

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

RAINBOW RIVER RANCH, LLC and
CONSERVATION LAND GROUP, LLC

Plaintiffs,

vs.

CASE NO.: 2009-6247-CA-B

CITY OF DUNNELLON, FLORIDA

Defendant.

JOINT MOTION FOR ENTRY OF CONSENT FINAL JUDGMENT

Plaintiffs, RAINBOW RIVER RANCH, LLC, and CONSERVATION LAND GROUP, LLC, and Defendant, the CITY OF DUNNELLON, FLORIDA, jointly move for entry of final judgment on Count I of the Complaint. In support thereof, Plaintiffs and Defendant state as follows:

1. Allegations of paragraphs 1 through 12, 20 through 22, and 24 through 28 in Count I of the Complaint in this action are admitted.
2. The parties have determined, in good faith and on advice of counsel, that as there is no dispute as to the allegations of Count I in the Complaint, it would be appropriate to request that a declaratory judgment be entered on Count I of the Complaint in this action.
3. The Plaintiffs own separate, contiguous parcels of real property described in Exhibits A and B of the Complaint. Prior to the adoption of Ordinance No. 2007-025, Conservation Land Group, LLC, could develop its property pursuant to an agricultural land use, at an allowable density of one dwelling unit per five acres, as reflected in the "Cubbage Agreement," dated November 22, 2000, as approved by the State of Florida Department of Community Affairs, the then owners of the property and the City, as memorialized in Ordinance

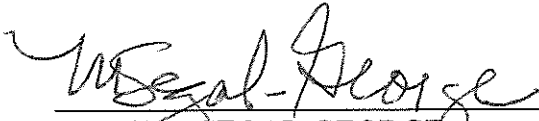
No. 01-02. Prior to the adoption of Ordinance No. 2007-025, Plaintiffs' property fell in separate designations under the City's Comprehensive Plan for Medium Density Residential, Conservation, and Commercial, as reflected in the previously reference Cabbage Agreement and Ordinance No. 01-02. Mixed-use development of 420 multi-family units and 125,000 square feet of commercial uses was permissible as an allowable density under the Cabbage Agreement and Ordinance No. 01-02.

4. The Plaintiff has expended time, effort, and substantial expenses in reliance on the aforesaid Agreement as described in paragraphs 1 through 12 of the Complaint. Accordingly the City acknowledges and agrees that the Plaintiff has a vested right to develop its property in accordance with the allowable uses of the property prior to the adoption of Ordinance No. 2007-25. The Plaintiffs and Defendant stipulate and agree that the City is estopped from applying, to Plaintiff's property, land-use ordinances adopted after March 23, 2007 (the date of Plaintiffs' first application to the City for preliminary plat approval). The reference to "ordinances" herein includes but is not limited to City Ordinances numbered 2007-04, 2007-10, 2007-012, 2007-25, and 2008-001, as well as any other amendments to the City's comprehensive plan and any amendments to the City's land development regulations.

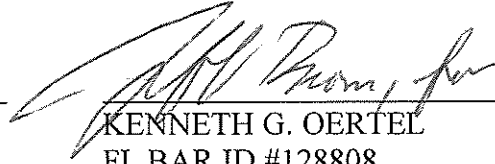
5. The parties stipulate that the Plaintiffs hold vested rights to develop the property in a manner consistent with the allowable densities and intensities described above in paragraph 3, under City ordinances in effect as of March 23, 2007.

6. The Plaintiffs and Defendant stipulate to the attached, proposed final judgment and request entry of that final judgment.

WHEREFORE, Plaintiffs and Defendant move for entry of final judgment in accordance with the foregoing stipulations, and in the form presented to the Court.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail

this 21st day of January ²⁰¹¹ 2010 to:

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_____ /

FINAL JUDGMENT ON COUNT I

This matter came before the Court on a Joint Motion for Entry of Consent Final Judgment. The Parties, through counsel, have represented that there is no dispute as to the merits of Count I in the Complaint. The Parties acknowledge the accuracy of the material allegations in Count I of that Complaint. The Court having reviewed the joint motion and being duly advised in the premises, the Court approves the following as findings of fact:

1. Plaintiffs, RAINBOW RIVER RANCH, LLC (“RRR”) and CONSERVATION LAND GROUP, LLC (“CLG”), are existing limited liability companies formed and existing under the laws of the State of Florida. Plaintiffs own contiguous parcels of real property located in the City of Dunnellon. These parcels are on the shore of the Rainbow River.

2. The Defendant, the CITY OF DUNNELTON, FLORIDA (“the City”), is a municipality located in Marion County, Florida.

3. Beginning in 2004, the individual owner of RRR investigated the possibility of purchasing the parcel of real property at issue in this action. That parcel (the “Property”) is approximately 265 acres in size, and the legal description is attached to the Complaint as Exhibit “A.” This parcel has approximately 6,500 feet of frontage on the Rainbow River. Prior to

purchasing this parcel, in October of 2004, the then owner of RRR (Jerry Dodd) and his representatives met with the then City Manager and Community Development Director of the City. The purpose of this meeting was to obtain the assurances of the City as to the potential for development of this site. At such meetings, the owner of RRR and his representatives were assured and promised that the City would support development on the property, would provide necessary utilities and assist future development should the property be purchased.

4. Based on these assurances, the principal of RRR entered into a contract to purchase this parcel on October 28, 2004, for the purchase price of \$7.5 million.

