IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

1000 FRIENDS OF FLORIDA,
FLORIDA WILDLIFE FEDERATION,
and SIERRA CLUB,

Petitioners,

v.

PALM BEACH COUNTY, FLORIDA,
and FLORIDA ROCK INDUSTRIES,
INC.

Respondents.
_____/

Appellate Division (Civil)
Case No.: 502008CA015653XXXXMB
Division: 'AY'

Opinion filed: February 16, 2010

Appeal from the Palm Beach County Commission, Palm Beach County, Florida.

For Petitioners: Richard Grosso, Esq., Everglades Law Center, Shepard Broad Law Center, Inc., Nova Southeastern University, 3305 College Avenue, Ft. Lauderdale, FL 33314

For Respondents: Robert Banks, Esq., 301 North Olive Avenue, West Palm Beach, FL 33401
Alan J. Ciklin, Esq., Ronald E. Crescenzo, Esq., 515 North Flagler Drive, 18th Floor, West Palm Beach, FL 33401

PER CURIAM.

Florida Rock Industries, Inc. submitted an application to the Zoning Division of the Palm Beach County Planning, Zoning and Building Department ("Zoning Division") requesting a conditional use permit for an excavation in Lake Harbor Quarry. The Zoning Division recommended approval, subject to conditions. The Palm Beach Board of Zoning Commissioners ("Board") held a public hearing on April 24, 2008. The Board approved the application by resolution. Petitioners have filed an appeal to the Circuit Court in and for the Fifteenth Circuit, seeking that the Board resolution be quashed.

Both Petitioners and the Respondents agree that Petitioners **must** meet the common law standing test because this action is a petition for writ of certiorari and is not an action under section 163.3215, Fla. Stat. Petitioners argue that they have standing because members of the organizations "enjoy educational, scientific, and recreational activities which could be impacted by the proposed mines." In contrast, Respondents argue that this does not constitute a special injury and therefore Petitioners do not have standing to bring a petition for writ of certiorari. Respondents' position is correct.

Under the common law, an aggrieved or adversely affected person having standing to sue is a person who has a legally recognizable interest which is adversely affected by the zoning decision. *Renard v. Dade County*, 261 So. 2d 832, 837 (Fla. 1972). Special damages must be shown differing in kind, rather than degree, than those suffered by the general community. *See City of Fort Myers v. Splitt*, 988 So. 2d 28, 32 (Fla. 2d DCA 2008). Standing under this test is typically based on the litigant's interest as a property owner. *Id.* at 33. The instant action is not brought pursuant to section 163.3215, which allows for liberalized standing, so Petitioners must meet the common law standing test. *See, e.g., Southwest Ranches Homeowners' Ass'n v. Broward County*, 502 So. 2d 931, 935 (Fla. 4th DCA 1987).

Petitioners argue that they have standing because members of the organizations "enjoy educational, scientific, and recreational activities which could be impacted by the proposed mines." In contrast to common law standing, under section 163.3215(3) of the Local Government Comprehensive Planning and Land Development Regulation Act any aggrieved or adversely affected party may maintain an action for injunction or other relief against a local government from taking action on a development order which materially alters the use of a particular property that is not consistent with the comprehensive plan. Liberalized standing

under section 163.3215 depends upon whether the plaintiff's interests are protected by the comprehensive plan; whether the interests exceed in degree the general interest in community good shared by all persons; and whether those interests would be adversely affected by the challenged decision. Thus, under this statutory test, contrary to the common law test, unique harm is not necessary and standing may be found based on the fact that petitioners suffer a greater degree of the same harm suffered by the community as a whole. *See Save Homosassa River Alliance, Inc. v. Citrus County, Fla.*, 2 So. 3d 329 (Fla. 5th DCA 2008). *Save Homosassa* involved a similar challenge, arguing that a permit was granted in violation of a comprehensive plan and was properly brought pursuant to section 163.3215. The environmental group alleged that it used the river for recreational and environmental purposes and had invested substantial funds in the river. Thus, the appellate court held that this was sufficient to demonstrate that the environmental group's interest in the river exceeded that of the general interest in community good shared by all under section 163.3215.

