detail within the SRA development application for review by Collier County staff. Special Districts could be for uses such as Universities, business or industrial parks, retirement communities, resorts, etc.
3. Village Design Criteria.
- a. General criteria.
    - i. Villages are comprised of residential neighborhoods and shall include a mixed-use village center to serve as the focal point for the community's support services and facilities.
    - ii. Villages shall be designed in a compact, pedestrian-friendly form.
    - iii. Create an interconnected street system designed to disperse and reduce the length of automobile trips.
    - iv. Offer a range of housing types and price levels to accommodate diverse ages and incomes. Accessory dwelling units shall not count towards the maximum allowed density .
    - v. Be developed in a progressive rural to urban continuum with the greatest density , intensity and diversity occurring within the village center , to the least density , intensity and diversity occurring within the Neighborhood Edge.
    - vi. The SRA document shall demonstrate the urban to rural transition occurring at the Villages limits boundary provides sufficient transition to the adjoining use, such as active agriculture, pasture, rural roadway, etc., and compatibility through the use of buffer ing, open space , land use, or other means.
    - vii. Shall allow signs typically permitted in support of residential uses including for sale, for rent, model home and temporary constructions signs . Specific design and development standards shall be set forth in the SRA document for such signs permitted in residential areas or in conjunction with residential uses.
    - viii. To the extent that section 5.05.08 is applicable within the Urban designated area, SRA Architectural Design Standards shall comply with the provisions of section 5.05.08, unless additional or different design standards that deviate from section 5.05.08, in whole or part, are submitted to the County no later than when the first SRA Site Development Document is submitted for approval.
    - ix. To the extent that section 4.06.00 is applicable within the Urban designated area, SRA Landscape Design and Installation Standards shall comply with the provisions of section 4.06.00, unless additional or different design and installation standards that deviate from section 4.06.00, in whole or in part, are submitted to the County no later than when the first SRA Site Development Document is submitted for approval.
  - b. Transportation Network. The transportation network for a Village shall adhere to the same standards provided for within a Town.
  - c. Parks. A Village shall provide a range of active and passive parks, squares and playgrounds as appropriate to be located within each Context Zone and Special District.
  - d. Context Zones.
    - i. General.
      - a) Villages shall be designed to include a minimum of two Context Zones: Village Center and Neighborhood General.
      - b) Each Zone shall blend into the other without the requirements of buffers .
      - c) Villages may include the Context Zone of Neighborhood Edge.
      - d) Villages may include Special Districts to accommodate uses that require use specific design standards not otherwise provided for within the

