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IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR ST. JOHNS COUNTY, FLORIDA

PONTE VEDRA CORPORATION,
a Florida corporation,

Plaintiff,

CASE NO: CA 16-0958
Division: 55

vs.

ST. JOHNS COUNTY, FLORIDA,
a political subdivision of the State of Florida,

Defendant.
_____/

MOTION TO DISMISS AMENDED COMPLAINT

Defendant ST. JOHNS COUNTY, FLORIDA ("County"), by and through its undersigned counsel, pursuant to Florida Rule of Civil Procedure 1.140(b), moves to dismiss the Amended Complaint that Plaintiff PONTE VEDRA CORPORATION ("Plaintiff") served on February 28, 2018, and, as grounds therefor, states as follows:

I.

INTRODUCTION/BACKGROUND

1. On July 11, 2016, the Plaintiff filed an application for Planned Unit Development ("PUD") rezoning with the County to develop property known as the "Outpost Parcel" with a seventy-seven (77) unit residential development to be called "Vista Tranquila" ("PUD Rezoning Application") on a parcel that currently has a Conservation future land use designation.

2. Just two months later, on September 12, 2016, before any public hearing on the PUD Rezoning Application had been held, the Plaintiff filed its initial Complaint in this case consisting of three (3) counts. Count I was entitled "Declaratory and Injunctive Relief Right to Processing Under Existing Comprehensive Plan;" Count II was entitled "Declaratory and Injunctive Relief Meaning of Existing Conservation Land Use Designation;" and Count III was

entitled "Declaratory and Injunctive Relief Substantive Due Process under Article 1 Section 9 Fla. Const."

3. On October 3, 2016, the County filed a Motion to Dismiss, which primarily argued that the Plaintiff's Complaint was premature and the claims were not ripe for adjudication because the PUD Rezoning Application had not been fully processed, the County had not held the required quasi-judicial hearings on the PUD Rezoning Application, and the Board of County Commissioners ("BOCC") had not made a final decision.

4. On February 27, 2017, after processing the PUD Rezoning Application (and partially recovered from Hurricane Matthew), County Staff provided the Plaintiff with nine (9) pages of staff comments on the PUD Rezoning Application ("First Staff Comments"). The First Staff Comments were previously filed in this case and are attached to the County's Request for Judicial Notice of Public Records filed on March 30, 2017.[1]

5. On April 3, 2017, after considering the County's Motion to Dismiss, this Court decided to abate these proceedings to allow time for the Plaintiff to pursue its PUD Rezoning Application and to allow time for the BOCC to hold a public hearing and make a final decision on such PUD Rezoning Application.

6. On June 30, 2017, the Plaintiff made a second submittal of its PUD Rezoning Application in response to the First Staff Comments. The second submittal included a number of changes from the initial submittal and reduced the number of residences from 77 to 66 units.

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1 The Plaintiff mistakenly claims at Paragraph 84 of the Amended Complaint that "[o]n February 8, 2018, County staff ***issued a new comment*** to PVC's PUD application making the unprecedented request that PVC submit a preliminary grading and stormwater management plan as part of its rezoning application." (Emphasis supplied). To the contrary, County Staff made the request for a grading and stormwater plan in the First Staff Comments provided to the Plaintiff in February 2017.

7. On July 31, 2017, the County Staff submitted to the Plaintiff a ten (10) page response to the second submittal ("Second Staff Comments"). The Second Staff Comments were previously filed in this case and are attached as Exhibit "1" to the County's Response in Opposition to Motion to Lift Abatement.

8. While the Plaintiff responded to the Second Staff Comments, the Plaintiff has not requested the County to schedule the PUD Rezoning Application for a public hearing, which is its right under Section 10, *Rezonings*, of the County's Development Review Manual which was previously filed in this case and attached to the County's Request for Judicial Notice of Public Records filed on March 30, 2017.

9. On November 20, 2017, the Plaintiff filed a Motion to Lift Abatement, which claimed that lifting the abatement was necessary so that the Plaintiff may amend its Complaint "to seek additional declaratory relief concerning its procedural right to a formal and appealable administrative interpretation" regarding the request for an administrative interpretation of the County's current Comprehensive Plan pertaining to the Conservation future land use designation of the Outpost Parcel. (*See* Motion to Lift Abatement at 9-10).

10. On January 26, 2018, this Court entered an order entitled "Order on Proceedings" and lifted the abatement.

11. On the same day, the Plaintiff made a third submittal of its PUD Rezoning Application in response to the Second Staff Comments. County Staff then submitted comments in response to this third submittal on February 13, 2018.

12. On February 28, 2018, the Plaintiff filed an "Amended Complaint," which, apart from its representations to the County and the Court that it was simply adding one new count, differs from the Plaintiff's initial Complaint in many regards.

13. In addition to extensive "General Allegations," the Amended Complaint consists of four (4) counts as summarized below:

A. Count I of the initial Complaint has been re-titled to "Declaratory and Injunctive Relief PVC's Right to Processing Under Existing Comp Plan."

B. Count II, entitled "Declaratory Relief PVC's Right to Formal and Appealable Response to Its Request for Administrative Interpretation," is essentially new and appears to set forth the "additional declaratory relief" the Plaintiff sought leave to file in its Motion to Lift Abatement and is addressed to the administrative interpretation of the Future Land Use Map ("FLUM") of the County's Comprehensive Plan.

C. Count III appears to have re-titled what was formerly Count II, "Declaratory and Injunctive Relief Meaning of Conservation-Related Provisions of Current Comp Plan" to now read "Declaratory Relief Meaning of Conservation-Related Provisions of Current Comp Plan." In this new count, the Plaintiff now claims for relief that the FLUM "requires adjustment" to allow the Plaintiff's proposed development. Previously, the Plaintiff had alleged that this Court should simply declare that the "Conservation land use designation of the Outpost site allows low density residential development consistent with the 'Residential C' land use category."[2]

D. Count IV is similar to former Count III and is entitled "Declaratory and Injunctive Relief PVC's Rights under Article 1 Section 9 Fla. Const.," but now purports to allege both a substantive and a procedural due process claim. However, while Count III of the initial Complaint was based in part upon the County's alleged "refusal to process" the PUD Rezoning Application in order to deny the Plaintiff a "point of entry" for review of the Outpost Parcel's land use designation, Count IV of the Amended Complaint is based solely upon the "applications for administrative interpretation concerning the limits of conservation / boundary adjustment for the Outpost site under the Conservation-related provisions of the

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2 With regard to the above, it bears noting that, perhaps to obscure how dramatic its requested relief truly is, the Plaintiff seems to have changed the allegations from the initial Complaint where the Plaintiff admitted that the Outpost Parcel was actually designated "Conservation" on the FLUM to instead allege in the Amended Complaint that the designation is "conditional." (*See, e.g.,* Amended Complaint at ¶¶ 25, 29, 31).

> Current Comp Plan, in advance of BOCC hearings on the Vista Tranquila PUD application." (*See* Amended Complaint at ¶ 124). Presumably, this shift in focus from the PUD Rezoning Application to only the administrative interpretation process was based on the fact that the County is clearly processing the PUD Rezoning Application and has repeatedly advised the Plaintiff that it may request a hearing on the application at any time. The Plaintiff's tactic now is that the County ***may not set a hearing on the PUD Rezoning Application*** without first addressing the administrative interpretation requests and, effectively, amending the FLUM. The prayer for relief in Count IV bears this out, adding a claim that the County has deprived the Plaintiff of "substantive due process" by allegedly depriving it of "final agency action [i.e. presumably from an inapposite ruling by the BOCC] from which PVC could appeal."

14. At its essence, the Plaintiff's Amended Complaint still asks this Court to rule on local land use matters that are not final. Because the County maintains doing so is improper, especially at this stage in the process, it is necessary to briefly examine the land use issues involved in each count of the Amended Complaint.

15. The first land use issue is the same one that formed the primary basis of the initial Complaint and still forms the basis for Count I of the Amended Complaint: the PUD Rezoning Application. Although Count I contains many of the same allegations regarding the County's supposed refusal to process the PUD Rezoning Application as in the initial Complaint, still notably absent in the Amended Complaint is any allegation regarding the BOCC conducting a public quasi-judicial hearing on the PUD Rezoning Application or any allegation setting forth the BOCC's decision to approve, deny, or modify the PUD Rezoning Application. Rather than properly contest the BOCC's final decision on the PUD Rezoning Application, the Plaintiff continues to ask this Court to focus on the preliminary phase of the formal decision-making process. The declaratory remedies sought in Count I are for this Court to: (a) determine that the PUD Rezoning Application is "sufficiently complete" (presumably after interpreting the County's Land

Development Code ("LDC")); (b) declare that the County "is obligated to timely process" the PUD Rezoning Application; and (c) declare that the County not "predicate processing" of the PUD Rezoning Application on the "processing of a future Comprehensive Plan amendment."[3]

16. Similarly, Count III seeks to jump ahead of the rezoning process entirely by asking the Court to declare the meaning of the Comprehensive Plan wholly apart from and before any BOCC decision on the PUD Rezoning Application.

17. Counts II and IV raise a second land use issue pertaining to an application for an "administrative interpretation" of the County's Comprehensive Plan that the Plaintiff initially submitted on July 16, 2013, "reapplied for" on June 16, 2014, and then submitted a version of again on August 31, 2017, during the pendency of the PUD Rezoning Application. (*See* Amended Complaint at ¶¶ 31, 34, 74). Notwithstanding the fact that the entirety of the Outpost Parcel is designated "Conservation" on the County's FLUM, the Plaintiff seeks to effect a change in the future land use designation for the bulk of the property to a totally different classification called "Residential C" through this "administrative interpretation" process.[4] The Amended Complaint fails to mention the final resolution of the 2013 and 2014 applications for administrative

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3 In each count of the original Complaint, the Plaintiff had expressly requested an injunction requiring the County to process the PUD Rezoning Application. In an apparent acknowledgment that the County has been processing the PUD Rezoning Application, such request has been replaced with a request for the Court to "[c]onsider application for further relief under § 86.061 Fla. Stat." Because this statutory provision could still support injunctive relief, the County must assume the Amended Complaint still seeks injunctive relief.

