IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

CAPTIVA CIVIC ASSOCIATION, INC.

Plaintiff,

v. Case No.: 24-CA-2674

LEE COUNTY, FLORIDA, a political subdivision of the State of Florida,

Defendant.
_____/

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court for hearing on January 10, 2025 upon Plaintiff, CAPTIVA CIVIC ASSOCIATION, INC.'s Motion for Summary Judgment [Dkt. 28] ("Motion"). The Court having reviewed the Motion, the Response filed by Defendant, LEE COUNTY (the "County") and Intervenor, WS SSIR OWNER, LLC ("SSIR Owner"), the documents contained in the parties' judicial notices ("Pl. JN" or "Def. JN"), having heard the argument of counsel, and otherwise being fully advised on the premises, hereby finds:

FINDINGS OF FACT

1. In 1973, the County adopted Zoning Resolution Z-73-202 (the "1973 Zoning Resolution"), which rezoned South Seas Resort ("South Seas") to a 304-acre special zoning district, using a planned unit development ("PUD") concept plan, with the special limitation that South Seas' density was specifically limited to three (3) units per acre. The 1973 Zoning Resolution limited the development density for this zoning district to 912 units, inclusive of hotel room units. *Pl. JN*, Ex. A.

2. On July 30, 2002, the County issued Administrative Interpretation ADD2002-00098 (the "Administrative Interpretation") to document the "as built–as approved" status of

development at South Seas and to clarify and serve as the zoning regulation controlling future development at South Seas. *See Pl. JN*, Ex. C, Pg. 4. The Administrative Interpretation states that "current and future development" within South Seas will consist of a "very low density," and "carefully planned and tightly controlled development" that will be "limited to a development density of 912 units." *Id.* at Pg. 5, 15. The Administrative Interpretation identified and included "hotel units" as part of the 912-unit density limitation. *Id.* at Pg. 7, 9, 10, 11, 14

3. On August 28, 2002, CCA filed suit against the County and the then owner/developer of South Seas in Lee County Circuit Court (Case No. 02-CA-009598), seeking a declaration of rights with respect to the Administrative Interpretation. *Pl. JN*, Ex. E.

4. On February 27, 2003, CCA, the County, and the developer of South Seas entered into a Mediation Agreement (the "Settlement Agreement"). *Compl.*, Ex 1; *Pl. JN*, Ex. F. The Settlement Agreement memorialized the density limits of the 1973 Zoning Resolution. *Id.*

5. On March 20, 2003, the Settlement Agreement was approved by Circuit Court Judge John S. Carlin. *Id.*

6. Paragraph 3 of the Settlement Agreement provides, in relevant part, the following: "The total number of dwelling units on South Seas Resort is limited to 912. No building permits may be issued by County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time." *Id.* ¶ 3.

7. Paragraph 8 of the Settlement Agreement states, "[t]he parties agree that this Mediation Agreement will be enforceable through application to the Court…." *Id.* ¶ 8.

8. Despite 50-year density restriction of 912 dwelling units and the restriction on the County's authority to issue building permits under Paragraph 3 of the Settlement Agreement, on September 5, 2023, the County adopted Land Development Code amendments by Ordinance No.

23-22 ("LDC Amendments") which exempt South Seas from density limits, which could allow the number of dwelling units on South Seas to exceed the 912 dwelling unit cap. *Pl. JN.*, Ex. K.

9. Specifically, the LDC Amendments:

a. Exempt development on South Seas from all provisions of Chapter 33 of the Land Development Code (the "Captiva Code"), including Section 33-1628(c) which limits dwelling units to three units per acre, *Id.* at Pgs. 5-6; and

b. Exempts South Seas from the Captiva Island density cap of three hotel units per acre from Chapter 34 (Section 34-1805) of the Land Development Code. *Id.* at Pg. 10.

10. Prior to adoption of the LDC Amendments, South Seas was exempt from Chapter 33 of the LDC under Section 33-1611(e) so long as development on South Seas complied with the Administrative Interpretation. Both Chapter 33 of the LDC and the Administrative Interpretation set the cap for dwelling units at three units per acre. *Pl. JN*, Ex. C, Pg. 5; Ex. K, Pg. 10.

11. The deletion of the Administrative Interpretation compliance requirement by the LDC Amendments, which amended Section 33-1611(e), coupled with Section 34-1805, as amended, which eliminated the three hotel units per acre cap on South Seas, means South Seas now has no numerical density limitation on dwelling units and therefore no cap of 912 dwelling units. *Pl. JN*, Ex. K, Pg. 6, 10.

