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Date: May 10, 2010

Re: CASE NO.: 42-2010-CA-001877-AXXX-XX

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

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

CASE NO.: 42-2010-CA-001877-AXXX-XX

RAINBOW RIVER CONSERVATION, IN.,
A Florida Corporation, and FREDERICK S. JOHNSTON,
MICHAEL G. RAUSCH, MAX P. LYNN,
JOHN DENNIS, PATRICIA M. ERMATINGER,
JEAN TULLIS, THELMA B. DICKINSON,
MARGARET LONGHILL, NIKKI CONNORS, ROGER BARTH,
EMMA JEAN PAINTER, LEONARD GANE,
WALTER JOHNSON, SHIRLEY E. DOWLING,
FRANKLIN W. ROTH, AS INDIVIDUALS

Plaintiffs,

vs.

CITY OF DUNNELLO, FLORIDA

Defendant.

DEFENDANT CITY OF DUNNELLO'S MOTION TO DISMISS

COMES NOW, Defendant, City of Dunnello, Florida, by and through its undersigned attorneys, pursuant to Rule 1.140, Florida Rules of Civil Procedure, and herewith files its Motion to Dismiss the Complaint and as grounds therefore states the following:

1. Plaintiffs have failed to state a cause of action against Defendant, City of Dunnello (hereinafter, "City").

2. Plaintiffs have failed to join two (2) indispensable parties. Rainbow River Ranch LLC and Conservation Land Group LLC, are "parties materially interested in the subject matter of the suit and who would be directly affected by an adjudication of the controversy". Everette v. Florida Department of Children & Families, 961 So. 2d 270, (Fla., 2007). In Mazza v. Santoni, 855 So. 2d 710, (Fla. 4th DCA 2003), the Court defined indispensable parties as follows; "Indispensable parties to a lawsuit are persons who have not

only an interest of such a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such a condition that the final termination may be wholly inconsistent with equity and good conscience.” The subject matter of this lawsuit involves a challenge to the Settlement of two (2) Bert Harris Claims made by Rainbow River Ranch and Conservation Land Group as against the City of Dunnellon.

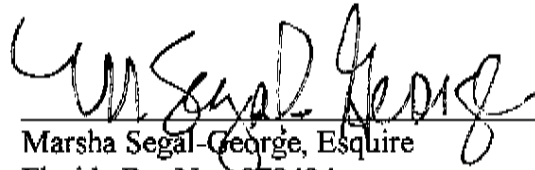
3. Lack of jurisdiction over the subject-matter - Florida Statute Section 163.3215 only applies to a challenge of a development order and its consistency with the local government’s comprehensive plan. The City has not issued a development order nor have Plaintiffs even alleged that a development order has been issued. The City has recognized vested rights and approved a Settlement Agreement pursuant to two (2) Bert Harris Claims under Bert J. Harris, Jr., Private Property Rights Protection Act, Section 70.001 (2) of the Florida Statutes (hereinafter, “Bert Harris”).

4. Lack of Standing – Four of the individual Plaintiffs do not live within the City of Dunnellon and as such would not suffer an adverse effect to an interest protected or furthered by the City’s comprehensive plan as required by Florida Statutes Section 163.3215. Further the Rainbow River Conservation, Inc., Plaintiff does not have standing to request a declaratory judgment pursuant to Florida Statute Section 163.3215 because while the Plaintiff has recited a series of laudable intentions with regard to the Rainbow River, they have repeatedly failed to allege any adverse effects, impact or harm under they would suffer from the complained of action of the City that was unique to them. Therefore any adverse effect on the Plaintiff does not exceed in degree the general interest in community good shared by all persons. Florida Statutes Section 163.3215 (2).

WHEREFORE, Defendant, City of Dunnellon, respectfully requests this Honorable Court enter an Order dismissing this action because Plaintiffs have failed to state a cause of action; has failed to join indispensable parties; lacks subject matter jurisdiction; and the multiple party Plaintiffs lack standing based on an absence of any adverse effects or impact or harm they would suffer that was unique to them.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via facsimile and U.S. Mail to Ralf Brookes, Esquire, 1217 E. Cape Coral Parkway #107, Cape Coral, Fl 33904 and Ken Oertel, Oertel, Fernandez, Cole & Bryant, P.A., Post Office Box 1110, Tallahassee, Florida 32302 this 10th day of May, 2010.



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