4 Amendments to the County's FLUM are typically obtained through a legislative process involving formal action by the BOCC at public hearings. *See* § 163.3184, Fla. Stat. (2017); *Martin Cnty. v. Yusem*, 690 So. 2d 1288 (Fla. 1997) (recognizing that amendments to comprehensive plans are evaluated on several levels of government to ensure consistency with Florida law and to provide ordered development); *see also* § 163.3184(8), Fla. Stat. (2017).

interpretation, other than to say that it was subject to a "stipulation" between the parties that was later extended. (*See id.* at ¶ 47). Notably, this "stipulation" is not attached to the Amended Complaint, leaving the reader to guess at what the stipulation provides and how it might affect the Plaintiff. Even more egregiously, though, is the Plaintiff's failure to attach or even mention the July 11, 2016 letter from the Plaintiff's attorney ***voluntarily dismissing the administrative proceedings*** because the Plaintiff had chosen the PUD Rezoning Application as its point of entry on presenting the Conservation land use designation issue to the BOCC.[5] Still, in Count II, the Plaintiff asks this Court to declare that the County is required to process the most recent request for administrative interpretation and the PUD Rezoning Application and, presumably, to order the County to do so. (*See id.* at ¶ 111).

18. Wedged in with the allegations regarding the requests for administrative interpretation are allegations regarding an "administrative appeal" that the Plaintiff lodged on September 26, 2014, regarding an "oral report" mentioning the Outpost Parcel that the County Administrator presented to the BOCC at its meeting on September 2, 2014. When the Plaintiff "attempted to lodge" such appeal, it was advised that the County Attorney "took the position that

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5 Even though the County brought it to the Plaintiff's attention in its first Motion to Dismiss, the Plaintiff has not remedied this serious omission. As noted in the County's first Motion to Dismiss, the Plaintiff and the County agreed (four times) to "stay" action on these administrative requests before counsel for the Plaintiff ***voluntarily dismissed them***. A copy of the "stipulation" with all amendments and the letter withdrawing the appeal were attached to the County's Motion to Dismiss the original complaint as Composite Exhibit "A." Yet, the Plaintiff continues to allege that the County somehow violated its rights in not processing these requests, while barely acknowledging their own stipulation to stay processing the requests and entirely ignoring the dismissal of the requests by Plaintiff's own counsel. The County's undersigned counsel and counsel for the Plaintiff both have a duty of candor to this Court. *See* R. Regulating Fla. Bar 4-3.3(a)(1); *McDaniel Ranch P'ship v. McDaniel Reserve Realty Holdings, LLC*, 100 So. 3d 120 (Fla. 2d DCA 2012).

no appeal was procedurally available" on this issue. (*See id.* at ¶¶ 45-46). Notwithstanding that opinion, though, this appeal notably was also subject to the "stipulation" and voluntary dismissal.

19. Count IV of the Amended Complaint claims that this "oral report" without notice to the Plaintiff and the County's alleged "refusal to process and/or delay and/or stonewalling of PVC's applications for administrative interpretation" have deprived the Plaintiff of procedural and substantive due process by failing to provide a "meaningful opportunity to be heard." (*See id.* at ¶¶ 120-124).[6] The Plaintiff claims that the County has attempted to "prevent or delay development of the Outpost site in order to preserve it for public acquisition and/or to depress the market value of the Outpost site in order to preserve it for public acquisition." (*See id.* at ¶ 120). While the Plaintiff claims the County is "stonewalling" in order to "prevent or delay final action from which PVC could appeal and/or which would ripen potential compensation claims" (*see id.* at ¶ 121), the Plaintiff does not assert a regulatory takings claim. To the contrary, as a remedy, the Plaintiff claims that it has been deprived of substantive and procedural due process. (*See id.* at 29). This, despite having voluntarily chosen to withdraw its earlier administrative proceedings and to apply for a PUD, which the Plaintiff identified as the more efficient means of resolving the land use issue.

20. The Court should dismiss the Plaintiff's Amended Complaint for failure to state a cause of action because:

A. The claims are premature and not ripe for adjudication;

B. The Plaintiff has failed to plead the essential allegations to obtain injunctive relief;

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6 As noted in paragraph 12.D above, the Plaintiff has apparently dropped its claim that the County is "stonewalling" its PUD Rezoning Application.

