

the client to post adequate security for the outstanding balance due. *Andrew Hall & Assocs.*, 679 So.2d at 61.

[4] Only in rare cases will the files be released without payment or the furnishing of adequate security, such as when the lawyer's misconduct caused his withdrawal or when the client has an urgent need for the file to defend a criminal prosecution and lacks the means to pay the fee or post a bond. *Id.* at 377. Courts have also found an exception where the attorney has filed a counterclaim or an independent action seeking to collect the fee. *See Fingar v. Braun & May Realty, Inc.*, 807 So.2d 202 (Fla. 4th DCA 2002) (holding that an attorney who brought an action against his client for fees was not entitled to the enforcement of a retaining lien to avoid discovery of the client's files).

None of these exceptions are applicable in this case. Foreman was fired, he did not withdraw, and he has not sought to collect his fee through the courts. Nor did Behr demonstrate any urgent need for documents. On the contrary, Behr acknowledges that she does not need the file in connection with the dissolution litigation, which is still pending, and that she already has copies of the pleadings filed in that case. She wants the file to determine whether Foreman possesses any documents that she does not already have. Accordingly, until such time that the fee dispute is settled, Foreman is entitled either to retain Behr's files, to receive payment for services rendered, or to receive a bond to protect his interest.

Because the trial court departed from the essential requirements of the law in ordering Foreman to comply with discovery without consideration of the retaining lien, we grant the petition for certiorari

and quash the trial court's March 6, 2003, order.

Petition granted.

NORTHCUTT and DAVIS, JJ., Concur.



MONROE COUNTY, a Political Subdivision of the State of Florida, and the Department of Community Affairs and Islamorada, Village of Islands, a municipal corporation, Appellants,

v.

Thora AMBROSE, et al., Appellees.

**Nos. 3D02-1716, 3D02-1754,
3D02-1800, 3D02-2068.**

District Court of Appeal of Florida,
Third District.

Dec. 10, 2003.

Rehearing and Rehearing En Banc
Denied Feb. 18, 2004.

Background: Landowners brought action for declaratory relief to determine rights to complete development of homes after land was designated as part of area of critical state concern and local government approved new land use regulations. The Circuit Court, Monroe County, Richard Payne, J., granted summary judgment in favor of landowners. County and village appealed, and landowners cross-appealed.

Holdings: The District Court of Appeal held that:

- (1) genuine issue of material fact as to whether landowners had vested development rights precluded summary judgment, and

(2) appropriate cut-off date for determining alleged vested rights was on date county first enacted land development regulations.

Reversed and remanded with instructions.

1. Judgment ⇌181(15.1)

Genuine issue of material fact as to whether landowners, who purchased land before county enacted development regulations pursuant to state designation as area of critical state concern, had vested right to develop land due to any reliance on state statute allowing for designation as area of critical state concern and any change of position in furtherance of developing land, precluded summary judgment for landowners in action for declaratory relief to determine development rights under statute. West's F.S.A. § 380.05(18).

2. Zoning and Planning ⇌376

If a landowner recorded his property pursuant to local subdivision plat law, his rights to complete any development cannot be limited or modified by the designation of the land as an area of critical state concern nor by the adoption of subsequent land regulations. West's F.S.A. § 380.05(18).

3. Zoning and Planning ⇌465

Recordation alone is not sufficient to establish vested rights to develop land. West's F.S.A. § 380.05(18).

4. Zoning and Planning ⇌465

Vested rights to develop may be established if a property owner or developer has: (1) in good faith reliance, (2) upon some act or omission of government, (3) made such a substantial change in position or has incurred such extensive obligations and expenses (4) that it would make it highly inequitable to interfere with the acquired right.

5. Zoning and Planning ⇌762

A citizen is entitled to rely on the assurances and commitments of a zoning authority and if he does, the zoning authority is bound by its representations.

6. Zoning and Planning ⇌161

The mere purchase of land without more does not create a right to rely on existing zoning.

7. Zoning and Planning ⇌465

A subjective expectation that land can be developed is no more than an expectancy and does not translate into a vested right to develop the property.

8. Zoning and Planning ⇌376, 465

Appropriate cut-off date for determining landowners' alleged vested rights to develop land was on date county first enacted land development regulations after county was designated area of critical state concern rather than on date statute allowing for designation was enacted. West's F.S.A. § 380.05(18).

Morgan and Hendrick, P.A., and Karen K. Cabanas (Key West), for appellant, Monroe County.

David L. Jordan, Deputy General Counsel (Tallahassee), for appellant, Department of Community Affairs.

Weiss Serota Helfman Pastoriza & Guedes, P.A., Edward G. Guedes, and Nina L. Boniske, for appellants, Islamorada, Village of Islands.

