

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

In Re: CITY OF DUNNELLON, FLORIDA,
RAINBOW RIVER RANCH, LLC, and
CONSERVATION LAND GROUP, LLC
as Joint Petitioners.

Case No.: 42-2010-CA-001960-B

AFFIDAVIT OF MIKE MCDANIEL

CAME BEFORE ME the undersigned authority Mike McDaniel, who, first being duly sworn, stated the following facts are true and correct and within his personal knowledge:

1. My name is Mike McDaniel, and I am the Chief of the Office of Comprehensive Planning within the Florida Department of Community Affairs, whose address is 2555 Shumard Oak Boulevard, Tallahassee, Florida, 32399. I have personal knowledge of all facts stated herein.

2. The Settlement Agreement executed by the City of Dunnellon ("City") and Rainbow River Ranch, LLC and Conservation Land Group, LLC ("Agreement") is contrary to the public interest served by Chapter 163, Part II, Florida Statutes, also known as the Local Government Comprehensive Planning and Land Development Regulation Act, for the following reasons:

3. The subject property lies adjacent to the Rainbow River and the Rainbow Springs State Park. Because of its exceptional scenic beauty and ecological importance, the Rainbow River has been designated by the Florida Department of Environmental Protection ("DEP") as an Aquatic Preserve and Outstanding Florida Water (OFW). The Agreement allows approximately 34 homes along the Rainbow River as well as dense clusters of development adjacent to the Rainbow Springs State Park. Under the Agreement, each residential structure along the water is

authorized to remove vegetation for the creation of an unobstructed view of the river and for the construction of a dock, walkway and gazebo-type structure. The development proposal could also result in the removal or breach of an abandoned railroad berm which has served to prevent untreated storm water runoff from reaching the Rainbow River.

4. Since 1994, various plan amendments have been proposed for this property. As noted by DEP in a May 13, 2005, letter with respect to one of these proposals, which is similar in nature to the development that would be allowed under the Settlement Agreement, the proposed development “has the potential to cause detrimental impacts to the Rainbow River Aquatic Preserve, OFW, and adjacent State Lands. Currently a vegetated buffer zone exists along the length of the Cabbage Property (Cabbage was the property owner at the time of the amendment), including an elevated abandoned railroad berm that acts as a buffer for storm water runoff. The berm allows storm water to pool and percolate into the ground where nutrients are removed by the vegetation and bound in the soil. Removal of the vegetation or breaching of the railroad berm would impair this process and could impact ambient water quality in the river. Soil disturbance in the buffer zone could also lead to increased turbidity levels in the river. Disturbances of vegetative communities within the buffer zone can also lead to the increased likelihood of invasive exotic plant growth. Natural vegetation disturbances leading to the expansion of invasive exotic species have already been documented within the preserve. The invasive exotic plant Hydrilla is already a significant concern. Placement of docks along the shoreline will increase the chances that Hydrilla will become established in these areas and out-complete the existing native plant communities ... To decrease probable impacts to the Rainbow River Aquatic Preserve, OFW, and adjacent state lands, the Department recommends that the proposed development take further steps to ... reduce the cumulative impacts of multiple private

docks ... The cumulative impacts of this clearing would greatly reduce the effectiveness of the existing buffer area.”

5. With respect to the same amendment the Southwest Florida Water Management District (SWFWMD) had the following comments in a letter date June 9, 2005: “Multiple boat docks are proposed for the development site on the River. The District has significant concerns about additional docks on the Rainbow River at this location because such facilities could necessitate destruction of intact natural systems, impact the River’s emergent and submerged aquatic vegetation, cause additional sediment depositions and/or allow increased establishment of exotic vegetation, such as Hydrilla and Lyngbya. Moreover, boats that may be constantly in the water can leach chemicals from paint and drip petroleum products into the River. The District also notes that sections of the Rainbow River adjacent to the Cubbage property are no more than twenty feet wide and two feet deep. There are parts of the shoreline where it would be difficult to build a boardwalk without the removal of large cypress trees. With such potential adverse environmental impacts to the River and its watershed likely, the District recommends inclusion of a community boat dock in lieu of multiple, individual docks on the River to provide boating access for residents of the proposed development sites.”

6. DEP and the SWFWMD have offered a number of recommendations to mitigate these concerns regarding the potential impacts upon the Rainbow River. DEP recommended that the buffer area be designated as a common area protected by a conservation easement that provides for an undisturbed naturally vegetated area while allowing minimal clearing for predetermined community access points. DEP also recommended that the cumulative impacts of multiple private docks to the Rainbow River be decreased by providing a community boat dock instead of multiple private docks. The SWFWMD recommended the preservation of the existing land use

between the shore of the Rainbow River and the abandoned CSX rail line as a critical protection area and supported a conservation easement that would allow only passive uses of the area. The SWFWMD also recommended the provision of a common docking facility for residents of the development.

7. The Settlement Agreement does not adequately address these concerns or include these recommendations.

8. Finally, the 2010 Agreement states that “in the event of a conflict between this Agreement, the City’s Comprehensive Plan or Land Development regulations or other rules or ordinances, this Agreement shall prevail.” In essence, the Agreement purports to amend the Dunnellon comprehensive plan without meeting the requirements and following the process set forth in Chapter 163, F.S., which is the sole means provided by Florida Statutes for amending a comprehensive plan. This language could also be interpreted as allowing the terms of the Agreement to override any state agency rules governing development in such an environmentally sensitive setting, such as rules relating to the permitting of docks in Outstanding Florida Waters and Aquatic Preserves. Chapter 163, F.S., sets forth the requirements and a process which comprehensive plan amendments must follow. It requires plan amendments to be based upon data and analysis regarding the area and to be internally consistent with other elements of the comprehensive plan. It sets forth a process which entails a review and comment by state and regional agencies with expertise in areas of potential impact, and it provides for public input. The intent of these requirements and process is to ensure that the public interest will be protected. It is likely a number of the concerns identified above could be addressed through the comprehensive plan amendment process.

9. In conclusion, my opinion as a professional planner regarding the Settlement Agreement is that it does not protect the public interest served by chapter 163 because it authorizes development which could negatively affect an Outstanding Florida Water and Aquatic Preserve as well as a state park. Additionally, the Agreement purports to allow development without meeting the requirements or following the process provided for in Chapter 163, F.S., which prescribes the sole means for amending a comprehensive plan.

Mike McDaniel
Mike McDaniel, Chief
Office of Comprehensive Planning

FURTHER AFFIANT SAYETH NAUGHT

STATE OF FLORIDA
COUNTY OF Leon

Before me personally appeared Mike McDaniel, being first duly sworn, deposes and says that the statements made in this Affidavit are true and correct to the best of his knowledge, information and belief, and subscribed his name hereto in certification hereof.

Sworn to or affirmed and signed before me this 28th day of April, 2011, by Mike McDaniel () who is personally known to me, or () who produced the following identification: _____.

Beth A. Frost
Name Beth A. Frost
Title Notary



Notary Public—State of Florida
My commission expires: