

Pinecrest Lakes

The Pinecrest Lakes Case: The Demolition Heard 'Round the State
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In early September, 2002, demolition crews brought an end to 7 years of litigation, reducing to rubble five apartment buildings that had been built in violation of a local comprehensive plan. With that, the **Pinecrest Lakes v. Shidel** case - decided by a Florida appeals court in 2001 and affirmed by the Florida Supreme Court in 2002 - stands as a major precedent and victory for citizen enforcement of comprehensive plans. The **Pinecrest** case is one of the most important land use cases of the past decade in Florida. It has received statewide and even national attention for the strength of the remedy it provides to Florida citizens who are defending their communities against inappropriate development. The ELULC was privileged to represent Karen Shidel in that case, and we think that all homeowners and citizens like her should be aware of what the case means.

Brief Summary of the Case

On May 31, 2002, the Florida Supreme Court upheld an appellate court order requiring a developer to tear down a multimillion dollar development that was built in violation of Martin County's Comprehensive Plan. The developer had built the apartments while Mrs. Shidel's legal challenge was pending in the courts, and thus "assumed the risk" that the buildings might ultimately be torn down. The Fourth District Court of Appeals, which wrote the opinion which the Supreme Court chose not to review, rejected the developer's argument that the injunction should have been denied because the monetary loss that it would suffer from demolition (\$3.3 million) outweighed the loss in property value that the Plaintiff had suffered (\$26,000). The court ruled that the integrity of a citizen's right to enforce a comprehensive plan prevails over the financial loss to a developer who acted in "bad faith" in an attempt to preclude the Court's ability to enforce the law.

The Fourth District Court of Appeals Opinion

In a unanimous decision issued on September 26, 2001, the Appeals Court affirmed the Trial Judge's ruling that removal of the buildings was proper, despite their cost, where the developer:

"made a business decision to go forward with construction... with the understanding that ... a court could well require the buildings to be removed... [and] consciously and knowingly accepted that risk."

In short, the Fourth District Court of Appeals rules that a developer could not preclude a court's ability to enforce the law by constructing the disputed buildings while they were subject to a legal challenge.

Approximately twenty years ago, the developer purchased a 500 acre parcel of land, which was ultimately developed into ten phases, nine of which developed as single family homes. The tenth and final phase was also approved for 29 single family homes, a density of 1.37 units per acre. However, in 1995, the developer sought an amendment to the plan of development to allow 136 units in 19 two-story apartment buildings, with an overall density of 6.5 units per acre. Numerous neighbors appeared before the County to object that the request violated the "density transition zone" requirement, but, the County granted the approval over these objections.

Karen Shidel, who lives on the adjacent street, timely filed suit, alleging that the site plan amendment was inconsistent with the Comprehensive Plan. A Trial Judge erroneously determined that her decision should be based solely on the record created by the County, and guided by a lax standard of judicial review, upheld the County's action. At that point, the developer began construction, even though the ruling was appealed. At the beginning of construction, written notice was sent informing the developer of the Plaintiff's intention, should she prevail, to seek demolition and removal of any construction undertaken while the case was pending. Although the development consisted of 19 apartments, the developer chose to first construct the five buildings within the disputed "density transition zone" that was required to protect the immediate neighbors, and which was at the heart of the legal challenge. The developer continued to build even after the initial court order was reversed and the case sent back for a trial, but transferred title to a limited liability company. When the Trial Court then ruled in favor of the Plaintiff, the developer continued to build. The Trial Court ordered the removal of the apartments, which it found to clearly violate the comprehensive plan's mandate for "comparable density" and "compatible dwelling unit type" for new development adjacent to large lot single family homes.

On appeal, the Fourth District Court of Appeals found that Trial Judge's ruling was consistent within the plain meaning of the Comprehensive Plan, and affirmed the finding of inconsistency. It rejected the argument that the Trial Court should have awarded monetary damages or ordered screening, such as trees and shrubbery, instead of demolition. Neither of these approaches, ruled the Court, would have corrected the violation or respected the integrity and purpose of the comprehensive planning requirements.

