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Attachment # 1
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IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
LEON COUNTY, STATE OF FLORIDA

GHOLAM REZA KARIMIPOUR and
ASHRAF K. MOGHADDAM,

Plaintiffs,

Case No. 07-CA-3437

v.

LEON COUNTY BOARD OF
COUNTY COMMISSIONERS,

Defendant.

FILED
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BOB INZER
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

NOTICE OF APPEAL

NOTICE IS GIVEN that the Leon County Board of County Commissioners, Defendant/Appellant, appeals to the First District Court of Appeal, the Final Summary Judgment rendered on June 3, 2008, attached hereto pursuant to Rules of Appellate Procedure 9.110(d) and 9.160(c) as Exhibit A. The nature of the Final Summary Judgment is a final order.

Respectfully submitted this 13 day of June, 2008.

OFFICE OF THE COUNTY ATTORNEY
LEON COUNTY, FLORIDA

BY: _____
HERBERT W.A. THIELE, ESQ.
County Attorney
Florida Bar No. 261327
LAURA YOUMANS, ESQ.
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(850) 606-2500

Counsel for Defendant/Appellant,
Leon County Board of County
Commissioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail, via first-class to: Marian D. Lamb, III, Esq., 217 Pinewood Drive, Tallahassee, Florida 32312, counsel for Plaintiffs/Appellees, on this 13 day of June, 2008.

OFFICE OF THE COUNTY ATTORNEY
LEON COUNTY, FLORIDA

BY: _____
LAURA YOUMANS, ESQ.
Asst. County Attorney

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IN THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA.

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CLERK'S OFFICE

GHOLAM REZA KARIMIPOUR and ASHRAF K. MOGHADDAM,

Plaintiffs,

vs.

CASE NUMBER: 07-CA-3437

LEON COUNTY,

Defendant,

_____/

FINAL SUMMARY JUDGMENT

THIS CAUSE having come on for hearing before the Court on May 14, 2008 upon the Plaintiffs' Motion for Final Summary Judgment, and the Court having examined and reviewed Plaintiffs' Verified Complaint, the Defendant's Answer to the Complaint and Answers to Plaintiffs' Interrogatories and Responses to the Plaintiffs' Request to Admit and the Plaintiff's Affidavit filed herein, and the exhibits attached thereto, and having reviewed the Plaintiffs' Motion for Summary Judgment and the Defendant's response to the Plaintiffs' Motion for Summary Judgment and having heard argument of counsel, the Court finds that there exists no genuine issue with regard to the following undisputed facts:

UNDISPUTED FACTS

1. The Plaintiffs, GHOLAM REZA KARIMIPOUR and ASHRAF K. MOGHADDAM, are the owners of the real property described in the Warranty Deed attached to the Plaintiffs' Complaint containing in the aggregate 48.28 acres (more or less) situate in Leon County, Florida which has been assigned Leon County Property Appraiser Identification Number 12-13-20-003-0000 (hereinafter the "Property") [Plaintiff's Affidavit].

2. The Property has been classified as agricultural property by the Leon County Property Appraiser's office for all years following Plaintiffs' acquisition in 2003 and is being utilized for the purpose of growing plants, crops, trees and other agricultural products [Plaintiff's Affidavit, Defendant's Admissions # 6 and 7].

3. Leon County has adopted a Comprehensive Plan and Land Development regulations as set forth in Section 10 of the Code of Laws of Leon County Code for the regulation of development pursuant to Chapter 163 F.S.A. and as required by Section 163.3202 Florida Statutes [Defendant's Answer to paragraph 14 and 17 of Plaintiffs' Complaint, Response to Plaintiffs' Request for Admissions No. 16 and the Leon County Code Section 10].

4. In April of 2007, the Leon County Department of Growth and Environmental Management notified Plaintiffs by letter dated April 17, 2007 that Plaintiffs were in violation of Section 10-171(a) of the Leon County Code for failure to obtain an Environmental Management Permit for an 11.84 acre portion of the Property being utilized for plant and tree nursery purposes, directing Plaintiffs to prepare and file an application for an after the fact Environmental Stormwater Permit, failing which they would be subject to a stop work order and referred to the Leon County Code Enforcement Board for applicable sanctions and fines [Plaintiff's Affidavit and Exhibits "B" and "C" to the Complaint].

