

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

BEVERLY STEELE and
NATHANIEL WILLIAMS, JR.,

Petitioners,

v.

Case No. 23-0156GM

SUMTER COUNTY, FLORIDA,

Respondent,

and

8G FARMS, LLC,

Intervenor.

_____ /

JOINT MOTION TO DISMISS PETITION FOR LACK OF STANDING

Respondent, Sumter County, Florida (“Respondent” or the “County”), and Intervenor, 8G Farms, LLC (“Intervenor”), by and through their undersigned counsel, hereby file this Joint Motion to Dismiss Petition for Lack of Standing, and in support thereof, state as follows:

Introduction

1. On January 13, 2023, Petitioners, Beverly Steele (“Steele”) and Nathaniel Williams (“Williams”) filed their Petition for Administrative Hearing (“Petition) seeking to challenge the adoption of an amendment to the County’s future land use map, which proposes to amend the land use on Intervenor’s property from agricultural to industrial.

2. On May 27, 2023, Williams filed a Notice of Voluntary Dismissal as a Petitioner, leaving Steele as the sole petitioner in this case.

3. Steele has since admitted in deposition that she does not own any property in Sumter County. Based on the following reasons, Steele does not have standing to proceed with the Petition.

ARGUMENT

4. During her June 1, 2023 deposition, Steele was asked about the allegation in Paragraph 7 of the Petition which states, in part, “*Petitioners own real property near and proximate to the area subject to the Plan Amendment ...*” (emphasis added). In response, Steele admitted that she does not own any property in Sumter County, and that in light of the dismissal of Williams, that statement in Paragraph 7 of the Petition is untrue:

Q. *I believe you testified, correct, that you don’t own any property in Sumter County, correct?*

A. **Right.** But remember this petition was – there were two petitioners. Nathaniel Williams does.

Q. Right. Mr. Williams is no longer a party to this case, correct?

A. Exactly, but that just happened. So this petition was before that.¹

Q. Understood. I’m just trying to better understand that this statement here that Petitioners *own* real property near and proximate to the area subject to the plan amendment, that is currently not a true statement, correct?

A. **It just became not true**, and if we had to revise it, we would just say Petitioner resides near and proximate to the area subject to the plan amendment.

¹ There are two sentences in Paragraph 7 of the Petition where it is repeatedly and incorrectly alleged that “Petitioners” (plural) “own property” in Sumter County. Steele testified that she does not own any property in Sumter County. It appears Steele was piggy-backing off Williams’ ownership of property to make the inaccurate allegation that *both* Petitioners own property in the County. With the dismissal of Williams, it is now clear that the remaining petitioner in this case does not own any property in Sumter County.

(Steele Depo, p. 34, l. 24 – p. 35, l. 14). Relevant excerpts from Steele’s deposition are attached as **Exhibit 1**.

5. While Steele contends she *resides* on property “near and proximate” to the subject property owned by the Intervenor, Steele admitted she does not reside on (or own) any property that is “abutting” or adjacent to the Intervenor’s property:

Q. So the property on which you reside for which you gave us the address does not share a boundary with the 8G property?

A. No.

(Steele Depo, p. 120, lls. 11-13).

6. Because Steele admits she does not own any property in Sumter County, she lacks standing as the sole remaining Petitioner to pursue a challenge to “a proposed change to a future land use map.” Section 163.3184(1)(a), Fla. Stat. As such, the Petition should be dismissed.

Memorandum of Law

7. Section 163.3184(5)(a), Fla. Stat., provides that any “affected person” as defined in paragraph (1)(a) may file a petition with the Division of Administrative Hearings. Section 163.3184(1)(a), Fla. Stat., sets forth who qualifies as an “affected person” for purposes of establishing standing. Notably, the statute draws a distinction between proceedings involving a “*plan that is the subject of a review*” and proceedings involving “*a proposed change to a future land use map.*”

8. For those proceedings involving a proposed change to a future land use map (FLUM), which is what Steele is challenging here, an “affected person” is defined to include “*owners of real property abutting real property that is the subject of a proposed change to a future land use map.*” Section 163.3184(1)(a), Fla. Stat. (emphasis added). It is undisputed that Steele does not satisfy this definition.

9. As to proceedings involving the review of a comprehensive plan, an “affected person” is defined more broadly to include “*persons owning property, residing, or owning or operating a business within the boundaries of the local government.*” Id.