Another instructive case is *Putnam County Environmental Council, Inc. v. Board of County Commissioners of Putnam County*, 757 So. 2d 590 (Fla. 5th DCA 2000). In that case, the trial court had dismissed a section 163.3215 complaint for lack of standing because the trial court erroneously held that section 163.3215 did not liberalize standing. The appellate court explained that section 163.3215 is a remedial statute and was intended to be liberally construed. The court reversed and held that under the statute, petitioners had standing where members of petitioners' environmental group studied species that could be destroyed and petitioners had assisted in acquiring the subject land for use as a state forest and had maintained an active continued connection with the forest.

Here, Petitioners' interest in the environment may exceed that of the general interest in community good shared by all (*i.e.*, a difference in degree), but they have not demonstrated special injury as must be established to prove standing. Petitioners argue that specific members of their organizations use the area for recreational and scientific purposes, but this is no different in kind than the injury suffered by the rest of the community. Further, even if using the affected areas for environmental or recreational purposes would have provided standing, Petitioners have not established in the record that Petitioner's members actually engaged in such uses, but merely that members have an interest in preserving the environment. Further, in contrast to the *Save Homosassa* case, these Petitioners have not shown a "unique relationship" or an "active connection." The record below must demonstrate the petitioner's adversely affected interests that would justify a finding of standing and allegations in the petition are not sufficient. *See Battaglia Fruit Co. v. City of Maitland*, 530 So. 2d 940, 943 (Fla. 5th DCA 1988) (court should have dismissed petition for writ of certiorari where petitioner had not appeared nor presented any evidence or objection at the county hearings which would indicate that petitioner's interests would be adversely affected); *Splitt*, at 32-33. Accordingly, the Petition is **DENIED** for lack of standing and it is unnecessary for the Court to consider the merits of the Petition.

SASSER and MARX, JJ., concur. COX, J., dissents with an opinion.

COX, J., dissenting.

With all due respect I dissent from the Majority's opinion. I would grant standing and find that the Palm Beach County Commission has disregarded its own ordinance and therefore, I would grant Certiorari.

There are two different criteria for standing.

Section 163.3215, Florida Statutes, sets forth the more liberalized standing requirements when dealing with a local government comprehensive plan case. ("Plan" cases are also trial de novo in the Circuit Court and not certiorari.) But this is not a Plan case.

The other criterion for standing is the common law which is more severe and is to be applied in cases involving zoning issues and/or the land development code. These issues are brought by common law cert.

Renard v. Dade County, 261 So. 2d 382 (Fla. 1972) is an excellent starting point for this discussion but is not the beginning of the case law. *Renard* is a case involving common law cert arising out of a rezoning proceeding where the zoning officials rezoned a tract from industrial to multi-family. The abutting property owner brought certiorari. It is a 38 year old case. A lot has changed in Palm Beach County since 1972.

The question of great importance which was certified to the Supreme Court by *Renard* centered on the issue of the plaintiff's "standing". The question was phrased this way:

> "The standing necessary for a plaintiff to (1) enforce a valid zoning ordinance; (2) attack a validly inacted zoning ordinance as not being fairly debatable and therefore an arbitrary and unreasonable exercise of legislative power; and (3) attack a void ordinance i.e. one enacted without proper notice required under the enabling statute or authority creating the zoning power."

In the *Renard* case, the court was also addressing the issue of requiring "special damages" as a criterion for standing under *Bucher v. Novotny*, 102 So. 2d 132 (Fla. 1958). The *Bucher* case and the "special damage" rule were an outgrowth of the Law of Public Nuisance. It is worth mentioning that the *Bucher* case is now 52 years old. The age of these cases, is important because of the nature of development and zoning which has occurred in all of those years and more specifically the very unique set of facts presented by the case involving the *1000 Friends of Florida.*

In *Renard* , the court looked at a series of cases involving property owners and abutting property owners and seems to rely on the proximity of the plaintiff's property to the zoning as a component of standing. Additionally, the *Renard* court was very concerned about what they termed "spite suits". Consider the following statement:

"So called "'spite suits'" will not be tolerated in this area of the law any more than in any other area."