- e. Individual potable water supply wells and septic systems are permitted in Hamlets and may be permitted in CRDs of 100 acres or less in size.
- 8. Requests for Deviations from the LDC. The SRA Development Document or any amendments to the SRA Development Document may provide for nonprocedural deviations from the LDC, provided that all of the following are satisfied:
  - a. The deviations are consistent with the RLSA Overlay; and
  - b. It can be demonstrated that the proposed deviation(s) further enhance the tools, techniques and strategies based on principles of innovative planning and development strategies, as set forth in §§ 163.3177 (11), F.S.
- K. SRA Public Facilities Impact Assessments. Impact assessments are intended to identify methods to be utilized to meet the SRA generated impacts on public facilities and to evaluate the self-sufficiency of the proposed SRA with respect to these public facilities. Information provided within these assessments may also indicate the degree to which the SRA is consistent with the fiscal neutrality requirements of [Section 4.08.07](#) L. Impact assessments shall be prepared in the following infrastructure areas:
  1. Transportation. A transportation impact assessment meeting the requirements of Chapter 10 of the LDC or its successor regulation or procedure, shall be prepared by the applicant as component of an Impact Assessment Report that is submitted as part of an SRA Designation Application package.
    - a. In addition to the standard requirements of the analyses required above, the transportation impact assessment shall specifically consider, to the extent applicable, the following issues related to the highway network:
      - (1) Impacts to the level of service of impacted roadways and intersections, comparing the proposed SRA to the impacts of conventional Baseline Standard development ;
      - (2) Effect(s) of new roadway facilities planned as part of the SRA Master Plan on the surrounding transportation system; and
      - (3) Impacts to agri-transport issues, especially the farm-to-market movement of agricultural products .
    - b. The transportation impact assessment, in addition to considering the impacts on the highway system, shall also consider public transportation (transit) and bicycle and pedestrian issues to the extent applicable.
    - c. No SRA shall be approved unless the transportation impact assessment required by this Section has demonstrated through data and analysis that the capacity of County/State collector or arterial road(s) serving the SRA to be adequate to serve the intended SRA uses in accordance with [Chapter 6](#) of the LDC in effect at the time of SRA designation.
  2. Potable Water. A potable water assessment shall be prepared by the applicant as a component of an Impact Assessment Report that is submitted as part of an SRA Designation Application package. The assessment shall illustrate how the applicant will conform to either Florida Administrative Code for private and limited use water systems, or for Public Water Systems. In addition to the standard requirements of the analyses required above, the potable water assessment shall specifically consider, to the extent applicable, the disposal of waste products, if any, generated by the proposed treatment process. The applicant shall identify the sources of water proposed for potable water supply.
  3. Irrigation Water. An irrigation water assessment shall be prepared by the applicant as a component of an Impact Assessment Report that is submitted as part of an SRA Designation Application package. The assessment shall quantify the anticipated irrigation water usage expected at the buildout of the SRA. The assessment shall identify the sources of water proposed for irrigation use and shall identify proposed methods of water conservation.
  4. Wastewater . A wastewater assessment shall be prepared by the applicant as a component of an Impact Assessment Report that is submitted as part of an SRA Designation Application package. The assessment shall illustrate how the applicant will conform to either Standards for Onsite Sewage Treatment and Disposal Systems, contained in Florida Administrative Code for systems having a capacity not exceeding 10,000 gallons per day or for wastewater treatment systems having a capacity greater than 10,000 gallons per day. In addition to the standard requirements of the analyses required above, the wastewater assessment shall specifically consider, to the extent applicable, the disposal of waste products generated by the proposed treatment process.
  5. Solid waste . A solid waste assessment shall be prepared by the applicant as a component of an Impact Assessment Report that is submitted as part of an SRA Designation Application package. The assessment shall identify the means and methods for handling, transporting and disposal of all solid waste generated including but not limited to the collection, handling and disposal of recyclables and horticultural waste products. The applicant shall identify the location and remaining disposal capacity available at the disposal site.
  6. Stormwater Management. A stormwater management impact assessment shall be prepared by the applicant as a component of an Impact Assessment Report that is submitted as a part of an SRA Designation Application Package. The stormwater management impact assessment shall, at a minimum, provide the following information:
    - a. An exhibit showing the boundary of the proposed SRA including the following information:
      - (1) The location of any WRA delineated within the SRA;
      - (2) A generalized representation of the existing stormwater flow patterns across the site including the location(s) of discharge from the site to the downstream receiving waters;
      - (3) The land uses of adjoining properties and, if applicable, the locations of stormwater discharge into the site of the proposed SRA from the adjoining properties.
    - b. A narrative component to the report including the following information:
      - (1) The name of the receiving water or, if applicable, FSA or WRA to which the stormwater discharge from the site will ultimately outfall;
      - (2) The peak allowable discharge rate (in cfs/acre) allowed for the SRA per Collier County Ordinance No. 90-10 or its successor regulation;
      - (3) If applicable, a description of the provisions to be made to accept stormwater flows from surrounding properties into, around, or through the constructed surface water management system of the proposed development ;
      - (4) The types of stormwater detention areas to be constructed as part of the surface water management system of the proposed development and water quality treatment to be provided prior to discharge of the runoff from the site; and
      - (5) If a WRA has been incorporated into the stormwater management system of an SRA, the report shall demonstrate compliance with provisions of [Section 4.08.04 A.4.b.](#)
  7. Public Schools. The applicant shall coordinate with the Collier County School Board to provide information and coordinate planning to accommodate any

IN THE CIRCUIT COURT OF THE TWENTIETH  
JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA

---

CONSERVANCY OF SOUTHWEST  
FLORIDA, INC.,

Plaintiff,

V.