The Court ruled that it would not engage in a balancing of the financial inequities as suggested by the developer because it would lead to "substantial non-compliance with comprehensive plans". The Court ruled that "to allow a developer to shroud an inconsistency with trees and shrubs, the more certain it is that courts will not enjoin an inconsistency and require its removal if already built." In this case, the Court found that the alleged inequity would have been avoided had the developer waited for the exhaustion of legal remedies before undertaking construction. Therefore, it found no inequity in ordering the apartments to be removed. The Court found that the law requires that all development comply with comprehensive plans, and does

not allow a developer to escape this requirement by making the cost of enforcing the law high.

Why The Development Violated the County Comprehensive Plan

The Trial Court found that there was no doubt that the project violated Martin County's land use rules. The apartments are multi-family, multi-story, and have balconies. The Court identified major differences in the size and type of the buildings and the population density they would create. The Court found the overall apartment density of 6.6 units per acre not comparable to the one unit per acre density of the adjacent single family homes. The Court found that it "impossible" to conclude that the homes and the apartment are "compatible dwelling unit types" or built at "comparable" densities. The only residential structure that could be less compatible with the adjacent homes, he wrote, "would be a multi-story condominium." Based on these facts, the Judge found that the site plan was inconsistent with the Comprehensive Plan. In other words, there was no way that two-story, eight unit apartment buildings at a density of 6.6 units an acre are compatible structures, or comparable densities to single story homes on acre lots. It was not even a close call that this violated the Comprehensive Plan.

Why an Injunction To Remove Expensive Buildings Was Found to Be Appropriate

The Trial Judge found that fairness required that Mrs. Shidel be granted the remedy of compliance with the Comprehensive Plan. He found that the developer had acted in bad faith by continuing to construct buildings during the pendency of the prior appeal during the trial, even after losing on the consistency issue. The Fourth District upheld the ruling that removal of the buildings was required to do justice on the particular facts on this case. But, it used even stronger language in saying that the integrity and importance of the Growth Management Act require that an injunction should always be granted to remove the development or structures that are inconsistent with a Comprehensive Plan, and thus in violation of state law. Thus, the Court found that the existence of an affected person is all that is necessary for the issuance of an injunction against a development that is inconsistent with a Comprehensive Plan. Chapter 163 requires a court to issue an injunction to remedy a violation of a comprehensive plan. Allowing a Court the discretion to decide to issue an injunction to remedy a plan violation, or not, would be inconsistent with the mandatory nature of the Act:

"The statutory rule is that if you build it, and in court it later proves to be inconsistent, it will have to come down."

It is very important to note that, although the Appeals Court laid down a clear legal principle that an injunction should always be issued under Ch. 163, it specifically concluded that even resort to the traditional "discretionary" approach of balancing the equities where an injunction is requested strongly supported removal of these apartments. Given the developer's business decision to assume the risk with full knowledge that the final court decision could order removal of any non-conforming

buildings, it was "difficult to perceive from the record any great inequity in requiring demolition." Moreover, said the Court, the public interest in preventing the "flouting" of the comprehensive planning requirements would outweigh the monetary loss to a developer.

Rejecting the developer's plea that the multi-million dollar cost of the buildings should preclude their removal, the Fourth District ruled that the developer "created his so-called hardship, and does not have a right to protection from his own bad choices." To allow the buildings to stand, ruled the Court, "would allow developers ... to build in defiance of the limits and then escape compliance by making the cost of correction too high." The Court said that:

"We claim to be a society of laws, not individual eccentricities in attempting to evade the rule of law. If the rule of law requires land uses to meet specific standards, then allowing those who develop land to escape its requirements by spending on a project out of compliance would make the standards of growth management of little real consequence."

For these reasons, said the Court, it is not proper to balance the equities in terms of the relative financial loss to be felt by the developer and the affected person. Such balancing would lead to substantial non-compliance, as the cost of the newly allowed construction will usually be greater than any property value loss experienced by individual neighbors resulting from the inconsistency. The developer's argument would "allow those with financial resources to buy their way out of compliance with comprehensive plans."