CONCLUSIONS OF LAW

1. The Court finds that there are no genuine issues of material fact in dispute, and Plaintiff is entitled to summary judgment, as a matter of law. *Volusia Cnty. v. Aberdeen at Ormond Beach*, L.P., 760 So.2d 126, 131 (Fla. 2000) ("Where the determination of the issues of a lawsuit depends upon the construction of a written instrument and the legal effect to be drawn therefrom,

the question at issue is essentially one of law only and determinable by entry of summary judgment.").

2. Paragraph 3 of the Settlement Agreement is clear and unambiguous: "The total number of dwelling units on South Seas Resort is limited to 912. No building permits may be issued by County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time." *Compl.*, Ex 1; *Pl. JN*, Ex. F.

3. The Settlement Agreement constitutes a valid and binding agreement between CCA and the County, which bars the County from issuing building permits within South Seas that will cause the total number of 912 dwelling units to be exceeded at any time. Paragraph 2 of the Settlement Agreement is separate and distinct from, and does not apply to, the 912 dwelling unit density limit and building permit issuance clause in Paragraph 3 of the Settlement Agreement. *See Sun Microsystems of California, Inc. v. Engineering and Mfg. Systems, C.A.*, 682 So. 2d 219, 220 (Fla. 3d DCA 1996) ("The public policy of the State of Florida, as articulated in numerous court decisions, highly favors settlement agreements among parties and will seek to enforce them whenever possible").

4. The proceeding before this Court is a proper remedy available to CCA to enforce its contractual rights under the Settlement Agreement, which cannot, as a matter of law, be enforced through Lee County's planning or zoning processes or any judicial or administrative review thereof. Neither CCA's pending administrative challenge to the County's LDC Amendments, nor the availability of *certiorari* relief with respect to SSIR Owner's Rezoning Application, preclude CCA's claim for declaratory judgment. Even if alternative forms of relief existed, under § 86.111, Fla. Stat., "[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief. *See also, Cintron v. Edison Insurance Company*, 339 So. 3d 459,

462 (Fla. 2d DCA 2022) (holding that the existence of an adequate remedy at law is not a basis for dismissal pursuant to Section 86.111, Florida Statutes); *Michael A. Marks, P.A. v. Geico Gen. Ins. Co.*, 332 So. 3d 11, 11-12 (Fla. 4th DCA 2022) (holding that pursuant to Section 86.111, the trial court erred in dismissing a declaratory judgment action merely because the plaintiff could have brought an action for breach of contract instead).

5. This matter is ripe for adjudication under Chapter 86, Florida Statutes and does not call for an advisory opinion. An actual breach is not required to enforce a contract. The Court finds that a present controversy exists between the parties regarding their respective rights, duties, and obligations *vis a vis* the Settlement Agreement. *See* Fla. Stat. § 86.031 ("A contract may be construed either before or after there has been a breach of it"); Fla. Stat. § 86.051 ("Any declaratory judgment rendered pursuant to this chapter may be rendered by way of anticipation with respect to any act not yet done or any event which has not yet happened"). SSIR Owner's Motion to Intervene concedes the ripeness of this case when it asserts that "SSIR is currently applying to the County for building permits which the CCA claims are subject to density limits, with which density limits Intervenor disagrees."

6. CCA's claim does not ask this Court to intrude upon the County's legislative function, interfere with the County's zoning process, or preclude the County from making zoning-related decisions consistent with the County's Comprehensive Plan, vested property rights, and existing zoning approvals. *See Snyder v. Board of County Commissioners of Brevard County*, 627 So. 2d 469 (Fla. 1993) (holding that site specific development approvals, including rezoning decisions and building permits, are quasi-judicial actions, not legislative, and do not enjoy the same level of discretion that attaches to legislative changes to a comprehensive plan or land development code. *Snyder*, 627 So. 2d 469 (Fla. 1993). To the extent that this Court's enforcement

of the 912–building permit limit in the Settlement Agreement might impact the County's view of SSIR Owner's Rezoning Application, is not a basis for dismissal of Plaintiff's claim seeking to enforce its contractual rights. The County cannot use separation of powers to unilaterally abrogate its obligations under an express Settlement Agreement. *Chiles v. United Faculty of Fla.*, 615 So. 2d 671, 673 (Fla. 1993) (The "separation of powers does not allow the unilateral and unjustified legislative abrogation of a valid contract.").

