

IN THE FIFTH JUDICIAL CIRCUIT COURT  
IN AND FOR MARION COUNTY

RAINBOW RIVER RANCH, LLC and  
CONSERVATION LAND GROUP, LLC

Plaintiffs

v.

Case No. 10-1960-CA-A  
*and*

CITY OF DUNNELLON, FLORIDA  
Defendant.

Case No. 09-6247-CA-B

And

RAINBOW RIVER CONSERVATION, INC.,  
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  
(*Proposed* Intervenors)

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**RESPONSE TO MOTION TO DISMISS JOHNSON, et al**

**and**

**MEMORANDUM OF LAW**

Intervenors Johnson et al respond to the Motion to Dismiss. Intervenors should not be dismissed from this action. Fla.R.Civ.P. 1.230 provides that a party seeking to intervene need only demonstrate an interest in the pending litigation, there is no need to show standing as a party in the

litigation. Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989); Union Central Life Insurance Co. v. Carlisle, 593 So.2d 505 (Fla. 1992).

Fla.R.Civ.P. 1.230 states that “[a]nyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention.” Rule 1.230 does not limit intervention to persons and entities which have standing as a defendant, but rather, merely requires anyone seeking to intervene claim “an interest” in the pending litigation over which this court already has jurisdiction. The difference between standing and the interest to intervene is recognized and discussed in Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989) wherein the court held that a party seeking intervention need not demonstrate standing as long as there exists a justiciable case or controversy in which the party seeking intervention has a substantial interest.

In the case of Union Central Life Insurance Co. v. Carlisle, 593 So.2d 505 (Fla. 1992), the Florida Supreme Court held that intervention under Rule 1.230 is a two step test, the first step being the nature of the interest of the person seeking intervention, and the second step being the parameters of intervention necessary to protect that interest in the pending litigation.

The interest under Rule 1.230 is similar to intervention under Fed.R.Civ.P. which provides that a would-be intervenor need not have a

specific legal or equitable interest in jeopardy, but need only show a “protectable interest of sufficient magnitude to warrant inclusion in the action.” Smith v. Pangilinan, 651 F.2d 1320, 1324 (9<sup>th</sup> Cir. 1981).

Although not required for intervention, Intervenors would meet the tests for “standing” as would be applied by the Courts in land use or zoning cases. These tests should be sufficient to support intervention with regard to this case and the proposed settlement agreement because this particular settlement agreement as drafted and approved by the City would violate Chapter 163, Part II, Florida Statutes (Florida’s growth management or comprehensive planning act) because it seeks to depart from the duly adopted Comprehensive Plan requirements for the subject lands without first obtaining an Amendment to the Comprehensive Plan.

As clearly explained by the Florida Supreme Court in Coastal Dev. of N. Fla. v. City of Jacksonville Beach, 788 So. 2d 204, 207-209 (Fla. 2001) "The amendment process entails, among other things, an integrated review process involving a mandatory review by the Department...The FLUM is a pictorial depiction of the future land use element and is supplemented by written goals, policies, and measurable objectives. The FLUM must be internally consistent with the other elements of the comprehensive plan...The FLUM is part of the comprehensive plan and represents a local government's

fundamental policy decisions. Any proposed change to that established policy likewise is a policy decision. The FLUM itself is a policy decision. A decision that would amend the FLUM requires those policies to be reexamined, even though that change is consistent with the textual goals and objectives of the comprehensive plan. Therefore, the scope of the proposed change is irrelevant because any proposed change to the FLUM requires a reexamination of those policy considerations and not an application of those policies." Id. Coastal Dev. of N. Fla at 209. See also Martin County v. Yusem, 690 So. 2d 1288 (Fla. 1997) (as to the required amendment process under Fla. Stat 163). The proposed settlement would violate a Remedial Amendment that was adopted by the City after entering into a Settlement Agreement with the State of Florida Department of Community Affairs, which has also intervened in this case to enforce the existing comprehensive plan and this prior settlement agreement. Contrary to assertions in the Motion to Dismiss that the Harris Act §70.001 would take precedence over Chapter 163, Part II (i.e., the comprehensive planning act) Section 163.3211, Fla. Stat. of the Growth Management Act EXPRESSLY PREEMPTS and provides that chapter 163 takes precedence over other chapters of Florida Statutes. This settlement as written, would violate 163.3184 requirements that a plan amendment be processed before the

settlement agreement departing from the duly-adopted effective Comprehensive Plan can be approved.

