

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In Re:**Sunwind Properties, Inc.****OGC CASE NO. 23-0155****Petitioner.**

FINAL ORDER DENYING PETITION FOR DECLARATORY STATEMENT

Findings of Fact

1. On February 7, 2023, Sunwind Properties, Inc. (Petitioner) filed a petition for declaratory statement and accompanying brief (Petition) requesting an opinion from the Florida Department of Environmental Protection (Department) regarding the applicability of coastal construction control line (CCCL) permitting regulations to a neighboring property (South College Property).

2. The Petitioners seek a declaration as to whether:

- a. The South College Property is subject to CCCL permitting regulations pursuant to section 161.053(1), Florida Statutes, and Florida Administrative Code rule 62B-33.008; and
- b. Charlotte County's CCCL, as stated in Florida Administrative Code rule 62B-26.006, imposes CCCL regulatory jurisdiction over all of the sandy beach on the southern end of Little Gasparilla Island including the South College Property.

3. The Department published notice of receipt of the Petition on February 10, 2023, in the Florida Administrative Register.

4. As of the date of this Final Order, no third party has petitioned for leave to intervene pursuant to Florida Administrative Code rule 28-105.0027.

5. For this Final Order, factual allegations were derived solely from the Petition. Pursuant to Florida Administrative Code rule 28-105.003, the Department relies on the statements of facts as presented by Petitioners in the Petition but takes no position on the truth or accuracy of such facts:

- a. The Petitioner is the owner of beach property at 9912 Little Gasparilla Island, Placida, Florida 33946, bearing Charlotte County parcel ID number 422027201014 (Sunwind Property).
- b. Directly adjacent and to the south of the Sunwind Property is the South College property, owned by 1520 South College LLC. The address of the South College property is 9916 Little Gasparilla Island, Placida, Florida 33946, and Charlotte County parcel ID number 422027201015.
- c. The Sunwind property is presently the furthest southern developed property on the Island, but the South College property is the southern-most property.
- d. The Petitioner believes the South College Property is subject to CCCL permitting regulations for future construction and development.
- e. Florida Administrative Code rule 62B-26.006 contains the metes and bounds description of the Charlotte County CCCL. The line runs along the County coast and barrier islands beginning from the northern county line at Manasota Key, though Little Gasparilla Island, and ending at the southern county line on Gasparilla Island.
- f. The Charlotte County CCCL does not extend to a fixed point on the island but rather to the point where the CCCL will intersect with the mean high-water line. Due to

accretion, the southern end of the island extends south and west of the end of the CCCL.

- g. The South College Property is currently listed for sale at an advertised price of \$6.5 million and is marketed as not being subject to CCCL permitting regulations for future construction and development.
- h. The Petitioner has sought to purchase the South College Property but believes the current price for the South College Property is overstated due to the assertion that it can be developed.

Conclusions of Law

1. Section 120.565(1), Florida Statutes, states that “[a]ny substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the *Petitioner’s* particular set of circumstances.” (Emphasis added.)

2. Section 120.565(2), Florida Statutes, states that “[t]he petition seeking a declaratory statement shall state with particularity the *Petitioner’s* set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.” (Emphasis added.)

3. Florida Administrative Code Rule 28-105.001, states that “[a] petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the *Petitioner’s* particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.” (Emphasis added).

4. As explained below, the Petitioner asks, in its Petition for a declaratory statement, how CCCL permitting regulations under section 161.053(a), Florida Statutes, and Florida

Administrative Code rule 62B-33.008, apply to the neighboring South College Property – a property that Petitioner has no ownership interest in whatsoever. Based on the facts presented, the Petitioner is not entitled to a declaratory statement on the questions presented.

5. The Department must deny the Petition because a petition for declaratory statement is not a proper means for determining the conduct of a third party. § 120.565, Fla. Stat. & Fla. Admin. Code. R. 28-105.001; *see also Manasota-88, Inc. v. Gardinier, Inc.*, 481 So. 2d. 948 (Fla. 1st DCA 1986) (upholding agency's denial of petition for declaratory statement concerning the applicability of air pollution permitting requirements to a third party). Here, the Petitioner seeks a determination concerning the applicability of CCCL permitting requirements to the hypothetical development of its third-party neighbor's property. Such a declaration is not authorized under Florida law because it would determine the conduct of a third party, namely the owner of Petitioner's neighboring property.

6. In addition to improperly seeking a declaration based on the conduct of a third party, the Petitioner does not meet the “substantially affected” test presented in *Agrico Chemical Co. v. Dept. of Environmental Protection*, 406 So. 2d 478 (Fla. 2d DCA 1981) (establishing a two-pronged test for a person to be substantially affected under chapter 120, Florida Statutes, and finding that economic interest, without environmental interest, is not sufficient to meet the second prong of the test).¹ To satisfy the two-prong *Agrico* test, the petition must show that (1) the Petitioner will suffer an injury-in-fact which is of sufficient immediacy to entitle him to the relief requested, (injury-in-fact) and (2) the injury is of a type or nature which the administrative

¹ The standing requirements in sections 120.56 and 120.57, Florida Statutes, should also be applied to petitions for declaratory statement under section 120.565, Florida Statutes. § 120.565, Fla. Stat. (providing “[a]ny substantially affected person may seek a declaratory statement ...”) (emphasis added); *see also Federation of Mobile Home Owners of Florida, Inc. V. Dept. of Business Regulation, Div. of Land Sales, Condominiums, and Mobile Homes*, 479 So. 2d 252 (Fla. 2d DCA 1985) & *Florida Soc. Of Ophthalmology v. State Bd. of Optometry*, 532 So. 2d 1279 (Fla. 1st DCA 1988).

proceeding is designed to protect (zone of interest). The injuries alleged by the Petitioner are purely economic in nature,² hypothetical and speculative and, thus, do not satisfy either prong of the *Agrico* test.

DISPOSITION

IT IS THEREFORE ORDERED:

The Petitioners' request for a declaratory statement is **DENIED**.

Any party to this order has the right to seek judicial review of the order under section 120.68 of the Florida Statutes by filing a notice of appeal under rules 9.110 and 9.190 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days from the date this order is filed with the clerk of the Department.

² As specified in section 161.053, Florida Statutes, the CCCL permitting program is designed to protect and preserve Florida's beaches and coastal barrier dunes, not to lower the demand and price of real estate.

DONE AND ORDERED this 1st day of May 2023, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



JUSTIN G. WOLFE
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FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Lea Crandall Digitally signed by Lea Crandall
Date: 2023.05.01 09:57:35 -04'00'

CLERK

May 1, 2023
DATE

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was emailed to Kevin S. Hennessy and Christopher A Perrigan, Lewis, Longman, & Walker, P.A., 100 Second Avenue South, Suite 501-S, St. Petersburg, Florida, 33701, at khennessy@llw-law.com and cperrigan@llw-law.com, on this 2nd day of May 2023.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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