5. On November 23, 2004, representatives, consultants and the then owner (Jerry Dodd) of RRR met again with Jackie Gorman, the Director of Community Development for the City. The purpose of this meeting was to review proposed development plans for this site. Ms. Gorman was encouraging to RRR and in fact, made positive suggestions for the future development of the site.

6. Based on the support and encouragement the Plaintiffs received from the City, in December 2004 the Plaintiffs hired Johnson Engineering of Ft. Myers, Florida to provide project design, engineering, permitting, surveying and related consulting services at a contract amount of \$185,000.00. During that same month, the Plaintiff hired the firm of Akerman Senterfitt to provide legal support for the proposed development at a cost of \$31,000.00.

7. During January and February 2005, the Plaintiff and its consultants met with the City's Planning Commission and presented its proposed development to the City Council. At these meetings, the Plaintiff received support and encouragement from the City.

8. Based on the Plaintiff's reasonable expectations of its ability to develop this parcel which were encouraged and supported by the City Planning Commission, City Council

and its staff, the Plaintiff closed on the purchase of the property in question on April 7, 2005, for the purchase price of \$7.5 million.

9. On July 15, 2005, the Plaintiff hired Audubon International to assist with the design and development of this project in an environmentally positive manner. The cost commitment from the Plaintiff for this engagement was \$150,000.00.

10. On February 22, 2007, the property was divided. RRR retained that part which was commercial and medium density; CLG received that part which had an agricultural designation.

11. On March 23, 2007, CLG submitted an application for preliminary plat approval for its site to the City. This application proposed a residential subdivision which complied with all then existing city code requirements. The City has not taken action on that application.

12. On April 2, 2007, CLG submitted an application to the Southwest Florida Water Management District (“District”) for a permit to develop a residential project called the “Preserve at Blue Run.” This was to be for and consistent with the allowable density of one unit per five acres.

13. On April 9, 2007, the City passed an ordinance which imposed a moratorium on future development. After the Plaintiffs had expended substantial effort and money in trying to accomplish its project on these parcels, the City reversed its position on the Plaintiffs’ plans. After the Plaintiffs had expended or committed over \$1,000,000.00 in putting its project together, the City commenced its opposition to those plans and efforts.

14. On November 26, 2007, CLG received its permit from the Southwest Florida Water Management District for its project, the “Preserve at Blue Run.”

15. On October 13, 2008, the City adopted amendments to its Comprehensive Plan

and Land Development Code. These amendments greatly limited, restricted and reduced the previously allowable uses of the Property. These amendments also increased requirements for the development of the Property which collectively made the future development of the Property more difficult, less economic and imposed a higher risk of failure. The City restricted the future uses of the Property thus preventing the Plaintiffs from attaining their reasonable investment backed expectations.

16. As a result of the moratorium on future development within the City and the changing regulations applicable to the Property, the Plaintiffs have a need for a declaratory judgment, declaring their rights to develop the Property.

17. The Plaintiffs have demonstrated subject matter jurisdiction for a declaratory judgment under chapter 86 of the Florida Statutes.

18. Plaintiffs are entitled to a judgment under Chapter 86 of the Florida Statutes, declaring Plaintiffs' right to develop the Property as originally planned as a vested use.

19. CLG purchased its land and expended considerable time, effort and expenses with the expectation that its land would have an allowable density of one dwelling unit per five acres and could be developed under the Land Development Regulations which existed at that time. CLG relied to its detriment in purchasing its portion of the Property with the expectancy that CLG's portion of the Property would be able to be developed under the ordinances which existed at that time.

20. The doctrine of equitable estoppel arises when a "landowner has in good faith made some substantial change in position or incurred extensive obligations in reliance of the zoning law." See City of Hollywood v. Hollywood Beach Hotel Co., 283 So. 2d 867, 869 (Fla. 4th DCA 1973), aff'd in part & rev'd in part on other grounds, 329 So. 2d 10 (Fla. 1976). The

Plaintiffs expended a great amount of time and expense in planning, designing, and commencing the undertaking of constructing a commercial and residential development on the Property under the then existing zoning and development ordinances. Plaintiffs expended at least \$1,150,811.00 for this purpose. This sum includes expenditures for legal services, engineering, permitting, design and site work.

21. The Plaintiffs have met their burden of proof to be entitled to equitable estoppel. Based on the stipulation of the parties, the Plaintiffs' development rights are deemed vested as of March 23, 2007.

22. The Plaintiffs hold vested rights to develop the property in a manner consistent with the allowable uses, densities and intensities, in any manner consistent with City ordinances in effect as of March 23, 2007, City Ordinance 01-02, and the agreements attached to that Ordinance.

Based on the foregoing, it is ORDERED and ADJUDGED:

23. The City is estopped from applying, to the Plaintiffs' property, any comprehensive plan amendment, amendment to land development regulation, or any other ordinance, if such an ordinance was adopted at any time after March 23, 2007. The reference to "ordinances" herein includes but is not limited to City Ordinances numbered 2007-04, 2007-10, 2007-012, 2007-25, and 2008-001, as well as any other amendments to the City's comprehensive plan and any amendments to the City's land development regulations.

24. The Plaintiffs' development rights, as described above in the findings of fact, are deemed vested.

25. The Court directs the City of Dunnellon to take such actions as they may be necessary to acknowledge the Plaintiffs' vested rights.

26. The Court reserves jurisdiction on the remaining counts in the Complaint.

DONE and ORDERED in Ocala, Marion County, Florida this ____ day of _____ 2010.

Circuit Judge

Copies furnished to:

Jeffrey Brown, Esq.
Marsha Segal-George, Esq.
Ralf Brookes

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