C. The Plaintiff improperly seeks an advisory opinion from this Court on the meaning of the County's Comprehensive Plan; and

D. As a matter of law, "applications for administrative interpretation" under the LDC do not apply to the Comprehensive Plan.

II.

LEGAL STANDARD

21. The purpose of a motion to dismiss is to test the legal sufficiency of a complaint to state a claim upon which relief can be granted. *See Augustine v. Southern Bell Tel. & Tel. Co.*, 91 So. 2d 320, 323 (Fla. 1956); *Hosp. Constructors Ltd. ex. rel. Lifemark Hosps. of Fla., Inc. v. Lefor*, 749 So. 2d 546, 547 (Fla. 2d DCA 2000). Although a court is required to accept well-pled factual allegations as true in ruling on a motion to dismiss, a court is not required to accept as true unwarranted deductions of fact, conclusions of law, or opinions asserted by the pleader. *See Am. Can Co. v. City of Tampa*, 14 So. 2d 203, 208 (Fla. 1943); *First Nat'l Bank in St. Petersburg v. Ferris*, 156 So. 2d 421, 424 (Fla. 2d DCA 1963). Further, while a court is limited to the four (4) corners of a complaint in ruling on a motion to dismiss, "[i]f an exhibit facially negates the cause of action asserted, the document attached as an exhibit controls and must be considered in determining a motion to dismiss." *See Fladell v. Palm Beach Cnty. Canvassing Bd.*, 772 So. 2d 1240, 1242 (Fla. 2000); *see also Franz Tractor Co. v. J.I. Case Co.*, 566 So. 2d 524, 526 (Fla. 2d DCA 1990). Additionally, "parties are bound by the allegations in their pleadings" and, "within the context of judicial proceedings, litigants are not permitted to take inconsistent positions." *See Bove v. Naples HMA, LLC*, 196 So. 3d 411, 414 (Fla. 2d DCA 2016).

III.

ARGUMENT

22. The Court should dismiss the Amended Complaint in its entirety for failure to state a cause of action upon which relief may be granted for the following reasons.

A. The Claims Presented Are Premature And Not Ripe For Adjudication

23. The PUD Rezoning Application was filed on July 11, 2016. As this Court is aware, the County has processed the PUD Rezoning Application and returned comments in response to Plaintiff, including as recently as February 2018. (*See* Amended Complaint at ¶ 84). The Plaintiff has responded to the First and Second Staff Comments, but has not requested that the application be set for public hearing. (*See id.* at ¶ ¶ 83, 84). However, because the BOCC has not made a final decision with regard to any quasi-judicial or legislative action directed to the PUD Rezoning Application, no cause of action has accrued. Accordingly, this Court should not exercise jurisdiction at this time; rather, it should dismiss the Amended Complaint in its entirety as premature.

24. It is well established in Florida that courts are not empowered to act as super zoning boards substituting their judgment for that of the legislative and administrative bodies exercising legitimate objectives. *See S. A. Healy Co. v. Town of Highland Beach*, 355 So. 2d 813 (Fla. 4th DCA 1978.) In the Amended Complaint, however, the Plaintiff asks this Court to do just that and improperly substitute its judgment for the County's. What is even more troubling is that the Plaintiff asks that this be done ***before*** the County has even held a public hearing (or been requested to hold one by the Plaintiff) or made a final decision on the PUD Rezoning Application.[7]

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7 Prime examples of the Plaintiff's apparent intent for the Court to control the

25. All counts of the Amended Complaint involve facts and seek relief that is premature and not ripe for adjudication. Case law supports this contention. For instance, in *Hasam Realty Corp. v. Dade County*, 178 So. 2d 747 (Fla. 3d DCA 1965), the plaintiff appealed an order dismissing the complaint filed against the county for denying a zoning variance as premature. The Third District affirmed, noting that when the suit was filed, the underlying claim was not final because an appeal to the board of county commissioners had yet to be decided. In so doing, the Third District stated:

> If a plaintiff has no valid cause of action on the facts existing at the time of filing suit, the defect cannot ordinarily be remedied by the accrual of one while the suit is pending.

Id. at 748.

26. Similarly, in *City of Coral Gables v. Fortun*, 785 So. 2d 741 (Fla. 3d DCA 2001), the Third District concluded an action neighbors filed seeking declaratory and injunctive relief to stop the city from issuing a building permit to allow construction of a single-family home was premature. When the circuit court entered emergency injunctive relief, the city appealed. On appeal, the Third District reversed, finding that the city commission had not taken final action on the application for the permit, and, therefore, the lawsuit was premature. The Third District held that the circuit court lacked subject matter jurisdiction to hear the matter, noting that upon the resolution of the quasi-judicial proceeding below, review could be had through a certiorari proceeding. *Id.* at 742. This raises a separate basis to dismiss this case in that the Plaintiff seeks

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outcome of the rezoning application review process before the BOCC has even ruled on the matter are set forth in the Amended Complaint where the Plaintiff criticizes the staff comments on the PUD Rezoning Application. (*See* Amended Complaint at ¶¶ 69, 72, 84-75). Notably, while the Plaintiff and County staff may disagree, "County staff" is not necessarily synonymous with "the County." The BOCC ultimately decides rezoning applications and has yet to do so in this case on the PUD Rezoning Application.

original jurisdiction on matters that are supposed to be reviewed through certiorari. *See Brevard Cnty. v. Snyder*, 627 So. 2d 469, 475 (Fla. 1993) (holding that an application for rezoning was in the nature of a "quasi-judicial proceeding and properly reviewable by petition for certiorari").