Case No. 11-2020-CA-

000780-0001-XX

COLLIER COUNTY, FLORIDA,  
ET AL.,

Defendants.

---

REMOTE HEARING BEFORE JUDGE LAUREN BRODIE

January 5, 2021

11:00 a.m.

Reported by:

Robin LaFemina, RPR, CLR

Job No.: 000936

TransPerfect Legal Solutions  
212-400-8845 - Depo@TransPerfect.com

1 Proceedings

2 objective criteria and we argue that  
3 that is the proper scope for this  
4 Court's review and we satisfy each of  
5 those criteria.

6 Thank you.

7 THE COURT: Okay.

8 Mr. Woods.

9 MR. WOODS: I don't have  
10 anything further, Your Honor.

11 THE COURT: Okay. Thank you.

12 So I'm going to reserve ruling  
13 just to look at those few last minute  
14 things that you raised that I haven't  
15 had an opportunity to review. Assuming  
16 that I deny the motion finding that  
17 there are issues that have to be tried,  
18 I understand that you contacted my  
19 office saying that you think that eight  
20 days is more appropriate than six; is  
21 that true?

22 MR. ISRAEL: Yes, Your Honor.

23 THE COURT: Who --

24 MR. ISRAEL: I'm sorry. This is  
25 Brian Israel.

IN THE CIRCUIT COURT OF THE TWENTIETH  
JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA

---

CONSERVANCY OF SOUTHWEST  
FLORIDA, INC.,

Plaintiff,

V.

Case No. 11-2020-CA-

000780-0001-XX

COLLIER COUNTY, FLORIDA,  
ET AL.,

Defendants.

---

REMOTE HEARING BEFORE JUDGE HUGH HAYES

April 28, 2021

1:30 p.m.

Reported by:

Robin LaFemina, RPR, CLR

Job No.: SY 2103

TransPerfect Legal Solutions  
212-400-8845 - Depo@TransPerfect.com

1 Proceedings - 4/28/21

2 would I think unfairly and unreasonably  
3 cripple our case, and instead the Court  
4 should allow the experts to testify,  
5 explain what their opinions are, how  
6 they developed them, and the Court can  
7 gauge credibility and how much weight  
8 to give the expert's opinion as it  
9 would in any case.

10 Now, one of the -- I would like  
11 to highlight one of the examples on the  
12 Conservancy's list of so-called  
13 extrinsic material, and, again, Your  
14 Honor, in their view, anything that is  
15 not literally a part of the Growth  
16 Management Plan, and the Growth  
17 Management Plan is like a statute, so  
18 if it's not in the statute, they call  
19 it extrinsic material and say it should  
20 all be excluded from the case contrary  
21 to all case law that I talked about  
22 previously, and here's one of the  
23 examples. Collier County itself has  
24 created a document called the Collier  
25 County Community Character Plan. It



1 Proceedings - 4/28/21

2 was created in the early 2000s, it was  
3 accepted by the Board of County  
4 Commissioners in 2001, and it is a  
5 document that talks about all of the  
6 land use planning concepts that are at  
7 the heart of the RLSA Overlay in the  
8 Growth Management Plan. Again, it  
9 was -- it's a document that was  
10 commissioned by the Collier County  
11 Board of Commissioners, County planning  
12 staff played a pivotal role in the  
13 creation of the document, it served as  
14 a basis for the GMP amendments that  
15 created the RLSA Overlay that's at  
16 issue in our case here and the Board  
17 voted to accept it in 2001, it is now  
18 posted on the website of Collier County  
19 on its page describing the Growth  
20 Management Plan, and it provides the  
21 views of Collier County and of its  
22 planning staff on the very issues in  
23 this case, compactness, intensity of  
24 uses, walkability.