**163.3211 Conflict with other statutes--**Where this act may be in conflict with any other provision or provisions of law relating to local governments having authority to regulate the development of land, the provisions of this act shall govern unless the provisions of this act are met or exceeded by such other provision or provisions of law relating to local government, including land development regulations adopted pursuant to chapter 125 or chapter 166.

First, intervenors would clearly meet the broad “statutory” standing test as citizens of the local government who submitted objections to the plan amendment required to approve this particular settlement agreement in order to comply with §163.3184(1)(a), Florida Statutes.

“Affected person” includes the affected local government; **persons owning property, residing, or owning or operating a business within the boundaries of the local government** whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. **Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government** during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

Under the required Plan Amendment Intervenors have the opportunity to submit their objections to the local government just as they have done in opposition to this settlement that departs from the Comprehensive Plan.

Secondly, intervenors also have standing to contest any act of local government that has the effect of allowing development of land that is “not” consistent with the duly-adopted Comprehensive Plan under the expanded statutory standing of Florida Statute §165.3215. Save the Homosassa River Alliance, Inc. v. Citrus County, 2 So. 3d 329 (Fla. 5th DCA 2009); Putnam County Env'tl. Council, Inc. v. Bd. of County Comm'rs of Putnam County, 757 So.2d 590 (Fla. 5th DCA 2000).

Third, intervenors also have “common-law” standing under the test established by the Florida Supreme Court in 1972 for non-statutory, common law standing test for development issues other than Comprehensive Plans, those with “proximity” to the proposed development. Renard v Dade County, 261 So.2d 832 (1972). Under the Supreme Court test in Renard in determining sufficiency of a party's interest to give standing to challenge action of zoning authority, factors such as proximity of his property to property to be zoned or rezoned, character of the neighborhood, including the existence of common restrictive covenants and set-back requirements, and the type of change proposed are considerations; fact that a person is

among those entitled to receive notice under the zoning ordinance is a factor to be considered on the action of standing to challenge proposed zoning action but notice requirements of area are not controlled on question of standing. “Proximity” has been found to satisfy the standing test where the location of petitioner’s property yields an interest that exceeds the general interest in community good shared in common with all citizens. Renard v. Dade County, 261 So.2d 832 (Fla. 1972); Upper Keys Citizens Coalition v. Wedel, 341 So.2d 1062 (3rd DCA 1987); Save Brickell Ave., Inc. v City of Miami, 393 So.2d 1197 (3rd DCA 1981).

Florida Rule of Civil Procedure 1.230 does not limit intervention to persons and entities that would have “standing” as a plaintiff or defendant, but rather, merely requires anyone seeking to intervene to merely claim “an interest” in the pending litigation over which this court already has jurisdiction. Fla.R.Civ.P. 1.230 states that “[a]nyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention.” Intervenors have a sufficient interest for intervention because of their proximity to the inconsistent proposed development activities would increase the number of houses, structures, impervious surface and increased demands created by additional dwelling units and development in the subject area along Rainbow River and as proximate property owners have adverse

impacts on intervenors' daily shared use and enjoyment of the wildlife habitat, conservation and natural resources of this same portion of the Rainbow River. Additional development under the Settlement Agreement that is inconsistent with the Comprehensive Plan requirements will result in the loss of additional tree canopy, riverine wildlife corridor forest frontage on that particular portion of the Rainbow River actually personally used by Intervenor.

Intervenors will suffer adverse effects to interests protected or furthered by the adopted Plan, as amended, including but not limited to density, intensity, and lands along the Rainbow River designated as conservation which affect their individual property interests, their interest in protecting and maintaining the natural resources of the Rainbow River, their interest in protecting wildlife and bird corridor along the riverbanks, their interest in sufficient water and wastewater infrastructure, their interests in efficient and equitable distribution of land uses in the area, densities or intensities of development, including the compatibility of adjacent land uses, their interest in environmental or natural resources of the Rainbow River.

Given Intervenor's proximity to the project and given their use of the same water system, roadway system, river, and sewer system, Intervenor will "suffer harm to a greater degree than that of the public in general" due

to their proximity to the development, her location in the same floodplain and river corridor and their active use of the same river in the same subject geographical area.