27. Lastly, *City of Sunny Isles Beach v. Publix Super Market, Inc.*, 996 So. 2d 238 (Fla. 3d DCA 2008), supports dismissal of the instant case. *Sunny Isles* involved a disagreement over an opinion of the city attorney that Publix challenged in a declaratory judgment action. The Third District held that the circuit court had exceeded its jurisdiction due to the supermarket's failure to exhaust administrative remedies at the local level. The court further noted that the attorney's opinion could be addressed in a writ of certiorari proceeding on the underlying site plan. Similarly, in the instant case, the Plaintiff has not even received a decision on the PUD Rezoning Application, and, therefore, the Amended Complaint is premature. Further, while the Plaintiff attacks the County Attorney's legal opinion and the opinions of County staff, these opinions are simply not actionable on their own, and any disagreement with the County's legal position could be raised as part of a certiorari proceeding.

28. In this case, it is undisputed that the BOCC has ***not*** issued a final decision on the PUD Rezoning Application. Consequently, as a matter of law, the Plaintiff's claims are premature for judicial review and the Plaintiff's Amended Complaint should be dismissed in its entirety.[8]

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8 To the extent Count I, at least, seeks a declaration that the County is obligated to timely process the PUD Rezoning Application, it is moot, as the County has been processing it.

B. The Plaintiff Has Failed To Plead The Essential Allegations For Injunctive Relief

29. While the Plaintiff deleted a specific plea in each count of the Amended Complaint that this Court "enter an injunction," the Plaintiff rephrased the request for relief to ask this Court to "[c]onsider application for further relief under §86.061, Fla. Stat.," which appears to still seek injunctive relief.[9] Accordingly, to the extent the Plaintiff seeks injunctive relief, the County submits that case law holds that a party must plead and later demonstrate: (1) irreparable harm; (2) a clear legal right; (3) an inadequate remedy at law; and (4) consideration of the public interest. *See St. Lucie Cnty. v. Town of Lucie Village*, 603 So. 2d 1289, 1292 (Fla. 4th DCA 1992).

30. In this case, the Plaintiff does not even allege that there will be irreparable injury, nor is there any discussion of the public interest in any count of the Plaintiff's Amended Complaint. Additionally, as noted in paragraph 25 above in discussing *Snyder*, once the PUD Rezoning Application has been presented to the BOCC for a final decision, the Plaintiff would have an adequate remedy to review an adverse decision through a certiorari proceeding. *See* Fla. R. App. P. 9.100(c). On the other hand, if the BOCC approves the PUD Rezoning Application, there would presumably be no need for the Plaintiff to even litigate the matter. For these reasons, to the extent each count of the Plaintiff's Amended Complaint seeks injunctive relief, such counts should be dismissed.

C. The Plaintiff Improperly Seeks An Advisory Opinion From This Court On The Meaning Of The County's Comprehensive Plan

31. Taken as true, the allegations of the Plaintiff's Amended Complaint fail to demonstrate that the Plaintiff is entitled to a declaration of rights at this time. In each count, the

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9 *See City of Tallahassee v. Talquin Elec. Coop., Inc.*, 549 So. 2d 725 (Fla. 1st DCA 1989) ("The trial court had jurisdiction under Section 86.061, Florida Statutes to adjudicate the request for injunctive relief . . . .").

Plaintiff asks this Court to interpret and then declare what the County's land use regulations and Comprehensive Plan mean in the context of the pending PUD Rezoning Application. Indeed, Count III specifically asks this Court to interpret the meaning of certain provisions of the County's Comprehensive Plan that the Plaintiff believes govern whether the Outpost Parcel should remain designated as Conservation on the County's FLUM. Given that these matters are premature, as set forth above, the most that a declaration by this Court could do is render an advisory opinion on the meaning of these local ordinances. This Court, however, is precluded from issuing any such advisory opinion.