25 Now, Your Honor, the Conservancy

1 Proceedings - 4/28/21  
2 that -- just to clarify, your  
3 explanation just now went to -- just to  
4 Commissioner Fryer's testimony.

5 THE COURT: Correct.

6 MR. SHENKMAN: Are you also  
7 ruling on all of the other issues in  
8 the Motion in Limine? That would  
9 basically eliminate a huge part of our  
10 case.

11 THE COURT: And I think the  
12 answer is yes. In other words, this is  
13 going to be part of the proffer -- when  
14 we had this discussion the last time we  
15 met and we talked about 1 through 6 and  
16 8, which I won't go into detail for the  
17 court reporter, but when we were  
18 talking about those, I thought -- my  
19 impression was those are arguments that  
20 you could make, but it really is still  
21 a question, and quite frankly when  
22 Mr. Burhans actually said something  
23 about I don't have any objection to  
24 that or something along that line, I  
25 think I said fine, I think that's what

1 Proceedings - 4/28/21

2 the testimony would reflect, but I  
3 thought that really, quite frankly,  
4 we're still in the focus of determining  
5 whether the Development Order is  
6 consistent with the development plan,  
7 and that's really the issue, and so if  
8 in fact like, for example, when you  
9 talk about these issues that it's hard  
10 to tell for sure what the position of  
11 the parties is, I think you agree that  
12 the issue of the -- let me just see  
13 where in my notes here -- that -- yeah,  
14 that the -- well, my notes reflect that  
15 during the discussions that the Plaintiff  
16 had agreed that they were not able to  
17 challenge the LDC, but instead could  
18 only challenge the GMP, and I wrote  
19 that down and in my own notes that I  
20 agreed, so that's pretty much the reason.

21 MR. ISRAEL: Ethan, you're on  
22 mute.

23 MR. SHENKMAN: Sorry.

24 So, Your Honor, with respect to  
25 the materials that the experts would

IN THE CIRCUIT COURT OF THE TWENTIETH  
JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA

---

CONSERVANCY OF SOUTHWEST  
FLORIDA, INC.,

Plaintiff,

V.

Case No. 11-2020-CA-

000780-0001-XX

COLLIER COUNTY, FLORIDA,

ET AL.,

Defendants.

---

REMOTE TRIAL BEFORE JUDGE HUGH HAYES

May 10, 2021

9:33 a.m.

Reported by:

Robin LaFemina, RPR, CLR

Job No.: SY 1952

1 Frantz - Cross

2 2021 really doesn't quality as an 18(c)  
3 or (d) witness. That's point 1. He's  
4 a former employee and there would have  
5 to be some issue of determining whether  
6 he has the capacity to speak on behalf  
7 of his former employer. But the other  
8 problem is, as stated, these are --  
9 this issue has already been argued by  
10 counsel in the Motion in Limine  
11 previously and ruled on by the court,  
12 and although I appreciate Mr. Shenkman's  
13 arguments are to some extent, I mean,  
14 it's basically an attempt to get in on  
15 the case in chief what we've already  
16 agreed that you would be able to bring  
17 in on your proffer, and so I don't want  
18 to really open it back up. A proffer  
19 is a proffer and the rulings are the  
20 rulings, and that's really what I think  
21 this is a, you know, subliminal attempt  
22 to accomplish, and although I appreciate  
23 that, it's not the correct time, place  
24 to do it. So I would sustain the  
25 objection for the record.

IN THE CIRCUIT COURT OF THE TWENTIETH  
JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA

---

CONSERVANCY OF SOUTHWEST  
FLORIDA, INC.,

Plaintiff,

V.

