

IN THE CIRCUIT COURT OF THE  
FIFTH JUDICIAL CIRCUIT IN AND  
FOR SUMTER COUNTY, FLORIDA

JESSICA LAUBE and ROBERT HUNTER  
Petitioners,

CASE NO.: 2019-CA-000500

v.

VILLAGE COMMUNITY DEVELOPMENT  
DISTRICT 10, and THE SUMTER COUNTY BOARD  
OF COUNTY COMMISSIONERS,  
Respondents.

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**MOTION IN OPPOSITION TO DEFENDANT THE SUMTER COUNTY BOARD OF  
COUNTY COMMISSIONERS' MOTION TO DISMISS PLAINTIFFS' SECOND  
AMENDED PETITION FOR INJUNCTIVE RELIEF, DAMAGES, AND WRIT OF  
MANDAMUS**

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COMES NOW the Petitioners, JESSICA LAUBE and ROBERT HUNTER (hereinafter referred to as "Petitioners"), by and through their undersigned counsel, move this honorable Court to deny Defendant's, Sumter County Board of County Commissioners (the "County"), Motion to Dismiss Second Amended Petition for Injunctive Relief, Damages, and Writ of Mandamus, as to the County only, and in support thereof hereby state:

1. On or about July 12, 2020, the Petitioners filed their Second Amended Petition for Injunctive Relief, Damages, and Writ of Mandamus, dropping from the action Village Center Community Development District and Sumter Landing Community Development District and proceeding solely against Defendants VILLAGE COMMUNITY DEVELOPMENT DISTRICT 10 ("VCDD10") and THE SUMTER COUNTY BOARD OF COUNTY COMMISSIONERS ("the County").

2. On or about July 22, 2020, the County filed its Motion to Dismiss Second Amended Petition for Injunctive Relief, Damages, and Writ of Mandamus (the “County’s Motion to Dismiss”) as to the County only, alleging that the Second Amended Petition (a) fails to state a cause of action; (b) fails to include an indispensable party; and (c) attempts to gain a Writ of Mandamus contrary to law and misusing the purpose of the extraordinary writ.

3. On or about July 31, 2020, the Petitioners filed an Agreed Motion to Enlarge Time to Respond to Defendant County’s Motion to Dismiss requesting an additional ten (10) days for Petitioners to file their response, and the Court entered its Order granting the motion on the same date, allowing Petitioners until August 11, 2020 to file their response.

### **Memorandum of Law**

#### ***Standard***

“The purpose of a motion to dismiss is to ascertain if the plaintiff has alleged a good cause of action.” *Connolly v. Sebeco, Inc.*, 89 So.2d 482 (Fla. 1956). When ruling on a defendant’s motion to dismiss, a trial court is limited to the four corners of the complaint, and it must accept all allegations in the complaint as true. See *Lutz Lake Fern Rd. Neighborhood Groups, Inc. v. Hillsboro County*, 779 So.2d 380, 383 (Fla. 2<sup>nd</sup> DCA 2000); See also, *National Ventures, Inc. v. Water Glades 300 Condominium Assn*, 847 So.2d 1070, 1073 (Fla. 4<sup>th</sup> DCA 2003). Moreover, the Court must draw all inferences in favor of the pleader. See *Fox v. Prof’l Wrecker Operations of Fla.*, 801 So.2d 174 (Fla. 5<sup>th</sup> DCA 2001).

The County has made several factual allegations or disputed factual allegations made by Petitioners, including disputing the zoning category of Tract A, stating the Future Land Use of tract A is “mixed use,” and whether Tract A discharges into a wetland area. Such facts are not to

be resolved pursuant to a motion to dismiss. *See Leon County v. Stephen S. Dobson, II, P.A.*, 917 So.2d 278, 280 (Fla. 1<sup>st</sup> DCA 2005) (When there are factual issues in dispute, an issue should not be resolved with a motion to dismiss.).

### ***Cause of Action***

The County complains that Petitioners have attached seventy-nine (79) pages of exhibits to the Second Amended Petition, as if it were some unheard-of horrible burden to have to look at specifically referenced sections of those pages. Petitions and complaints for actions, such as homeowner association disputes, routinely have hundreds of pages, so seventy-nine (79) is hardly worthy of comment. In any event, the Second Amended Petition makes specific reference to the portions of the exhibits that are cited.

Petitioners have specifically alleged that Tract A is located within a Conservation Zoning District, pursuant to Sumter County Code of Ordinances §13-424(a)(1) (2020). The cited ordinance provides as follows.

#### *13-424 – Non-residential Zoning Districts*

##### *(a) Conservation Zoning District (CV).*

*(1) Purpose and intent. The purpose and intent of the CV (Conservation) zoning district is to designate and preserve lands which are owned or maintained by federal, state, regional and local agencies for purposes of environmental protection, conservation **and stormwater management. Public or private use or development in this district is prohibited** except when consistent with the controlling agency's policies and regulations and the Sumter County Comprehensive Plan. Principal uses shall be limited to those approved by the controlling agency. [Emphasis added].*

The County admits that Tract A is in a “stormwater management area”. See County’s Motion to Dismiss, Page 6, ¶1. The exhibits to the Second Amended Petition make it clear that Tract A is reserved for drainage and stormwater management. It is undisputed that VCDD10 is a governmental agency and the owner of Tract A. By the County’s admission and the express

language of its own ordinances, therefore, Tract A is located within a Conservation Zoning District. It is Petitioners' position that any reference to a "residential planned urban development" (RPUD) zoning district on the Plat is irrelevant to the legal nature of the specific tract of land expressly defined by the Sumter County Code of Ordinances. It is the Petitioners' position that the RPUD designation on the Plat does not supersede the laws defining the stormwater management area as a Conservation Zoning District.