5. Plaintiffs engaged an engineer to prepare the requested application which was filed by the Plaintiffs, and accepted by the Defendant, on August 9, 2007 under protest, asserting that Plaintiffs' use of the Property was agricultural in nature, and as such, the operations were not subject to Leon County Stormwater Development regulations set forth in Section 10 of the Leon County Code [Plaintiffs' Exhibit "D" to the Complaint].

6. On August 24, 2007 the Leon County Department of Growth and Environmental Management notified Plaintiffs that because pine trees had been harvested on the remaining 36.44 acre portion of the Property, the application for an Environmental Stormwater Permit needed to be revised to include all timbered portions of the Property to ensure compliance with the Leon County Environmental Management Act [Plaintiff's Affidavit and Exhibit "E" to the Complaint].

7. Plaintiffs directed their engineer to prepare an amended permit application to include the entirety of the Property which was also filed by the Plaintiffs, and accepted by the Defendant, on November 21, 2007, under protest and with a full reservation of rights [Plaintiff's Affidavit and Exhibit "F" to the Complaint].

8. Plaintiffs filed the requested applications and paid the required permit application fees in the total amount of $13,132.12 pursuant to the directions of Leon County under protest and with a full reservation of rights in order to avoid penalties, fines and sanctions which had been threatened by Leon County for failure to comply with its development regulations [Plaintiff's Affidavit].

9. But for Leon County's demand that the Plaintiffs file an after the fact environmental permit application, the Plaintiffs would not construct the plans and designs set forth in the applications attached to the Complaint as Exhibits "D" and "F", but would only conduct normal agricultural operations reasonably required to grow plants and trees in accordance with Best Management Practices [Plaintiff's Affidavit].

10. Based upon the foregoing undisputed facts the Court makes the following conclusions of law:

CONCLUSIONS OF LAW

11. This Court is vested with Jurisdiction over the parties and the subject matter of this action challenging the validity, enforcement, application and effect of Section 10 of the Leon County Code to Plaintiffs agricultural property pursuant to Article V of the Florida Constitution and Chapter 86 F.S.A. East Naples Water System, Inc. v. Board of County Commissioners of Collier County, 457 So.2d 1057 (Fla. 2nd District 1984); Medical Arts, Inc. v. Rohrbaugh, 293 So.2d 366 (Fla. S.Ct. 1974).

12. Leon County is a charter county and its authority to act is granted and restricted by the provisions of Article VIII Section 1(g) of the Florida Constitution and the provisions of the Leon County Charter which vest in Leon County the authority to exercise all powers of self-government not inconsistent with general law, including but not limited to the authority to adopt and enforce comprehensive plans and development regulations for the development of the County.

13. Florida Statutes Section 163.3161 F.S.A., entitled "Local Government Comprehensive Planning and Land Development Regulation Act", provides in Subsection (5) "....that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act."[emphasis supplied]

14. Leon County, by its Answer to the Complaint and Response to Plaintiffs' Request for Admissions, has admitted that Section 10 of the Leon County Code was adopted pursuant to the provisions of Chapter 163 F.S.A., and that Leon County is "constrained or preempted" to regulate development within its jurisdiction pursuant to and in accordance with

Chapter 163 F.S.A. For the purposes of this action the same has been conclusively established. Fla.R.Civ.P.1.370; Lutsch v. Smith, 397 So.2d 337 (Fla. 1st DCA 1981).

15. Chapter 163 Florida Statutes and Section 10 of the Leon County Code both provide for regulation of activities which constitute "development". In those cases where both local government and the State have authority to legislate in a particular area, the local government ordinance must not conflict with State Statute and Leon County does not have the authority to adopt or enforce any ordinances inconsistent with general law. Article VIII Section 1(g) Florida Constitution, and Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc., 681 So.2d 826 (1st DCA 1996); Thomas v. State, 614 So.2d 468 (Fla.1993); City of Casselberry v. Orange County Police Benevolent Ass'n, 482 So.2d 336 (Fla. 1986).

16. The "Comprehensive Planning and Land Development Regulation Act" specifically authorizes and directs local government's adoption and enforcement of Comprehensive Land Plans and Land Use Regulations. The Act defines "development" in Section 163.3164(6) F.S.A. which provides that the term "development" has the meaning given it in Section 380.04, and Florida Statutes Section 380.04(1) provides that "The term development means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels." However, sub-section 380.04(3) provides in part as follows:

> (3) The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:....
> (e) The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

17. Florida Statutes Section 380.04(3)(e) expressly excludes from the definition of development the use of land for the purposes of growing plants, crops, trees and other agricultural or forestry products. The intentional legislative omission of these agricultural uses and operations from the definition of development cannot be lightly disregarded. Florida Wildlife Federation v. Collier County, 819 So.2d 200 (1st DCA 2002); Love PGI Partners, LP v. Schultz, 706 So.2d 887 (5th DCA 1998).