Case No. 11-2020-CA-

000780-0001-XX

COLLIER COUNTY, FLORIDA,

ET AL.,

Defendants.

---

REMOTE TRIAL BEFORE JUDGE HUGH HAYES

May 11, 2021

9:33 a.m.

Reported by:

Robin LaFemina, RPR, CLR

Job No.: SY 1953

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Mulhere - Cross

the testimony we've already gone through as far as whatever went in with -- it was almost like -- I can't remember his name, whether it was Mr. Fryer, any discussions or so that they had at the time as to whether these are binding on the Board of County Commissioners and/or anyone who created the 20-24. So I think at this point I would have to sustain the objection.

MR. MICHAEL: Understood, Your Honor.

THE COURT: Okay.

COURT CLERK: If I may, Your Honor --

THE COURT: Yes, ma'am?

COURT CLERK: -- because I will still have to mark them as they have been offered at this time. That was 19 and then 13, 520 through --

MR. MICHAEL: 550.

COURT CLERK: 520 through 550.  
Are those page numbers in the entirety

IN THE CIRCUIT COURT OF THE TWENTIETH  
JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA

---

CONSERVANCY OF SOUTHWEST  
FLORIDA, INC.,

Plaintiff,

V.

Case No. 11-2020-CA-

000780-0001-XX

COLLIER COUNTY, FLORIDA,

ET AL.,

Defendants.

---

REMOTE TRIAL BEFORE JUDGE HUGH HAYES

May 12, 2021

9:32 a.m.

Reported by:

Robin LaFemina, RPR, CLR

Job No.: SY 1965



1                   Gauthier - Direct  
2           Commissioners. Evidence relating to  
3           that process, including opinion  
4           testimony, related to anything about  
5           that prior process, has been excluded  
6           in the Motion in Limine. Moreover,  
7           what they want to do is use 4.3 to  
8           suggest that you have to apply 4.3 in  
9           determining use, density or intensity  
10          under 163.3215(3), and that's not the  
11          case.

12                   THE COURT: Well, the problem  
13          is, quite frankly, it's not just the  
14          highlighted language that you have on  
15          the screen, but the rest of the  
16          language that talks about compliance  
17          with the LDC Stewardship District and  
18          assurance that the applicant has  
19          acquired or will acquire, etc. In  
20          other words, this is just -- quite  
21          frankly, I have to agree with the  
22          defense, it is just a re-analysis of  
23          what has already been ruled upon and  
24          discussed as to, in other words, we're  
25          not going back and re-litigating each

IN THE CIRCUIT COURT OF THE TWENTIETH  
JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA

---

CONSERVANCY OF SOUTHWEST  
FLORIDA, INC.,

Plaintiff,

V.

Case No. 11-2020-CA-

000780-0001-XX

COLLIER COUNTY, FLORIDA,

ET AL.,

Defendants.

---

REMOTE TRIAL BEFORE JUDGE HUGH HAYES

May 13, 2021

9:31 a.m.

Reported by:

Robin LaFemina, RPR, CLR

Job No.: SY 1967

1 Gauthier - Redirect

2 GMP. If we remember the testimony,  
3 Mr. Gauthier was struggling not to  
4 admit it and he was struggling with the  
5 LDC. I only went to the LDC to get him  
6 back to the greater population. So I  
7 didn't ask his opinion, if he had an  
8 expert opinion about whether Rivergrass  
9 was consistent with the LDC.

10 THE COURT: Well, I would agree  
11 that the ruling that the Court's  
12 previously made with regard to LDC is  
13 still there, it has not been opened up.  
14 If we were to open it up now, we would  
15 be here for another two days. And so I  
16 don't think it's been -- and I would  
17 agree that the cross-examination was to  
18 comments that Mr. Gauthier made that  
19 could have been taken up at some point  
20 in the past under LDC, but that's been  
21 ruled upon and that's not been knowingly  
22 given up, so I would -- we will see  
23 where the question is going, but the  
24 way it's stated right at this point, if  
25 Mr. Shenkman's last comment was as to

IN THE CIRCUIT COURT OF THE TWENTIETH  
JUDICIAL CIRCUIT  
IN AND FOR COLLIER COUNTY, FLORIDA

---

CONSERVANCY OF SOUTHWEST  
FLORIDA, INC.,

Plaintiff,

V.