Although Intervenors Johnson et al meet both tests as set forth above, the difference between standing and the interest to intervene is recognized and discussed in Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989) wherein the court held that a party seeking intervention need not demonstrate standing as long as there exists a justiciable case or controversy in which the party seeking intervention has a substantial interest. In Wingrove Estates Homeowners Association v. Paul Curtis Realty, 744 So.2d 1242 (Fla. 5th DCA 1999) :

“the Orange County Development Review Committee recommended that the County Commission deny the Grand Oaks Village P-D. At the time the proposal was considered by the County Commission, representatives for both the developer and the two neighboring homeowner associations addressed the commission, which ultimately voted to deny the plan. The developer then filed petitions for mandamus and certiorari review of the county's action in the circuit court. The two neighborhood associations filed a motion to intervene in those proceedings, and the summary denial of that motion resulted in their petition to this court.”

The District Court of Appeals in Wingate then explained the arguments and held in favor of intervention returning the case to the Circuit Court as follow:

“The Associations argue that their residents, who border or are in close proximity to the proposed development, would definitely be affected and point to the fact that Orange County, the respondent herein, has no objection to their intervention. The Associations also argue that numerous cases hold that neighboring property owners affected by zoning changes have standing to challenge those changes. *See e.g., City of St. Petersburg Board of Adjustment v. Marelli*, 728 So.2d 1197 (Fla. 2d DCA 1999); *National Wildlife Federation, Inc. v. Glisson*, 531 So.2d 996 (Fla. 1st DCA 1988); *Rinker Materials Corp. v. Metropolitan Dade County*, 528 So.2d 904 (Fla. 3d DCA 1987). Curtis, on the other hand, contends that the interests of the Associations can be protected by Orange County, that the Associations may inject new issues into the litigation, and that, in any event, intervention is discretionary with the lower court.

**We cannot agree that the discretion of the lower court in this matter is absolute.**

In the leading case on this issue, *Union Cent. Life Insurance Company v. Carlisle*, 593 So.2d 505 (Fla.1992), the supreme court, while acknowledging that intervention is discretionary, held that the trial court in that case *abused* its discretion in not allowing an insured to intervene. This appears to be because **there are circumstances in which equitable considerations require the court to allow intervention.** *See Blue Cross of Florida, Inc. v. O'Donnell*, 230 So.2d 706 (Fla. 3d DCA 1970); *O'Connell v. Rabin*, 596 So.2d 1299 (Fla. 3d DCA 1992); *Florida Wildlife Federation, Inc. v. Board of Trustees of Internal Imp.*, 707 So.2d 841 (Fla. 5th DCA 1998).

Review of motions to intervention under Rule 1.230 is a two step test, the first step (1) being the nature of the interest of the person seeking intervention, and the second step (2) being the parameters of intervention necessary to protect that interest in the pending litigation. Union Central Life Insurance Co. v. Carlisle, 593 So.2d 505 (Fla. 1992).

(1) Under the first prong of the intervention test, Intervenor will also suffer adverse effects to interests protected or furthered by the adopted Plan, as amended, including but not limited to density, intensity, and lands along the Rainbow River designated as conservation which affect their interests and proximate individual property owners and their interest in protecting and maintaining the natural resources of the Rainbow River. The interests of the preservation and restoration of environment and wildlife species have uniformly been accepted as “protectable interests” supporting **intervention**. See, e.g., Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Dept. of Interior, 100 F.3d 837, 841 (10<sup>th</sup> Cir. 1996); Humane Society v. Hodel, 840 F.2d 45, 52 (D.C. Cir. 1988)); Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525 (9<sup>th</sup> Cir. 1983).

Although the interests of the Intervenor and the interests of the local government Defendant in this action generally overlap, the interests of the Intervenor do not entirely coincide with the interests of the local government defendant. The local government has political and economic interests which make it unlikely, if not impossible, for them to fully and adequately represent Intervenor’s interest and position. The interests of each Intervenor is set forth below in this motion, supra.

(2) Under the second prong of the intervention test, Intervenor requests intervention to the extent necessary to protect their interests compliance with state law contained in Florida Statutes, constitutional as well as statutory due process and consistency with the duly-adopted Comprehensive Plan, including remedial amendments to the Comprehensive Plan adopted as part of the settlement agreement with the state land planning agency, the State of Florida Department of Community Affairs (DCA).