Further, §13-424(a)(1), expressly states that "Public or private use or development in this district is prohibited except when consistent with the controlling agency's policies and regulations and the Sumter County Comprehensive Plan. Principal uses shall be limited to those approved by the controlling agency." It is Petitioners' position that the Sumter County Comprehensive Plan does not permit public use of the stormwater management area. It is also the Petitioner's position that the principle uses approved by SWFD, the controlling agency, do not include public use of the stormwater management area, Tract A. Petitioners cite in their Second Amended Petition the SWFMD approval of Tract A as a "Drainage Easement to Top of Bank". ¶15. Petitioners also specifically cite Part B, §2.24 of SWFMD's Environmental Resource Permit Manual establishing that "Water Management Areas" shall not be open for public access. Consequently, because SWFMD has never permitted public use of Tract A, the Sumter County Code of Ordinances prohibits public use of Tract A.

It is undisputed that VCDD10 has permitted public use of Tract A, as alleged by the Petitioners to be in violation of §13-424(a)(1). *See* Second Amended Petition, ¶19. The petitioners have specifically alleged that the County has the obligation to enforce the Sumter County Code of Ordinances, under Fla. Stat. §125.01(g). *See* Second Amended Petition ¶58.

### ***Writ of Mandamus***

When a trial court receives a petition for a writ of mandamus, its initial task is assessing the petition to determine whether it is facially sufficient. *Holcomb. v. Dep't of Corr.*, 609 So.2d 751 (Fla. 1st DCA 1992). If it is not facially sufficient, the court may dismiss the petition. *Id.* If the petition states a legally sufficient claim, however, the court must issue an “alternative writ in mandamus” ordering the respondent to show cause why the writ should not be granted. Fla. R. Civ. P. 1.630(d). While it is well-settled under Florida law that a mandamus cannot be used to mandate the doing of a discretionary act, it is the Petitioners’ position that enforcement of §13-424(a)(1) is not discretionary. Pursuant to Sumter County Code of Ordinances, §13-303(a)(2), “[t]he director **shall** administer and enforce this chapter and other regulations and codes pertaining to the subject matter hereof.” [Emphasis added]. Subsection (f) of that ordinance provides that the director’s duties include, “[o]ther actions pertaining to the administration and enforcement of this chapter and other related codes.”

The only claim Petitioners make against the County is Count III – Action for Writ of Mandamus. The legal theory for the County’s liability under this count, as established by the facts alleged in the Petitioners’ Second Amended Petition, is:

- a) VCDD10 has violated §13-424(a)(1) of the Sumter County Code of Ordinances.
- b) The County is required to enforce the Sumter County Code of Ordinances, particularly Ch. 13 and related codes.
- c) The County refuses to enforce the Sumter County Code of Ordinances against VCDD10 for its violation of §13-424(a)(1).
- d) A Writ of Mandamus is the appropriate action when a governmental agency refuses to act according to its legal duty.

The County either misunderstands this legal theory or seeks to mislead the Court by asserting that SWFMD is a necessary party to the litigation. Petitioners are not challenging any regulation or designation by SWFMD. Petitioners are not seeking County enforcement of any SWFMD regulation or designation. The County has included in its ordinances that a violation of those SWFMD regulations or designations is a violation of the Sumter County Code of Ordinances. Consequently, VCDD10's violation of SWFMD regulations or designations is a violation of the Sumter County Code of Ordinances. The County has the authority and shall enforce its own ordinances. VCDD10 has violated §13-424(a)(1) by allowing the public use of Tract A. Petitioners sue the County and seek a Writ of Mandamus because the County refuses to enforce its ordinances against its fellow governmental agency, VCDD10.

### **Conclusion**

For the purposes of the County's motion to dismiss, the Court is required to accept all allegations within the Second Amended Petition as true and to make all references in favor of the Petitioners. The only portion of the Second Amended Petition that concerns the County is Count III – Writ of Mandamus. The Court may only dismiss Count III if it is facially insufficient. The Petitioners have clearly set forth facts alleging the violation of the Sumter County Code of Ordinances, as well as the obligation and refusal of the County to enforce said ordinances. A motion to dismiss is not the appropriate procedure to settle questions of law or fact. While the arguments the County puts forth may or may not be appropriate and relevant to a summary judgment hearing, they are neither appropriate nor relevant to a motion to dismiss. Consequently, the Court must deny the County's Motion to Dismiss Second Amended Petition for Injunctive Relief, Damages, and Writ of Mandamus.

WHEREFORE, the Petitioners, JESSICA LAUBE and ROBERT HUNTER, pray this honorable Court enter its Order, denying Defendant's, Sumter County Board of County Commissioners, Motion to Dismiss Second Amended Petition for Injunctive Relief, Damages, and Writ of Mandamus, or in the alternative grant Petitioner leave to amend; granting Petitioners' reasonable attorneys' fees, paralegal's fees, and taxable costs; and any further relief this honorable Court deems just and proper.

Respectfully submitted this 11<sup>th</sup> day of August, 2020 by:

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via the Court's e-Portal to: Jennifer C. Rey, Esq., countyattorney.sumtercounty@hoganlawfirm.com, jrey@hoganlawfirm.com, pleadings@hoganlawfirm.com; Megan A. Rosenberg, Esq., mrsenberg@hoganlawfirm.com; Stephanie J. Brionez, Esq., stephb@bblawfl.com, tammiew@bblawfl.com, kahlees@bblawfl.com, wendyc@bblawfl.com; Mark A. Brionez, Esq., markb@bblawfl.com; and Jerry Ladelle Sessions, II, Esq., atty.sessions@gmail.com, on the 11<sup>th</sup> day of August, 2020.

/s/ S. David Cooper  
S. David Cooper, Esq.