Case No. 11-2020-CA-

000780-0001-XX

COLLIER COUNTY, FLORIDA,

ET AL.,

Defendants.

---

REMOTE TRIAL BEFORE JUDGE HUGH HAYES

May 14, 2021

9:00 a.m.

Reported by:

Robin LaFemina, RPR, CLR

Job No.: SY 1968

1 Proceedings

2 Thank you, Judge. We'll waive  
3 the balance of our time.

4 THE COURT: Okay. Well, I thank  
5 you very much.

6 Let me go through a couple of  
7 things with you though. I generally  
8 prefer to do the bottom line first, and  
9 that is that with regard to the numbers  
10 1 through 6 and number 8, it -- whether  
11 those are actually in or out to a great  
12 extent in this case makes no difference  
13 only because the Defendant is going to  
14 be prevailing in all of those areas, so  
15 I won't say that all seven areas  
16 because still you understand it's  
17 1 through 6 and number 8, and that  
18 really is based on your argument and  
19 your witnesses as well.

20 I think with -- I probably don't  
21 think at this time of the day on a  
22 Friday it's worth really getting into  
23 that much more detail on Mr. Gauthier  
24 because, although a very nice guy and,  
25 you know, I'm sure eminently qualified

1 Proceedings

2 to -- based on his prior employment and  
3 even as he stated clearly he's, you  
4 know, a hired expert witness at this  
5 point and he works for both plaintiffs  
6 and defendants, I mean, I think he did  
7 testify that the majority of his  
8 testimony was provided for the parties  
9 like the plaintiff in our case today,  
10 but he did dwell probably an awful long  
11 time on the issue of the  
12 interconnectivity of the sidewalk  
13 system, and we've already talked about  
14 the fact that he said, well, I didn't  
15 do anything on the bicycle path because  
16 I wasn't asked to do that, and as I've  
17 already pointed out, I mean, he fully  
18 appreciated and understood the  
19 connectivity issues, did not really  
20 deeply consider the issue of whether  
21 somebody was truly going to walk,  
22 whether they're going to ride a bike,  
23 whether they were, as he pointed out,  
24 in the development that is commonly  
25 called The Villages, he could have

## 1 Proceedings

2 easily have said Lakewood Ranch, you  
3 know, whether people use golf carts for  
4 lack -- I'm sure they've got another  
5 name than that, but everybody is  
6 familiar with the concept of the golf  
7 cart, and so he used generally pretty  
8 extreme examples of somebody having to  
9 walk from the top end of the projected  
10 project of Rivergrass down to the civic  
11 center, and that's why probably even  
12 though -- I probably really should not  
13 have given him that example of do you  
14 really think somebody is going to walk  
15 from Port Royal over to Third Street to  
16 pick up a carton of milk as the example  
17 because it was not part of the  
18 presentation of the evidence, but since  
19 he had resided in Naples, I knew it was  
20 just a point to get across. The thing  
21 is that the Defendants have, in my  
22 opinion, clearly won their case on the  
23 basis of the evidence presented, but --  
24 and I'll just go over briefly some of  
25 those points. I think that the

1 Proceedings

2 Development Order is consistent with  
3 the GMP relating to use, density and  
4 intensity of use, and, you know, even  
5 though there were claims of  
6 inconsistency, those claims are based  
7 on the language within the GMP and I  
8 think that the Court still has to  
9 follow the case law that says that the  
10 Court must rely on the plain meaning of  
11 the language in the GMP in making its  
12 findings on consistency and that Heine  
13 case is a good authority for that.  
14 Likewise, as I've previously pointed  
15 out, that the language of the Plan  
16 should be given its plain and ordinary  
17 meaning.