32. The purpose of a declaratory judgment under Section 86.11, *Florida Statutes*, is to afford parties relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations. In *Santa Rosa County v. Administration Commission*, 661 So. 2d 1190 (Fla. 1995), the Florida Supreme Court discussed the pleading and proof requirements governing a request for declaratory relief stating:

> Parties who seek declaratory relief must show that there is a bona fide, actual, ***present practical need for the declaration***; that the declaration should deal with a present, ascertained or ***ascertainable state of facts or present controversy*** as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an ***actual, present, adverse and antagonistic interest in the subject matter***, either in fact or law; that the antagonistic and adverse interest are all before the court by proper process or class representation and that the ***relief sought is not merely the giving of legal advice by the courts*** or the answer to questions propounded from curiosity. These elements are necessary in order to maintain the status of the proceeding as being judicial in nature and therefore within the constitutional powers of the courts. [citation omitted. Thus, absent a bona fide need for a declaration based on present, ascertainable facts, the circuit court lacks jurisdiction to render declaratory relief.

Id. at 1192-93 (emphasis supplied) (citations omitted).

33. The Court in *Santa Rosa County* specifically cautioned against seeking advisory opinions, stating:

> ***Florida courts will not render, in the form of a declaratory judgment, what amounts to an advisory opinion at the instance of parties who show merely the possibility of legal injury on the basis of a hypothetical 'state of facts which have not arisen' and are only 'contingent, uncertain, [and] rest in the future***.'" [citations omitted]; *see also American Indemnity Co. v. Southern Credit Acceptance, Inc.*, 147 So.2d 10, 11 (Fla. 3d DCA 1962) (holding that, in a declaratory action case, "courts may not be required to answer a hypothetical question or one based upon events which may or may not occur").

Id. (emphasis supplied).

34. As discussed above, this case is ***not*** ripe for declaratory relief, because the BOCC has ***not*** made a final decision on the PUD Rezoning Application. Moreover, as can be inferred from the Amended Complaint, the County is processing the PUD Rezoning Application. By requiring this Court to "interpret" the Comprehensive Plan or force an administrative process upon the County, especially while the PUD Rezoning Application is pending and being processed, the Plaintiff is improperly seeking an unauthorized advisory opinion. Accordingly, this Court should dismiss the Plaintiff's Amended Complaint in its entirety.

D. As A Matter Of Law, "Applications For Administrative Interpretation" Do Not Apply To The Comprehensive Plan

35. Throughout the Amended Complaint, the Plaintiff describes its view of an "administrative interpretation" process for the Comprehensive Plan. (*See* Amended Complaint at ¶¶ 26, 31, 32, 34, 35, 39, 40-41, 43, 45, 47-49, 63, 65, 74, 82, 85, 88-90, 99, 106, 110, 119-22). Count II, the completely new count, is entirely based on the claim that the Plaintiff was entitled to file and pursue an "application for an administrative interpretation about the consistency of its

proposed PUD with the Conservation-related provisions of the Current Comp Plan," before the BOCC even hears the PUD Rezoning Application. (*See id.* at ¶ 110). As relief for Count II, the Plaintiff claims, in part, that this Court should:

> Declare that under LDC §§ 10.01.01, 10.01.02, 9.07.02, 5.03.01, and 5.03.02, PVC was entitled to a formal and appealable response to PVC's 2017 RAI within 10 days of its submission and that the County improperly refused to process the 2017 RAI.

These allegations are also imbedded in Count IV of the Amended Complaint, where, for example, the Plaintiff claims at Paragraph 120:

> By its refusal to process and/or delay and/or stonewalling of PVC's applications for administrative interpretation, the County has sought to prevent or delay development of the Outpost site in order to preserve it for public acquisition and/or to depress its acquisition price, in violation of PVC's right to substantive due process.

36. The various provisions of the LDC that the Plaintiff cites are attached to the Amended Complaint. The Plaintiff specifically cites the "administrative remedy provided by [LDC] §§ 10.01.01 and 10.01.02" as the basis of its claim of relief. (*See id.* at ¶ 31).

37. Significantly, the introductory provision of Part 10.00.00 of the County's LDC dealing with the administrative interpretation process itself states as follows:

> The purpose of this Article is to provide mechanisms for obtaining interpretations ***of this Code***, for obtaining relief where hardship would otherwise occur, and for enforcement of this Code.

(Emphasis added).

38. The fundamental problem with the Plaintiff's argument, and with Count II specifically, is that "this Code" is an entirely different local law than the "Comprehensive Plan." In fact, Part 1.01.00 of the LDC, entitled "Title and Citation," defines "Code" as follows:

> This Code shall be known as the "St. Johns County Land Development Code" and may be cited and referred to as the "Code" or the "LDC." Provisions contained in this Code shall be referenced as Article ___, Part ___, or Section ____.

(Emphasis added) (A copy of Part 1.01.00 of the County's LDC is attached hereto as Exhibit "A," of which this Court may take judicial notice pursuant to Sections 90.202-.203, *Florida Statutes*).

39. Not only does the term "Code" mean the LDC, as defined by the County's LDC itself, but the LDC defines "Comprehensive Plan" to refer to a completely different document. Part 12.01.00 of the LDC, entitled "Definitions," defines "Comprehensive Plan" as follows:

> Comprehensive Plan: Means the St. Johns County Comprehensive Plan adopted by the St. Johns County Board of County Commissioners, as may be amended from time to time.