Comprehensive Plans Protect Intangible Interests, Like Environmental Conditions and Quality of Life

The case emphasizes that plan policies that are designed to protect neighborhood compatibility, quality of life, community stability and other "intangible" values are just as important and enforceable as things like "units per acre." The developer and the County strenuously argued in this case that, as long as the project did not violate the "maximum densities" established in the plan, that it could not be said to violate the plan. Indeed, the then - County Attorney told the Commissioners when they approved the project that the developer was entitled to the maximum densities established by the plan and that the County could not apply the density transition requirement so as to result in a density less than what the developer desired. It is clear now, indeed it was clear since the 1993 **Snyder** decision, that this is not the law, and a development must comply with all applicable plan provisions. All plans contain many more goals, objectives and policies beyond those fixing maximum densities.

Along those same lines, in terms of determining whether and how a third person is "adversely affected" by a development order, and how they should be made whole when remedying a violation, the Court made it clear that:

"Ms. Shidel has lost the intangible aspects of her property ownership, i.e., privacy, solitude, peaceful enjoyment of her property, the drastic change in the character of her neighborhood, the change in density and intensity and the overall diminished enjoyment of her land. Those damages cannot be quantified nor remedied by monetary damages."

This is why an injunction to remove the inconsistent development was required, and not just money damages or the planting of trees.

II. E. The Question of Deferring to a Local Government's Interpretation of its Own Plan

This part of the opinion must be read carefully to understand the Court's actual rulings. The developer had argued that the trial court erred in failing to grant deference to the County's interpretation that the multi-story, multi-family apartments were consistent with its Comprehensive Plan. However, the cases cited by the developer for the "deference" argument were out of date cases which set forth a very lax standard of review which the Florida Supreme Court had rejected in 1993 as too deferential. The Court in Pinecrest viewed the developer's argument as suggesting that whatever the local government approved should be viewed as its interpretation that such project was what the plan meant to be approved. What the Court said is that courts must not "bow to a county's interpretation" of its own plan:

"[t]he statute does not say that local governments shall have some discretion as to whether a proposed development should be consistent with the Comprehensive plan. Consistency with a comprehensive plan is therefore not a discretionary matter."

In response to the Court's opinion, Martin County has already raised the issue publicly about seeking a legislative change that would reverse what it perceives as the Court's unwillingness to give due deference to the County's interpretation of the Plan. This is misguided and reads something into the opinion that is not there.

First, it is critical to know that the Court found the Trial Court's ruling that the apartments violated the Plan to be **consistent with the plain meaning of the plan**. The case law has always been clear that in the case of "plain meaning" there is no deference to be given.

Second, the Trial Court had found the development inconsistent with the Plan even after giving deference to the County's interpretation. Even giving the County the benefit of the doubt, he found that the notion that these apartments, given their appearance and density, were what was envisioned by the Plan could not be reconciled with the specific terms and overall intent of the Plan. Deference to an interpretation has never meant "anything goes". In this case, the development was properly found to violate the Plan under either the standard used by the Trial Judge or the slightly more rigorous standard used by the appeals court.

What The Case Means for Growth Management

The ruling is a major victory for citizen enforcement of growth management laws. It means that a developer cannot preclude the ability of a court to enforce the law by constructing disputed buildings before the court rules. It also makes clear that all of the provisions of a comprehensive plan are to be enforced. The Court's ruling reflects the clear intent of the law, and should not be a surprise to anyone. The surprising thing is that there were some who thought that comprehensive plans and citizen enforcement rights did not need to be taken seriously. This was a very unique case, with several equities and factors, which both courts agreed required removal of the buildings in the interests of justice and the rule of law. Developers who respect the comprehensive planning process and the third party rights set forth in the law have nothing to worry about, but those who refuse to believe that the law means what it says, should read the opinion.