18 The thing that's really  
19 important in this case that has come --  
20 really come up is the opposition, shall  
21 we say, that the Plaintiff has  
22 delivered. It really does not  
23 materially alter anything that the  
24 Defendants have done with the GMP and  
25 which was approved pursuant to the



## 1 Proceedings

2 statutory obligations that the BOCC had  
3 both in their 20-24, but primarily  
4 under the statute we're operating  
5 under, which is 163.3215(3) or actually  
6 that includes 163.3194(1)(a), I know  
7 the court reporter can keep up with it,  
8 but I was trying to make sure it was  
9 clear, so this -- before I go to the  
10 discussion in Heine that the Second  
11 District has ruled upon and which is  
12 obviously compulsive that we follow the  
13 Second District's ruling that Judge  
14 LaRose has written, but as a maybe  
15 overly simplification of it, the  
16 issue -- the issues that have been  
17 presented here have been presented with  
18 clear and convincing evidence and  
19 actually competent and substantial  
20 evidence to support the defense  
21 obligation to a great extent, the issue  
22 is of the legality as, you know,  
23 counsel pointed out, of the legality of  
24 the decision of the Board of County  
25 Commissioners versus, for lack of a

## 1 Proceedings

2 better term, developmental or aesthetic  
3 options which could have been chosen,  
4 might ultimately still be chosen. I  
5 mean, the development is not even  
6 really apparently started or anywhere  
7 near completed. So we're dealing with  
8 a preference of aesthetic design  
9 preferences versus the real issue is  
10 the legal and efficacious decisions that  
11 are based on constitutionality by the  
12 elected Board of County Commissioners,  
13 but more importantly this case is  
14 controlled by the Heine versus Lee  
15 County case, and, again for the Clerk --  
16 I mean, the Court Reporter, it's 221  
17 So. 3d 1254 Second District Court of  
18 Appeals 2017. Interesting, too, that  
19 was a Summary Judgment case. Of  
20 course, it was decided by one of my  
21 colleagues, Judge Krier, when she was  
22 at that time assigned to Lee County,  
23 and it was a Summary Judgment case. It  
24 also was a decision on review based  
25 upon 163.32153, which the, you know,

1 Proceedings

2 basically is often referred to as the  
3 consistency statute.

4 Kind of interestingly, as a  
5 sidebar, is that that decision was also  
6 made under what we could call the old  
7 Summary Judgment rule, 1.510, and not  
8 even the new one that just kicked in by  
9 the Florida Supreme Court in May, the  
10 beginning of this month and this year,  
11 but, and so -- it -- you know, that was  
12 an even more liberal Summary Judgment  
13 rule that you could have in essence  
14 defeated Judge Krier's ruling, but the  
15 Appellate Court clearly said that she  
16 was correct, and some of the materials  
17 that they discussed, that they said the  
18 type of claim allowed under the  
19 consistency statute is not unlimited,  
20 and that the statute authorizes an  
21 aggrieved party to bring an action to  
22 challenge a Development Order that,  
23 open quotation marks, materially alters  
24 the use or density or intensity of use  
25 of a particular piece of property,

## 1 Proceedings

2 which is not consistent with the  
3 Comprehensive Plan that is pursuant --  
4 and then you have the statute  
5 163.3215(3), and they point out that  
6 the pertinent language of the  
7 consistency statute is clear and  
8 unambiguous, and they pointed out, that  
9 is to say, later in their account on  
10 page 1258 of the Opinion, it says, that  
11 is to say we look only to clear text  
12 for statutory meaning, not to the  
13 stars, and they were quoting from the  
14 Brown case. Interestingly, there is  
15 some language in the Florida Supreme  
16 Courts in 1.510, I already called it,  
17 basically says that we're not supposed  
18 to, in opposing a Motion For Summary  
19 Judgment, be looking into metaphysical  
20 possibilities, I'm not going to spell  
21 it, but they make recitation to the  
22 Matsushita case, but -- which was -- I  
23 mean, that's the Florida Supreme Court  
24 quoting the United States Supreme  
25 Court, and they then point out that