10. There is a logical reason for this distinction. In general, a comprehensive plan review involves provisions that could potentially have countywide impact, and therefore, there is a lower threshold to afford standing to a wider class of individuals. On the other hand, a proposed FLUM amendment involves only a specific parcel of property within a county. Given the limited area affected by a proposed FLUM amendment, it is not surprising that a narrower standard applies to qualify as an “affected person” to challenge a FLUM amendment (i.e., an *owner* abutting the subject property). For example, why should a *resident* in one end of a county be able to file an administrative challenge to a FLUM amendment affecting only a small portion of property in the complete opposite end of the county?

11. It is also worth noting that while the Legislature used the broader terms “owning property” *or* “residing” within the county when addressing reviews of a comprehensive plan, the Legislature limited challenges to a proposed change to a FLUM amendment to only “owners” (not residents) abutting real property. Under well-established rules of statutory interpretation, the Legislature’s exclusion of the word “residing” as it pertains to FLUM amendment challenges is presumed to be intentional. Pursuant to the canon of statutory construction *expression unius est exclusion alterius*, “when a statute or code provision lists the areas to which it applies, it will be construed as excluding from its reach any areas not expressly listed.” Siegle v. Lee County, 198 So. 3d 773 (Fla. 2d DCA 2016). Steele, who admits she does not own any property in Sumter County, does not have standing to pursue the subject FLUM amendment challenge.

12. All provisions in Section 163.3184(1)(a), Fla. Stat., should be read together and harmonized so that each is given effect. “A basic tenet of statutory interpretation is that a ‘statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts.’” Jones v. ETS of New Orleans, Inc., 793 So. 2d 912, 914-15 (Fla. 2001) (quoting Acosta v. Richter, 671 So. 2d 149, 153-54 (Fla. 1996)). “It is a basic rule of statutory construction that ‘the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless.’” Martinez v. State, 981 So.2d 449, 452 (Fla. 2008).

13. The County and Intervenor acknowledge this ALJ’s recent Recommended Order in Beverly Steele and David M. Caruthers v. Sumter Cnty., Case No. 22-3416GM (Fla. DOAH Jun. 1, 2023) in which the County raised a standing challenge to both petitioners. While the Recommended Order concluded that the petitioners had standing, the supporting cases cited at Paragraph 75 of the Recommended Order are readily distinguishable from the facts presented here, and the facts of this case should stand on their own.²

14. For example, the case of Melzer v. Department of Community Affairs, 881 So. 2d 623 (Fla. 4th DCA 2004) did not involve a challenge to a “proposed change to a future land use map,” whereas the present case clearly does. As a result, there is a different standard that applies to establish standing. In addition, the parties in that case stipulated to the petitioners’ standing at the administrative level, so the standing question raised in this Motion was never addressed or analyzed. Id. at 625.

² In the earlier Steele case, this ALJ concluded in the Recommended Order that Steele’s co-petitioner, Caruthers, is an “owner of real property abutting real property that is the subject of the Plan Amendment.” (Id., ¶ 72). Steele, as the sole petitioner in this case, has not and cannot make such a factual showing.

15. The other three administrative decisions are also factually distinguishable. Again, in Rogers v. Escambia Cnty., Case No. 22-3224GM (Fla. DOAH Mar. 17, 2023), the parties had already stipulated that petitioner had standing. An additional distinction is that unlike Steele, the petitioner in Rogers owned property in the county.

16. In the case of Melzer v. Martin Cnty., Case No. 22-3021GM (Fla. DOAH Mar. 17, 2023), the petitioner did *not* challenge a proposed change to a future land use map. Moreover, the petitioner owned property in the county and the parties stipulated as to petitioner's standing for purposes of the administration proceeding.³

17. Finally, in the case of Hills v. Hernando Cnty., Case No. 21-3808GM (Fla. DOAH Apr. 11, 2022), the record reflects that petitioner owned property “directly adjacent to” the property subject to a future land use map change. (Recommended Order, ¶ 4). Based on a review of the record, it also appears that the County and Intervenor stipulated that petitioner was an “affected person” and therefore had standing. (County and Intervenor's Proposed Recommended Order , ¶ 62).

Conclusion

18. In this case, Steele has admitted she does not own *any* property in Sumter County, let alone property abutting that of the Intervenor, and her standing is being contested. Those are significant distinctions from the aforementioned cases. Based on the foregoing, Steele does not have standing pursuant to Section 163.3184(1)(a), Fla. Stat. As Steele is the sole remaining petitioner in this action, the Petition should be dismissed.

³ The Administration Commission has since reviewed the ALJ's Recommended Order in that case and announced on May 23, 2023 that it would “*overturn the ALJ's decision and find the Comprehensive Plan amendment to be in compliance, and to direct the commission staff to draft and circulate a final order for approval.*” <https://www.tcpalm.com/story/news/local/martin-county/2023/05/23/martin-county-rural-lifestyle-land-use-moves-forward-with-states-ok/70233658007/>. The parties are currently awaiting the issuance of the final order.