It is clear that during the time period of *Renard* there was a concern about the courts being used as a way of stopping development where anyone could file a lawsuit to challenge a zoning opinion.

The Supreme Court was concerned that things had changed since the *Bucher* decision. Consider the following:

> "The *Bucher* ruling requiring special damages still covers this type of suit, however in the 20-years since the *Bucher* decision changed conditions including increased population growth and density require a more lenient application of that rule. The facts of the *Bucher* case if presented today would probably be sufficient to show special damage."

If the Supreme Court were to hear the alleged facts of the petition for writ of certiorari in the *1000 Friends of Florida* cases now that 38 years have passed, the criteria they set forth might be somewhat different. "Things have changed."

Subsumed in the *Renard* decision is the concept that there would always be someone who in fact had standing.

"Standing" is a judicial limitation of a right guaranteed under the Florida Constitution. Article I, Section 21, "Access to the Court", provides that the Court shall be open to <u>every</u> person for redress of <u>any</u> injury and justice <u>shall</u> be administered without sale, denial, or delay. This is a

fundamental right. We have to determine *1000 Friends of Florida's* fundamental right to access to this Court on a case clearly factually different but no less constitutionally on point.

Justice Anstead, in a dissent while on the Fourth District Court of Appeal, set forth what may be the best articulation of our rights under the Florida Constitution when he said:

> "The right to go to court to resolve our disputes rather than resorting the self-help or settling them in the streets is one of the most fundamental and necessary rights of a citizen in a society based on the rule of law. Article I, Section 21 of the Florida Constitution provides a broad guaranty of access to the courts to "any person for redress for any injury" provides that "justice shall be administered without sale, denial, or delay." The provision does not expressly or impliedly restrict nor has it been construed to limit that broad guaranty to specific kinds of actions or types or relief... Clearly the intent of the access provision is to provide a broad guaranty of access regardless of the nature of the dispute. While the provision may not guaranty a litigant a particular remedy when the litigant is allegedly wronged, it does guaranty a litigant who has a recognized cause of action a forum in which to be heard."

Guerrero v. Humana, 548 So. 2d 1187 (Fla. 4th DCA 1989).

In the *1000 Friends of Florida* case the property in question (approximately 7,500 acres) is located in an isolated section of Palm Beach County approximately 10 miles South of Lake Okeechobee. There are no abutting landowners for miles surrounding the property. The Palm Beach County Land Development Code specifically prohibits the use of the land for a mine except for construction materials for State roadway purposes, specific agricultural uses, and specific governmental water storage uses. No other uses are permitted under the zoning code.

The potential mine owner specifically says that it intends to use the mine to produce private industry construction materials, toothpaste, and other commercial products for distribution to the public in general which is in direct violation of the zoning code.

The County staff at the hearing testified that they cannot say for certain that the zoning code criteria have been met and that irreparable harm may not result from the mining.

The Board of County Commissioners of Palm Beach County, Florida, notwithstanding the prohibition contained in the County's own zoning ordinance, approved and allowed the zoning.

The majority has determined that *1000 Friends of Florida* does not have standing. That decision leaves us with a more compelling question. If *1000 Friends of Florida* does not have standing then the question is 'Who in the State of Florida **does** have standing to challenge the wrongful act of the Palm Beach County Commission?" The answer is no one.

The Judicial branch, in a checks and balances system, is Constitutionally mandated to protect access to the Courts and must be the Defender of the people of Florida when their elected officials disregard the law.

1000 Friends of Florida has standing and Certiorari should be granted.