7. The Settlement Agreement does not constitute illegal contract zoning. "Contract zoning refers to an agreement between a property owner and a local government where the owner agrees to certain conditions in return for the government's rezoning or enforceable promise to rezone." *Chung v. Sarasota County*, 686 So. 2d 1358, 1359 (Fla. 2d DCA 1996). The Settlement Agreement was not an agreement "to certain conditions in return for the government's rezoning or enforceable promise to rezone" and there was no agreement to "adopt" the Administrative Interpretation. Instead, the Settlement Agreement confirmed and enforced the duly-enacted rezoning that had already occurred thirty (30) years earlier via the 1973 Zoning Resolution. The Settlement Agreement does not "limit, prohibit, or eliminate" the County's obligation to comply with the applicable zoning ordinances. *See Molina v. Tradewinds Development Corp. by Kilday*, 526 So. 2d 695 (Fla. 4th DCA 1988) (holding that settlement agreement between city and developer in zoning dispute was valid and enforceable where the agreement did not "limit, prohibit, or eliminate" the city's obligation to comply with applicable zoning ordinances); *Stranahan House, Inc. v. City of Fort Lauderdale*, 967 So. 2d 1121, 1125 (Fla. 4th DCA 2007) (same).

8. The doctrine of sovereign immunity does not bar CCA's declaratory judgment claim because the Settlement Agreement is an express, written contract and the defense of

sovereign immunity does not insulate a public body from an action arising from its breach of an express, written contract. *See Pan-Am Tobacco Corp. v. Department of Corrections*, 471 So. 2d 4, 6 (Fla. 1984) (holding that the defense of sovereign immunity will not protect the state from an action arising from the state's breach of an express, written contract). Additionally, the County did not raise sovereign immunity in its Answer and Affirmative Defenses, thereby waiving that defense. SSIR Owner, as Intervenor, cannot revive that waived defense. *Omni National Bank v. Georgia Banking Co.*, 951 So. 2d 1006, 1007 (Fla. 3d DCA 2007) ("The intervenor must accept the record and pleadings as they exist in the litigation and the intervenor may not raise any new issues.").

9. Whether the Settlement Agreement is or is not a restrictive covenant that runs with the land or binds or does not bind SSIR Owner, is immaterial to this case. CCA's claim is directed exclusively at the County. CCA seeks to enforce the County's obligation under Paragraph 3 of the Settlement Agreement which states that the County cannot issue building permits in excess of 912 dwelling units. CCA does not seek any relief against SSIR Owner. The County issues building permits, not SSIR Owner. Additionally, the County and SSIR Owner waived this "restrictive covenant" issue by failing to plead it as an affirmative defense.

10. CCA's claim for declaratory judgment does not constitute a common law writ of mandamus or an action for injunctive relief. Rather, as already found by this Court, CCA "asserts a statutory claim for declaratory judgment within the authority of Chapter 86, Florida Statutes." *Order Denying Motion to Dismiss* [Dkt. 18], ¶ 5.

11. Additionally, the Court finds that the County is estopped from denying the validity of the Settlement Agreement. It is undisputed that the County and CCA voluntarily negotiated and executed the Settlement Agreement whereby the County expressly agreed not to issue building

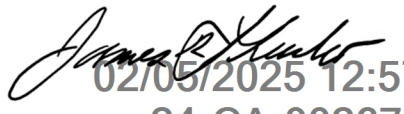
permits in excess of 912 dwelling units at any time. CCA reasonably relied on that promise and, in return, dismissed its lawsuit with prejudice. The County cannot accept the benefits of the Settlement Agreement—the dismissal of a lawsuit—and then later argue that the same agreement is unenforceable. *See Abia v. City of Opa-Locka*, 389 So. 3d 685, 686 (Fla. 3d DCA 2024) ("Opa-Locka cannot take the benefit of the settlement agreement—the dismissal of a lawsuit—and then later argue that the same agreement is unenforceable.").

12. Plaintiff has overcome all affirmative defenses asserted by the Defendant, Lee County, as set forth in this Court's *Order Denying Defendant, Lee County's and Intervenor's Motion for Summary Judgment* [Dkt. 36]. The Court rejects all other arguments raised by the County and SSIR Owner.

Based upon the foregoing, it is ORDERED AND ADJUDGED, as follows:

Plaintiff, CAPTIVA CIVIC ASSOCIATION, INC.'s Motion for Summary Judgment is hereby GRANTED.

DONE AND ORDERED in Chambers, Lee County, Fort Myers, Florida.



James Shenko, Circuit Court Judge 0ciN-nV-
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