18. The language of Section 380.04(3) and the Legislative intent is clear and unambiguous. Where the language of a statute is unambiguous, it must be accorded its plain meaning. Citizens of the State of Florida v. Public Service Commission, 425 So.2d 534 (Fla.1982); Trushin v. State, 475 So.2d 1290 (Fla.3d DCA 1985), review denied, 486 So.2d 598 (Fla.1986). Further, in construing a statute, courts cannot attribute to the legislature an intent beyond that expressed. Public Health Trust of Dade County v. Lopez, 531 So.2d 946 (Fla.1988); Bill Smith, Inc. v. Cox, 166 So.2d 497 (Fla. 2d DCA 1964); Seaboard System Railroad, Inc. v. Clemente, 467 So.2d 348 (Fla. 3d DCA 1985); Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc., 681 So.2d 826 (1st DCA 1996). Where a statute contains a definition of a word or phrase, that meaning must be ascribed to the word or phrase whenever repeated in the same statute, unless a contrary intent clearly appears Vocelle v. Knight Bros. Paper Co., 118 So.2d 664 (Fla. 1st DCA 1960) Nicholson v. State, 600 So.2d 1101 (Fla. 1992).

19. The Courts have consistently recognized that the exempted uses and operations set forth in Section 380.04(3) F.S.A. do not constitute development. Florida Wildlife Federation v. Collier County, 819 So.2d 200 (1st DCA 2002); Love PGI Partners, LP v. Schultz, 706 So.2d 887 (5th DCA 1998); Rinker Materials Corporation v. Town of Lake Park, 494 So.2d 1123 (Fla.

S.C.t. 1986); St. John's County v. Department of Community Affairs, 836 So.2d 1034 (5th DCA 2002); Robins v. City of Miami Beach, 664 So.2d 1150 (3rd DCA 1995); Board of County Commissioners of Monroe County v. The Department of Community Affairs, 560 So.2d 240 3rd DCA (1990).

20. Having found that the Leon County Land Use regulations set forth in Section 10 of the Leon County Code were adopted pursuant to and in accordance with, Chapter 163 Florida Statutes to regulate and control "development" as defined therein, the Court finds that no code adopted pursuant to Chapter 163 Florida Statutes can alter its intended impact and Leon County can not, consistent with general law, regulate as "development" that which the Legislature has determined, by definition, does not constitute development. Love v. PGI Partners, L.P. v. Schultz 706 So.2d 887 (5th DCA 1998).

21. The Affirmative Defenses set forth in the Defendant's Answer are not applicable to the undisputed facts and the conclusions of law reached herein, and upon application of law to the undisputed facts the Plaintiffs' have demonstrated that they are entitled to the entry of a Final Summary Judgment as a matter of law.

It is thereupon ORDERED AND ADJUDGED:

1. The use of the Plaintiffs' property for the purpose of growing plants, crops, trees and other agricultural products constitutes an agricultural operation or use as set forth in 380.04(3)(e), and is expressly exempt from the definition of development under Chapter 163 F.S.A. and such use does not constitute development.

2. To the extent that the provisions of Section 10 of the Leon County Code adopted pursuant to Chapter 163 F.S.A. purport to regulate as "development" that which has by general

law been exempted from the definition of "development", such provisions are inconsistent with general law, and are unenforceable as a matter of law.

3. Plaintiffs are not required to comply with the Leon County Land Development Regulations under Chapter 10 of the Leon County Code in order to use the Property for the purpose of growing plants, crops, trees and other agricultural products or other agricultural purposes as set forth in Section 380.04(3)(e).

4. Leon County shall immediately refund to the Plaintiffs all permit application fees paid to Leon County by the Plaintiffs in the total amount of $13,132.12.

5. The Court reserves jurisdiction to enter such further orders as may be necessary to give full force and effect to this Final Summary Judgment and to grant such further and supplemental relief as equity may require upon the application of any party hereto.

DONE AND ORDERED in Chambers, Tallahassee, Florida on the 3rd day of ~~May~~ June, 2008.

WILLIAM L. GARY
CIRCUIT JUDGE

cc: Herbert W. Thiele, Esquire
Laura Youmans, Esquire
Marion D. Lamb, III, Esquire