Under Florida Statutes §163.3184, review by the state of Florida, Department of Community Affairs (DCA) is undertaken to ensure that the Plan Amendment is consistent with State Plan, Regional Plans and Florida Administrative Code Rule 9J-5 and is internally consistent with the City of Dunnellon Comprehensive Plan. Failure to obtain approval of a plan amendment prior to approval of development that is not consistent with the Comprehensive Plan violates state law including §163.3184.

Before the City adopted the proposed Settlement Agreement, the state land planning agency, State of Florida Department of Community Affairs (DCA), faxed a letter to the City of Dunnellon City Commission *See Exhibit A, DCA Letter dated March 19, 2010*, stating that this proposed settlement in this case would violate state law and **violates a prior remedial settlement with DCA**. A settlement agreement that **violates state law** that expressly

takes precedence of the proposed Harris Act settlement in this case is not proper and should not be approved without going through the plan amendment process.

The issue of contract away the police power in the context of a Bert Harris Act Settlement Agreement was recently addressed in Twelfth Circuit Court Rehill v. Manatee County, 17 Fla. L. Weekly Supp. 251a (12<sup>th</sup> Circuit Court, January 10, 2010). The Court in Rehill went to great pains to note that the settlement agreement in that case did not approve but merely agreed to “schedule a public hearing to *consider*” the applicant’s request. (*emphasis in original*). Rehill held that there was no improper contract zoning expressly because “the settlement agreement expressly provided that it would not bind the Board in its exercise of governmental discretion, nor obligate the Board to grant approval.” The Court noted that “unlike the governing body in Chung, the Board did not bind itself to enact the request” before the matter was noticed or scheduled for the required hearings.” *Id.* The Board’s decision in Rehill not to obligate itself in the Bert Harris Act Settlement Agreement was also important to meet due process by ensuring that the decision to approve [or deny] was not made at the settlement agreement hearing, but would be merely considered at subsequent public hearings. *Id.*

The proposed settlement agreement based on the Bert Harris Act Ch.70 Fla Stat does not override the provisions of the Growth Management Act Ch. 163, Fla. Stat. To the contrary Section 163.3211 of the Growth Management Act provides that chapter 163 takes precedence over chapter 70, Florida Statutes:

**163.3211 Conflict with other statutes--**Where this act may be in conflict with any other provision or provisions of law relating to local governments having authority to regulate the development of land, **the provisions of this act shall govern** unless the provisions of this act are met or exceeded by such other provision or provisions of law relating to local government, including land development regulations adopted pursuant to chapter 125 or chapter 166.

The City cannot approve development even under the Bert Harris Act that violates state law and is inconsistent with the duly adopted comprehensive plan and is not in compliance with a previous, prior settlement with the state land planning agency in a settlement agreement. Chisholm v Miami Beach, 830 So.2d 842 (Fla. 3<sup>rd</sup> DCA 2002).

The Third District Court in Chisholm v. City of Miami Beach upheld reversal of the City's approval a set of variances and Bert Harris Act settlement that departed from City Code. The Circuit Court in Chisholm in a well reasoned opinion held that the exposure to monetary damage in a Bert Harris Act lawsuit was not a sufficient to depart from the essential requirements of law contained in the requirements of City Code.

In Chisholm, the Third District Opinion<sup>1</sup> written by Chief Judge Schwartz agreed with and upheld the rationale of the Chisholm Circuit Court opinion<sup>2</sup> written by Judge Altonaga which held that:

“Respondent Ritz maintains that the public interest served in the settlement are the resolution of the pending litigation and limiting the potential financial exposure of the City as a result of the three lawsuits. This position misapplies the statutory standard. **If this position were upheld, every Harris Act settlement would, by definition, serve a public interest by resolving pending claims and avoiding further litigation.**” Id.

“The City properly recognizes, in agreement with the position of the Petitioners, that the public interest is that which is served by the regulations at issue, ... It is almost impossible to conjure up a situation where the public interest served by a regulation ... could be served [where] the property owner need not comply with those very same restrictions.” Id.

The instant settlement order is in-artfully and illegally drafted because it is admittedly inconsistent with the duly-adopted Comprehensive Plan and goes beyond agreeing to process a plan amendment instead agreeing to forego the required plan amendment that is required under State law. See “*The Status of Florida Law on Contract Zoning: Practical Drafting Suggestions to Avoid Contract Zoning Claims in Settlement Agreements*, The Florida Bar Journal, February, 2007 Volume 81, No. 2 Page 5.