Brion Blackwelder, Richard Grosso, and David Cozad (Fort Lauderdale), for appellants/intervenors, Protect Key West, d/b/a "Last Stand", et al.

Janet E. Bowman (Tallahassee), for 1000 Friends of Florida, Inc., as Amicus Curiae, for appellants.

James S. Mattson (Key Largo); Andrew M. Tobin (Tavernier); for appellees.

Frank A. Shepherd, for Pacific Legal Foundation, as Amicus Curiae for appellees.

Before LEVY *, GERSTEN, and GODERICH, JJ.

PER CURIAM.

In the proceedings below, the trial court granted summary judgment in favor of Thora Ambrose, et. al. (“Landowners”), finding that Section 380.05(18), Florida Statutes (1997),¹ created a vested right for the Landowners to complete development of single-family homes on their land. Monroe County, the Department of Community Affairs, and the Village of Islamorada (hereinafter collectively referred to as “Monroe County”) appeal the trial court’s order granting summary judgment. The Landowners cross-appeal the same order. We reverse and remand with instructions.

The Landowners own parcels of undeveloped land that were platted and recorded in Monroe County between April 24, 1924 and June 27, 1971. During this time, local subdivision plat law governed the development of land. In 1979, the Florida Legislature enacted Section 380.0552 and designated Monroe County as an area of

critical state concern.² Since then, the local government has approved new land development regulations for these areas.³ The Landowners assert that these subsequent land regulations have limited or modified their rights to develop their parcels of land.

In 1997, the Landowners filed a complaint seeking declaratory relief to determine their rights pursuant to Chapter 380, Florida Statutes, and to determine the effect, if any, of the 1986 Land Development Regulations, the Rate of Growth Ordinance (“ROGO”) and the 2010 Comprehensive Plan. Monroe County and the Landowners filed cross motions for summary judgment. The trial court granted summary judgment in favor of the Landowners.

The trial court found that pursuant to Section 380.05(18), Florida Statutes (1997), the Landowners have vested rights to build single family homes, by virtue of recording their parcels of land. The trial court also determined that the Landowners did not have to show a reliance or change of position and that their rights were vested solely on the recordation of their land. The trial court held that these vested rights are superior to and preempt any of the State of Florida and local gov-

* Judge Levy did not participate in oral argument.

1. Chapter 380 also known as “The Florida Environmental Land and Water Management Act of 1972” governs natural resources, conservation, reclamation and use of land and water.

2. The legislative intent behind designating the Florida Keys an area of critical state concern is to establish a land use management system that protects the natural environment; conserves and promotes the community character; promotes orderly and balanced growth in accordance with the capacity of available and planned facilities and services; provides affordable housing in close proximity to places

of employment; promotes and supports a diverse and sound economic base; protects the constitutional rights of property owners to own, use and dispose of their real property and; promotes coordination and efficiency among governmental agencies in the Florida Keys. *See* § 380.0552, Fla. Stat. (1997).

3. The first land development regulations were adopted in 1986 pursuant to Sections 380.05(6) and (8), Florida Statutes (1985). In 1992, the Rate of Growth Ordinance (“ROGO”) was adopted as part of a state emergency rule. Finally, in January of 1996, Monroe County adopted its 2010 comprehensive plan.

ernments' comprehensive plans and land use regulations. Finally, the trial court determined that the Landowners' rights to develop their land became vested on July 1, 1972, the enactment date of Section 380.05(18). For the following reasons, we reverse the order granting summary judgment and remand for further proceedings.

[1] The trial court interpreted Section 380.05(18) to find that the Landowners have vested rights to develop their property pursuant to the recordation of their parcels of land. Section 380.05(18) provides that:

Neither the designation of an area of critical state concern nor the adoption of any regulations for such an area shall in any way limit or modify the rights of any person to complete any development that has been authorized by registration of a subdivision pursuant to chapter 498 or former chapter 478, by recordation pursuant to local subdivision plat law, or by a building permit or other authorization to commence development on which there has been a reliance and a change of position, and which registration or recordation was accomplished, or which permit or authorization was issued, prior to approval under subsection (6), or the adoption under subsection (8), of land development regulations for the area of critical state concern. If a developer has by his or her actions in reliance on prior regulations obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to the developer's interests, nothing in this chapter authorizes any gov-

ernmental agency to abridge those rights.

[2, 3] The plain language of the statute clearly illustrates that if a landowner recorded his property pursuant to local subdivision plat law, his rights to complete any development cannot be limited or modified by the designation of the land as an area of critical state concern nor by the adoption of subsequent land regulations. Although, the trial court's order is clearly in accord with this provision in the statute, the court determined that the Landowners did not have to show a reliance or change of position and that their rights were vested solely on the recordation of their land. We disagree. Recordation alone is not sufficient to establish vested rights.