40. Moreover, the County originally adopted the LDC in 1999 by Ordinance No. 99-51, which has been amended several times. The County's Comprehensive Plan, on the other hand, was adopted in 1990 by Ordinance No. 1990-53, which revised and replaced the 1981 Comprehensive Plan, The County has amended the Comprehensive Plan numerous times since then. Simply put, the "Code" and the "Comprehensive Plan" are separate legal documents, adopted by different ordinances, and moreover separately defined. *See Baker v. State*, 636 So.2d 1342, 1343-1344 (Fla. 1994) (holding that where the legislature has used particular words to define a term, the courts do not have the authority to redefine it.) Therefore, pursuant to the plain and unambiguous language of the County's LDC, the "Comprehensive Plan" is not the "Code" to which the administrative interpretation provisions of LDC §§ 10.01.01 and 10.01.02 even apply.

41. Aside from the basic fact that the "Code" is not the "Comprehensive Plan," there is an important statutory distinction between a "code" and a "plan." Chapter 163, Part II, *Florida Statutes*, is entitled the "Community Planning Act" ("Act"). Section 163.3167(2), *Florida*

Statutes, requires that each local government in Florida "shall ***maintain a comprehensive plan*** of the type and in the manner set out in this part." (Emphasis supplied). Moreover, the Act requires that ***after adopting a comprehensive plan***, each local government must adopt land development regulations, which are also called "land development ***codes***." *See Keene v. Zoning Bd. of Adjust.*, 22 So. 3d 665, 668 (Fla. 5th DCA 2009) (emphasis added); *see also* § 163.3202, Fla. Stat. (2017).

42. Therefore, the plain meaning of both the provisions of the LDC cited by the Plaintiff in the Amended Complaint and of the Florida Statutes negate the Plaintiff's contention that it is entitled to an "administrative interpretation" of "the meaning of the provisions of the Current Comp [sic] Plan pertaining to the current Conservation land use designation of the Outpost site." (*See* Amended Complaint at ¶116). Rather, the "administrative interpretation" process set forth in the County's LDC applies to the "St. Johns County Land Development Code," not the "Comprehensive Plan." *See Rinker Materials Corp. v. City of N. Miami*, 286 So. 2d 552, 553 (Fla. 1973) (holding that local ordinances are subject to the same rules of construction as statutes and, thus, must be applied pursuant to their plain and unambiguous terms). The County has not identified another source of the Plaintiff's alleged entitlement to a discrete interpretation of the Comprehensive Plan outside of the pending PUD Rezoning Application.

43. Accordingly, Counts II and IV, as well as all allegations in the Amended Complaint regarding the "administrative interpretation" process, should be dismissed for failure to state a claim upon which relief may be granted because, contrary to the Plaintiff's contention, the "administrative interpretation" process does not provide a mechanism by which the FLUM designation for the Plaintiff's property may be amended from Conservation to Residential C.

IV.

CONCLUSION

44. In sum, for the reasons set forth herein, Counts I, II, III, and IV of the Plaintiff's Amended Complaint fail to state causes of action pursuant to Florida law. Accordingly, the Court should dismiss the Plaintiff's Amended Complaint in its entirety

WHEREFORE, Defendant ST. JOHNS COUNTY, FLORIDA, moves the Court for entry of an Order dismissing Counts I, II, III, and IV of the Plaintiff's Amended Complaint in their entirety and such further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED on this 15th day of March 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court by using the *ePortal* system and served a copy thereof via Electronic Mail to:

Amy Brigham Boulris, Esquire
M. Lynn Pappas, Esquire
Lauren Vickroy Purdy, Esquire
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on this 15th day of March 2018.

TERRELL K. ARLINE, ESQUIRE

ARTICLE X
INTERPRETATIONS, EQUITABLE RELIEF, AND ENFORCEMENT

PART 10.00.00 GENERALLY

The purpose of this Article is to provide mechanisms for obtaining interpretations of this Code, for obtaining relief where hardship would otherwise occur, and for enforcement of this Code.

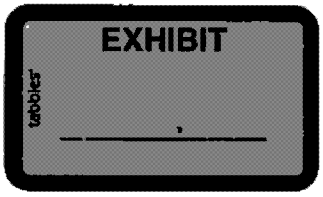
PART 10.01.00 INTERPRETATIONS OF THIS CODE

Sec. 10.01.01 Authority To Render

In the event that any question arises concerning the application of regulations, performance standards, definitions, Development criteria, or any other provision of this Code, the County Administrator shall be responsible for interpretation and shall look to the Comprehensive Plan for guidance. Responsibility for interpretation by the County Administrator shall be limited to standards, regulations and requirements of this Code, but shall not be construed to include interpretation of any technical codes adopted by reference in this Code, nor be construed as overriding the responsibilities given to any commission, board or official named in other sections or articles of this Code.