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<sup>1</sup> Chisholm v Miami Beach, 830 So.2d 842 (Fla. 3<sup>rd</sup> DCA 2002)

<sup>2</sup> Chisholm v City of Miami Beach, 8 Fla. L. Weekly Supp. 689, Circuit Court Opinion August 9, 2001, Judge Altonaga

Because no actual application for development has even been submitted by Plaintiff in this case, recent appellate case law also holds that there is no ripe Harris Act claim in the underlying case itself and the case should be dismissed under motions to dismiss as set forth in previously filed motions by the City. This is especially made clear under the new case M & H Profit, Inc. v. City of Panama City 28 So.3d 71, 76 -77 (Fla.App. 1 Dist.,2009) cert denied Fla S Ct at 2010 WL 2682139, 1 (Fla.,2010) (petition for review is denied):

“Simply put, until an actual development plan is submitted, a court cannot determine whether the government action has “inordinately burdened” property:

Without the benefit of an actual development application and expert staff review to determine how the general requirement applies to a particular property, how can the impact of a density limitation be determined? It is common to find that a particular piece of property cannot develop to the maximum extent theoretically permitted by the code, when all of the setbacks, landscaping requirements, preservation of environmentally sensitive areas, traffic flow and parking requirements, etc., are taken into account. In that event, the financial effect of a downzoning could be overstated if it is measured with respect to the theoretical maximum density and not the density actually achievable on the property.

The actual achievable density cannot be known until one does the work of applying the regulations to the property. If claims are to be allowed under the act based on the mere enactment of a general density limitation, and the owner has not done this work, is the government now forced to site plan the property for the owner in order to figure it out? That seems to go beyond what should reasonably be expected of government....

Susan L. Trevarthen, *Advising the Client Regarding Protection of Property Rights: Harris Act and Inverse Condemnation Claims*, 78 Fla. B.J. 61, 63-64 (July/Aug. 2004); *see also* Ronald L. Weaver and Joni Armstrong Coffey, *Private Property Rights Protection Legislation: Statutory Claims for Relief from Governmental Regulation*, Florida Environmental & Land Use Law at 30.3-8 (June 2007) (stating the plain language of the Bert Harris Act supports the conclusion that “a jurisdiction-wide piece of legislation would not become \*77 actionable under the Act until a property owner has applied for development approval and been denied under the provisions of the legislation”). Thus, the trial court properly held the mere enactment of a general police power ordinance or regulation does not give rise to a Bert Harris Act claim.

M & H Profit, Inc. v. City of Panama City 28 So.3d 71, 76 -77 (Fla.App. 1 Dist.,2009) cert denied Fla S Ct at 2010 WL 2682139, 1 (Fla.,2010) (petition for review is denied).

The City’s interest is not sufficient to protect the interests of Intervenors. In Chisholm v Miami Beach, 830 So.2d 842 (Fla. 3<sup>rd</sup> DCA 2002), the height of a proposed development project was contrary to the Code, and the Court noted that the variance criteria had not been met under the Code. The Third District noted that at the very least, a variance from the Code is required before the development is approved and a variance must go through the appropriate quasi-judicial variance hearings and must meet the applicable variance criteria contained in the City Code prior to approval. *Id.*

The lower circuit court opinion in Chisholm noted that while Bert Harris Act allowed the City to settle a claim by providing:

“the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.” The “Bert J. Harris Act settlement was not “**necessary**” for any purpose other than to take away this Court's jurisdiction to review the legality of the variance approvals, an outcome that cannot be sanctioned as “necessary” in and of itself... Petitioners have shown a departure from the essential requirements of law.”

Chisholm v City of Miami Beach, 8 Fla. L. Weekly Supp. 689, (Circuit Court Opinion August 9, 2001). Consolidated Petitions for Writ of Certiorari from decisions of the Board of Adjustment of the City of Miami Beach and the City of Miami Beach).