[4] Florida common law provides that vested rights may be established if a property owner or developer has (1) in good faith reliance, (2) upon some act or omission of government, (3) made such a substantial change in position or has incurred such extensive obligations and expenses (4) that it would make it highly inequitable to interfere with the acquired right. *See Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So.2d 10 (Fla.1976); *Sakolsky v. City of Coral Gables*, 151 So.2d 433 (Fla.1963); *Equity Res., Inc. v. County of Leon*, 643 So.2d 1112 (Fla. 1st DCA 1994); *Harbor Course Club, Inc., v. Dep't of Cmty. Affairs*, 510 So.2d 915 (Fla. 3d DCA 1987); *Dade County v. United Res., Inc.*, 374 So.2d 1046 (Fla. 3d DCA 1979). The only exception to this common law rule under Chapter 380 is specifically provided for in the statute. *See* § 380.06(20), Fla. Stat. (1997).⁴ The Landowners do not fall under this exception.

4. Section 380.06(20)(a), Florida Statutes (1997), provides that:

For the purposes of determining the vesting of rights under this subsection, approval pursuant to local subdivision plat law, ordi-

nances, or regulations of a subdivision plat by formal vote of a county or municipal governmental body having jurisdiction after August 1, 1967, and prior to July 1, 1973, is sufficient to vest all property rights for the

[5, 6] The theory behind vested rights is that “a citizen is entitled to rely on the assurances and commitments of a zoning authority and if he does, the zoning authority is bound by its representations.” *Town of Largo v. Imperial Homes Corp.*, 309 So.2d 571, 573 (Fla. 2d DCA 1975). However, the mere purchase of land without more does not create a right to rely on existing zoning. *See City of Miami Beach v. 8701 Collins Ave., Inc.*, 77 So.2d 428 (Fla.1954). It would be unconscionable to allow the Landowners to ignore evolving and existing land use regulations under circumstances when they have not taken any steps in furtherance of developing their land.

[7] Pursuant to Section 380.05(18), the Landowners rights to develop their land are not limited or modified by the designation of an area of critical state concern nor the adoption of regulations if they recorded their property prior to the approval of land development regulations for the area. Monroe County was designated an area of critical state concern in 1979, but the first land use regulations were not enacted until 1986. If the Landowners did not start development prior to the enactment of these land regulations, they acted at their own peril in relying on the absence of zoning ordinances. *See Pasco County v. Tampa Dev. Corp.*, 364 So.2d 850 (Fla. 2d DCA 1978) (existence of present right to use a particular use of land derived from less restrictive zoning or no zoning

purposes of this subsection; and no action in reliance on, or change of position concerning, such local governmental approval is required for this vesting to take place. Anyone claiming vested rights under this paragraph must so notify the department in writing by January 1, 1986. Such notification shall include information adequate to document the rights established by this subsection. When such notification requirements are met, in order for the vested rights authorized pursuant to this paragraph to

ordinance at all is not a sufficient act of government upon which to base equitable estoppel to preclude enforcement of subsequently adopted zoning restrictions); *see also* § 380.05(16), Fla. Stat. (1997). A subjective expectation that land can be developed is no more than an expectancy and does not translate into a vested right to develop the property. *See Namon v. Dept of Env'tl. Regulation*, 558 So.2d 504 (Fla. 3d DCA 1990).

Furthermore, the purpose of Chapter 380 is to protect the natural resources and environment of the state, preserve water resources, and facilitate orderly and well planned development. *See Compass Lake Hills Dev. Corp. v. Dept of Cmty. Affairs*, 379 So.2d 376 (Fla. 1st DCA 1980); § 380.0552, Fla. Stat. (1997). The reason Monroe County was designated an area of critical state concern was to provide for an increased state role in decisions which have a statewide impact. *See* § 380.021, Fla. Stat. (1997). Allowing Landowners who have not taken any steps to develop their property to obtain vested rights would be contrary to legislative intent. The result would clearly subvert significant legislation and regulations designed and enacted for the purpose of preserving our most precious lands.

Therefore, we conclude that the Landowners must show they relied on Section 380.05(18), and changed their position in furtherance of developing their land, in

remain valid after June 30, 1990, development of the vested plan must be commenced prior to that date upon the property that the state land planning agency has determined to have acquired vested rights following the notification or in a binding letter of interpretation. When the notification requirements have not been met, the vested rights authorized by this paragraph shall expire June 30, 1986, unless development commenced prior to that date.

order to have vested rights to develop their property. See *Equity Res. Inc. v. County of Leon*, 643 So.2d 1112 (Fla. 1st DCA 1994)(vested rights were established based on acts of reliance where property was purchased under contract contingent on rezoning). We are unable to determine if the Landowners' rights are vested because the trial court's determination rested solely on the Landowner's recordation of property and did not address the reliance issue. Therefore, we remand this matter back to the trial court to determine, based on the foregoing analysis, whether these Landowners have vested rights.