Sec. 10.01.02 Procedures

A request for interpretation may only be filed for property in which the requestor holds legal or equitable interest, or in which the requestor has entered into a contract for sale or purchase. A request for an interpretation shall be filed with the County Administrator on a form established by the County Administrator. After a complete application, and required fee have been received, the County Administrator shall issue a letter of interpretation within ten (10) working days of receipt of the complete application.



ARTICLE I
GENERAL PROVISIONS

PART 1.01.00 TITLE AND CITATION

This Code shall be known as the "St. Johns County Land Development Code" and may be cited and referred to as the "Code" or the "LDC." Provisions contained in this Code shall be referenced as Article ___, Part ___, or Section ____.

PART 1.02.00 BASIS FOR ADOPTION

Sec. 1.02.01 Legislative Authority

The Board of County Commissioners of St. Johns County, Florida, has the authority to prepare, adopt and enforce this Code pursuant to Article 8, Sec. 1(f), the Florida Constitution; Section 125.01, et. seq., Florida Statutes (F.S.); Section 163. 3161, et. seq., F.S.; Section 163.3161(8), F. S.; Section 163.3201, F.S.; Section 163.3202, F.S.; Rule 9J-5, Florida Administrative Code (F.A.C.); Rule 9J-24, F.A.C.; the St. Johns County Comprehensive Plan; and such other authorities and provisions established in statutory or common law.

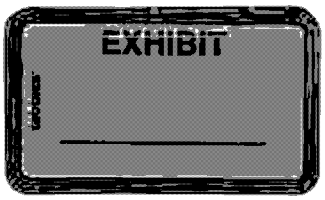
Sec. 1.02.02 Purpose

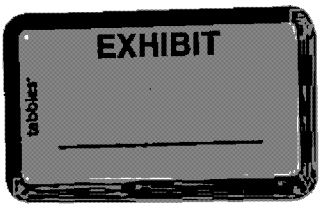
It is the purpose of the Board of County Commissioners of St. Johns County to establish the standards, regulations and procedures for review and approval of all proposed Development of property in unincorporated St. Johns County, and to provide a Development Review Process that will be comprehensive, consistent, and efficient in the implementation of the goals, objectives, and policies of the St. Johns County Comprehensive Plan.

Sec. 1.02.03 Intent

A. In order to foster and preserve public health, safety, comfort and welfare, and to aid in the harmonious, orderly, and progressive Development of the unincorporated areas of St. Johns County, it is the intent of this Code that the Development process in St. Johns County be efficient, in terms of time and expense; effective, in terms of addressing the natural resource and public facility implications of proposed Development; and equitable, in terms of consistency with established regulations and procedures, respect for the rights of property owners, and consideration of the interests of the citizens of St. Johns County.

B. The Board of County Commissioners deems it to be in the best public interest for all Development to be conceived, designed, and built in accordance with good planning and design practices and the minimum standards set forth in this Code.





or cultural activities.

Compensatory storage. The excavation within a free-flowing, riverine (non-tidal) flood hazard area of hydraulically equivalent volume as proposed fill for the purpose of balancing the effect of proposed fill on the floodplain, provided the excavated area is not below the normal water line of a pond or other body of water and it drains freely to the watercourse.

Complete Application: See Application, Complete.

Completely Enclosed Building: A Building separated on all sides from adjacent open space, or from other Buildings or other Structures, by a permanent roof and by exterior walls or party walls which are pierced only by windows and normal entrance or exit doors.

Comprehensive Design Plan: An architectural plan depicting complete Building, structural and electrical requirements, which integrates any Sign or part thereof.

Comprehensive Plan: Means the St. Johns County Comprehensive Plan adopted by the St. Johns County Board of County Commissioners, as may be amended from time to time.

Concurrency Exemption Determination: Means a decision by the County Administrator, or the Board of County Commissioners by which a Parcel is granted a Determination of Concurrency Exemption and is therefore exempt from the requirements of Part 11.00.00 through Part 11.07.00 of this Code.

Concurrency Review Committee: Means a committee as designated by the County Administrator.

Concurrency Review Process: The procedures, review time frames, and Appeals process defined by this Code.

Concurrency Requirements: Means the provisions of the Comprehensive Plan requiring that public facilities for traffic, mass transit, Wastewater, potable water, recreation/open space, solid waste, and drainage are available at the Adopted Levels of Service concurrent with the impact of Development.

Confusing Sign: See Hazardous Sign.

Connected System: Means a publicly-owned or privately-owned Wastewater collection system that connects to and discharges into the a Wastewater System for purposes of treatment and disposal.

Connection, Vehicle Access: Driveways, streets, turnouts or other means of providing for the right of access to or from Public or Private Roadways.

Connection, Utility: Means the installation of a utility service connection to water or Wastewater infrastructure of a central utility system owned by any Utility Provider.

Conservation: To minimize or limit the impact of Development to the resource sought to be conserved. Conservation of the resource shall not require that the resource remain completely undisturbed.