Judge Altonaga addressed similar Bert Harris Act settlement arguments about financial exposure as a false rationale in the Circuit Court’s order in Chisholm:

“The [City] maintains that the public interest served in the settlement are the resolution of the pending litigation and limiting the potential financial exposure of the City as a result of [B. Harris Act] lawsuits. This position misapplies the statutory standard. If this position were upheld, every Harris Act settlement would, by definition, serve a public interest by resolving pending claims and avoiding further litigation. The City properly recognizes, in agreement with the position of the Petitioners, that the public interest is that which is served by the regulations at issue... **Similarly, where a use is not allowed under the applicable land development regulations, it logically follows that the use is “speculative” in nature.** .... Respondent maintains that the public interest served in the settlement are the resolution of the pending litigation and limiting the potential financial exposure of the City as a result of the three lawsuits. This position misapplies the statutory standard. If this position were upheld, every Harris Act settlement would, by definition, serve a

public interest by resolving pending claims and avoiding further litigation. The City properly recognizes, in agreement with the position of the Petitioners, that the public interest is that which is served by the regulations at issue, which in this case, are the height restrictions on the Ritz and surrounding properties.... It is almost impossible to conjure up a situation where the public interest served by a regulation imposing height restrictions could be served by the granting of variances so that the property owner need not comply with those very same restrictions.... To adopt the reasoning that a settlement of a Harris Act claim is necessary simply because there is a pending Harris Act claim, is to construe the statutory language in such a way that renders meaningless the language that the relief must be necessary to prevent inordinately burdening the property owner. That argument could thus be utilized any time a property owner made a Harris Act claim, which appears an illogical application of the statute.” Chisholm Properties South Beach, Inc. v. City of Miami Beach, 8 Fla. L. Weekly Supp. 689 (Fla. 11th Cir.Ct. August 9, 2001)

As set forth in the Judge’s logical reasoning above, even the Bert Harris Act does not preempt the required compliance with the list of allowable uses in a zoning district set forth in City Code § 28-2 (such a use would not only be “speculative” but contrary to the public interest stated and served by the regulation).

Upon further appeal, the Third District in Chisholm v City of Miami Beach, 830 So.2d 842 (Fla. 3<sup>rd</sup> DCA 2002), in an opinion written by Chief Judge characterized the proposed settlement as a “Sweetheart deal” between the developer and the City intended to allow the applicant to depart from the requirements of law set forth in the City Code, held that that settlement under Harris Act purporting to approve a specific development project

without meeting City Code requirements was “unjustified and illegal” and was properly reversed.

Similarly, in this case a deal between the City and the Developer that allows the developer to violate the duly adopted Comprehensive Plan does not protect the Intervenors.

WHEREFORE, the INTERVENORS each respectfully requests the court deny the motion to dismiss and allow intervention by intervenors, Johnson et. al., pursuant to Fla.R.Civ.P. 1.230 as intervenors with the right to be heard and the right to appeal adverse orders in this proceeding if they deem that necessary to protect their affected interests.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Ralf Brookes", is written over a horizontal line. A vertical line extends downwards from the end of the signature.

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RALF BROOKES ATTORNEY  
Attorney for Intervenors RRC et al  
Florida Bar No. 0778362  
1217 E Cape Coral Parkway #107  
Cape Coral, Florida 33904  
Telephone (239) 910-5464  
Facsimile (866) 341-6086  
[Ralf@RalfBrookesAttorney.com](mailto:Ralf@RalfBrookesAttorney.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by US mail on this **September 1, 2010** to the following:

**City Attorney, City of Dunnellon**

Marsha Segal-George, Esq.  
Fowler, O'Quinn, Feeney & Sneed, P.A.  
28 West Central Boulevard, Suite 400  
Orlando, FL 32801  
Fax (407) 425-2690  
[marshaisg@bellsouth.net](mailto:marshaisg@bellsouth.net)

**Attorney for:**

**Conservation Land Group, LLC and Rainbow River Ranch LLC**

Kenneth G. Oertel, Esq.  
Oertel, Fernandez, Cole & Bryant, P.A.  
Post Office Box 1110  
Tallahassee, FL 32302-1110  
Fax: (850) 521-0720  
[koertel@ohfc.com](mailto:koertel@ohfc.com)



Ralf Brookes Attorney  
Fla Bar No. 0778362  
Attorney for Intervenors RRC et al  
1217 E Cape Coral Parkway #107  
Cape Coral, Fl 33904  
(239) 910-5464;  
(866) 341-6086 fax  
***Electronic service/ scheduling  
preferred at :***  
[ralf@ralfbrookesattorney.com](mailto:ralf@ralfbrookesattorney.com)

*As filed with the :  
5th Circuit Court  
110 NW 1<sup>st</sup> Ave,  
Ocala Fl 34475*