We also conclude that the subsequently enacted land regulations do not apply to the Landowners who are determined to have vested rights. See *Town of Largo v. Imperial Homes Corp.*, 309 So.2d at 573 (town enjoined from enforcing new zoning requirements where it was determined that developer had vested rights). Those Landowners who do not have vested rights, however, will be subject to the subsequently enacted land regulations. See *Harbor Course Club*, 510 So.2d at 918 (development of property as a golf driving range violated Section 380.05 as property owners' rights had not vested prior to designation of the land as an area of critical state concern).

To the extent that these regulations render any of the Landowners' property practically useless, the Landowners are entitled to compensation. Section 380.08, Florida Statutes (1997), provides that the government cannot adopt a rule or regulation that constitutes a taking without providing full compensation.⁵ See *Joint Ventures v. Dep't of Transp.*, 563 So.2d 622 (Fla.1990)(state must pay when it regulates private property in such a manner

that the regulation deprives the owner of the economically viable use of that property).

[8] Based on the foregoing analysis, it is unnecessary to address the other points raised on appeal. With regard to the cross-appeal, the Landowners argue that the trial court incorrectly calculated the cut-off date for determining their vested rights under Section 380.05(18). The trial court concluded that July 1, 1972 was the date that the parcels of land became vested because on that date Section 380.05(18) was enacted. The Landowners allege that September 15, 1986 is the correct cut-off date for determining their vested rights, and Monroe County concedes that the Landowners are correct on this point. We agree.

Section 380.05(18) provides vested rights for Landowners who recorded their property prior to the approval of land development regulations for the area of critical state concern. The first land development regulations for Monroe County were enacted on September 15, 1986. Therefore, we reverse with instructions for the trial court to enter September 15, 1986, as the appropriate date for obtaining vested rights.

In conclusion, we reverse the summary judgment finding that a plain reading of Section 380.05(18) gives the Landowners a vested right to develop their property if the Landowners have demonstrated a good faith reliance and change of position. We also reverse on the cross-appeal with instructions for the trial court to enter September 15, 1986, as the appropriate date that the Landowners' rights vested. We remand for further proceedings consistent with the above analysis.

5. Section 380.085, Florida Statutes (1997), enables a person substantially affected by the denial of a permit to build, to initiate an

action in circuit court on the grounds that an area of critical state concern development order effects a taking without compensation.

Reversed and remanded with instructions.



Richard A. STORM, Appellant,

v.

**The TOWN OF PONCE
INLET, Appellee.**

No. 5D02-3555.

District Court of Appeal of Florida,
Fifth District.

Jan. 2, 2004.

Rehearing Denied March 2, 2004.

Background: Property owner brought suit against town for negligent retention of chief building official, whose alleged misinformation to property owner caused damages. The Circuit Court, Volusia County, J. David Walsh, J., dismissed complaint on sovereign immunity grounds. Property owner appealed.

Holdings: The District Court of Appeal, Sharp, W., J., held that:

- (1) property owner sufficiently stated claim against town for negligent retention, but
- (2) town was protected by sovereign immunity.

Affirmed.

1. Appeal and Error ⚡893(1)

Standard for appellate review of a trial court's order dismissing a complaint for failure to state a cause of action is de novo.

2. Appeal and Error ⚡919

Pleader is entitled to have the reviewing court accept as true all facts pleaded,

and any inferences which may reasonably arise therefrom, when reviewing a dismissal for failure to state a claim.

3. Appeal and Error ⚡863

Only if, as a matter of law, the reviewing court determines no cause of action has been pleaded should it affirm a dismissal for failure to state a claim.

4. Municipal Corporations ⚡746

Property owner sufficiently stated claim against town for negligent retention of chief building official by alleging that the inspector knowingly gave false information to property owner, that he systematically maladministered his department and caused injury to property owner and others who had to deal with him, and that the town well knew of the damage the inspector was causing but allowed it to continue.

5. Municipal Corporations ⚡746

Town's retention of chief building inspector was a discretionary and fundamental decision, and thus town was protected by sovereign immunity from property owner's negligent retention claim.

6. Constitutional Law ⚡72

Municipal Corporations ⚡745.5

States ⚡112.1(2)

Decision of the governmental executive (mayor, town council, governor) to hire or fire a top head of an agency is necessarily fundamental, and involves the exercise of governmental discretion at the highest level, and thus such decisions are protected by sovereign immunity; this is precisely the area into which, under the separation of powers doctrine, courts must not intervene.

Robert L. McLeod II of McLeod, Canan, LLC, St. Augustine, for Appellant.