WHEREFORE, the parties respectfully request that the ALJ enter an order granting the County and Intervenor's Motion to Dismiss Petition for Lack of Standing, and grant such other and further relief as the ALJ deems just and appropriate.

Dated: June 20, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 20, 2023, a true and correct copy of the foregoing was served via the Division of Administrative Hearings eALJ electronic filing portal upon **Ralf Brookes, Esq.** (RalfBrookes@gmail.com), *Attorney for Petitioners*, 1217 E. Cape Coral Parkway #107, Cape Coral, Florida 33904 and **Jennifer C. Rey, Esq.** (jennifer@hoganlawfirm.com), *Attorney for Respondent*, The Hogan Law Firm, Post Office Box 485, Brooksville, Florida 34605-0485.

/s/ Christopher P. Benvenuto
CHRISTOPHER P. BENVENUTO, ESQ.
Florida Bar No. 649201

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DEPOSITION OF
BEVERLY STEELE
Taken on behalf of the Intervenor

DATE TAKEN: June 1, 2023
TIME: 1:12 p.m. - 4:46 p.m.
PLACE: Via Zoom videoconference

Stenographically Reported by:

Lisa Gropper, RPR, FPR-C
Anthem Reporting, Inc.
A Veritext Company
201 E. Kennedy Boulevard - Suite 712
Tampa, Florida 33602
(888) 909-2720



1 property was there, and so I -- we had -- I had no
2 reason to go to look to see who owned it, but -- so we
3 had use of it.

4 Q Right. But how did you know that -- did
5 anyone ever ask permission to use the property if they
6 didn't know who owned it?

7 A I don't know. I don't know. I mean, I went
8 there as a child, and as a child we never did anything
9 unless our parents told us to, and we never went
10 there -- I know I never went there without my parents.
11 So -- you know, so no, I can't really -- can't answer
12 you there.

13 Q But as far as you know, you're not aware of
14 any permission that was granted for you or your family
15 to go on that property, are you?

16 A I'm not aware of it, no. I'm not saying that
17 it didn't exist, but I'm not aware of it. I never
18 asked.

19 Q I want to ask you about this statement here.
20 It says, "Petitioners' substantial interest will be
21 adversely affected given that Petitioners' own real
22 property near and proximate to the area subject to the
23 plan amendment."

24 I believe you testified, correct, that you
25 don't own any property in Sumter County, correct?

1 A Right. But remember this petition was --
2 there were two petitioner. Nathaniel Williams Jr. does.

3 Q Right. Mr. Williams is no longer a party to
4 the case, correct?

5 A Exactly, but that just happened. So this
6 petition was before that.

7 Q Understood. I'm just trying to better
8 understand that this statement here that Petitioners'
9 own real property near and proximate to the area subject
10 to the plan amendment, that is currently not a true
11 statement, correct?

12 A It just became not true, and if we had to
13 revise it, we would just say Petitioner resides near and
14 proximate to the area subject to the plan amendment.

15 Q Did you draft any portions of this petition
16 yourself?

17 A I gave comments. I looked at it. I reviewed
18 it.

19 So I'm -- I'm just like -- just like your
20 clients, I have people that do that. I have a lawyer
21 that can do that. I have a history expert that can add
22 to it. I have a planning land expert that can add to it
23 too. So just like your people, I reached out to people
24 that could help me. That's what 8G did when they hired
25 you. They reached out to people that can help them.

1 A No, it isn't.

2 Q Okay. I'm going to move the map back.

3 So I'm back on now Ms. Flossie Sesler's
4 property, which the address is 9060 County Road 231,
5 parcel C28-041. Does this parcel abut any of the 8G
6 Farms properties? Does it share a boundary?

7 A I said my family's land. So my property is on
8 that family 40 acres, and that family land abuts it, but
9 no, that property does not abut it. But that's my
10 family's land.

11 Q So the property on which you reside for which
12 you gave us the address does not share a boundary with
13 the 8G property?

14 A No.

15 Q Okay. But the parcel that you say is your
16 family's property, the one that's in the name of Suzy
17 Ann Steele's estate, that is adjacent to the 8G Farms
18 property?

19 A Yeah. That was owned by my grandfather,
20 Mitchell Steele, so that's the original 40 acres when
21 you see all there in that.

22 Q Okay. All right. And this is the 8G Farms
23 property.

24 So did you, as Beverly Steele, receive written
25 notice from the county as an interested party living