## 1 Proceedings

2 interestingly one of the I think  
3 similarities is that in the Heine case  
4 there was a claim that the Trial Court  
5 should have construed the consistency  
6 statute, I will spell it, I know the  
7 Court reporter knows, but in pari  
8 materia, and that's just in and then --  
9 I-N P-A-R-I, next word M-A-T-E-R-I-A,  
10 but that the Court should have  
11 interpreted in pari materia Section  
12 163.3194(3)(a), which it talked about  
13 other aspects, I'm not going to read  
14 the exact -- the full quote of the  
15 statute, but it talks about other  
16 aspects of development permitted by  
17 such Order or regulation are compatible  
18 with the -- further the objectives,  
19 etc., and so they -- the Second  
20 District though goes on to, Judge  
21 LaRose's writing for the whole Second  
22 District though says, however, once  
23 again, the in pari materia canon of  
24 statutory construction would be  
25 appropriate only if we found the

1 Proceedings

2 statute ambiguous, and then it says  
3 they -- next paragraph, we will not  
4 rewrite the consistency statute to  
5 include language omitted by the  
6 legislature, and later on in the case  
7 they say the Heine's, however, conflate,  
8 common spelling, C-O-N-F-L-A-T-E, the  
9 consistency statute expansively, the  
10 expansive conferral of standing, and  
11 that's their big point in that case, is  
12 not to confuse standing, and they say  
13 that the expensive conferral of  
14 standing with the scope of what a  
15 plaintiff with standing may challenge,  
16 and it says because the consistency  
17 statute was intended to liberalize  
18 standing, not broaden the scope of what  
19 a party with standing may challenge  
20 beyond use, density and intensity, the  
21 Trial Court did not err in construing  
22 the statute literally rather than  
23 liberally, and that is exactly what I  
24 would say ditto for my opinion.

25 So I would direct the defense

1 Proceedings

2 counsel to prepare the Order.  
3 Obviously you can take -- I tried to go  
4 slowly enough that you can say enter  
5 the Order and then you can attach  
6 Exhibit A, if you wish, since we're  
7 presuming you are taking it on  
8 appellate review.

9 What is next?

10 MR. MICHAEL: Your Honor, should  
11 we tidy up the issue of exhibits that  
12 we had discussed prior to closing?

13 MR. BURHANS: Can I just ask a  
14 point of clarification, Judge?

15 When would you like that  
16 proposed final judgment?

17 THE COURT: I mean, no offense,  
18 but whenever you want it. I mean,  
19 it's -- I -- I think I know where we're  
20 going, so it's like whenever you guys  
21 are comfortable and satisfied and  
22 that's fine.

23 MR. BURHANS: All right. We'll  
24 submit it as soon as we can. Probably  
25 give it to you in a little bit of a

1 Proceedings

2 next door neighbor's JA and see if what  
3 she's got pending for me before she  
4 leaves for the day.

5 Okay. We'll take a 15-minute  
6 break.

7 (Whereupon, a brief recess was  
8 taken.)

9 THE COURT: All right. It looks  
10 like I finally caught a couple of  
11 people before they left for the day.  
12 So at this point, where would you like  
13 to go next on your discussion of the  
14 other exhibits?

15 MR. MICHAEL: Yes, Your Honor.  
16 We do have an agreement. We are going  
17 to file our exhibits and we have agreed  
18 not to use the documents in that  
19 proffer list on appeal to seek reversal  
20 of the Court's Summary Judgment ruling  
21 unless such documents are already in  
22 the Summary Judgment record.

23 THE COURT: Okay.

24 MR. MICHAEL: So we reserve the  
25 right to use documents in the Summary