

Conservancy of Southwest Florida, Inc. v. Collier County, 352 So. 3d 481 (Fla. 2d DCA 2022)

Second DCA Holds Traffic and Fiscal Neutrality Fall Within Narrow Scope of Consistency Challenges under Section 163.3215, Florida Statutes

The Conservancy of Southwest Florida, Inc. (the “Conservancy”), filed a single-count declaratory judgment action under section 163.3215, Florida Statutes (a “Consistency Challenge”). The Conservancy challenged the approval of a development project (the “Project”) covering roughly a thousand acres of rural land in the eastern part of the Collier County (the “County”). The Project included a mixture of residential, commercial, and public space.

The Conservancy contended that the Project violated provisions of the County’s Growth Management Plan (“GMP”), Land Development Code (the “Code”), and other land use standards. The circuit court limited the scope of a Consistency Challenge “to claims alleging a material alteration to the use or intensity of use” inconsistent with the GMP. The circuit court excluded claims related to the Code or other land use standards as those that are not expressly incorporated into the GMP. The Conservancy appealed.

To successfully challenge a project approval as inconsistent with the comprehensive plan under section 163.3215, a party must show that the order “materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan.” (citing *Heine v. Lee County*, 221 So. 3d 1254 (Fla. 2d DCA 2017)). The Second DCA held that the scope of the Conservancy’s Consistency Challenge was correctly narrowed at the trial court level. However, the Second DCA disagreed with the circuit court’s opinion that traffic and fiscal neutrality are outside the scope of the Consistency Challenge. Specifically, the Court found that traffic and fiscal neutrality implicate the “intensity of use” under the County’s GMP. Accordingly, the Second DCA held that the two issues are adequate grounds for a section 163.3215 challenge and remanded the case for further proceedings.