Manatee County v. Mandarin Development, Inc., No. 2D18-4053, 2020 WL 1280810 (Fla. 2d DCA Mar. 18, 2020).

Second DCA Affirms that County's Wetland Easement Requirements Constitute a Per Se Taking, but Reverses Ruling that Ordinance Requiring a Grant of Easement is Facially Unconstitutional

Manatee County ("the County"), as part of its Comprehensive Plan and Land Development Code ("the Code"), created provisions aimed at the protection of wetlands. These provisions require that property owners maintain a buffer around the wetlands. Additionally, the property owner is required to grant a conservation easement to the County so that it may access the property to ensure compliance with the wetland protection provisions.

In 2007, Mandarin Development, Inc. ("the Developer") acquired property in the County with the intent to build 86 single-family homes on the property. As part of preparations to develop the property, the Developer filed an amended site plan requesting multiple variances to the Code. Notably, the Developer did not request a variance for either the wetland buffer requirement or the required conservation easement. The amended site plan was approved and development began on the property. In 2012, four years after the amended site plan was completed, the Developer requested a variance for the wetland buffer, which the County denied. Two years later, the Developer requested compensation for the conservation easement, which the Developer argued was a taking. The County denied that this was a taking and did not compensate the Developer.

Following the County's denial of compensation, the Developer filed suit. The Developer made three arguments in its complaint: (1) the County's requirement of wetland buffers is facially unconstitutional; (2) the County's requirement that property owners dedicate a conservation easement over wetlands is facially unconstitutional; and (3) the requirement for the grant of a conservation easement over wetlands results in a taking of property in violation of the Florida and Federal Constitutions.

The trial court rejected the Developer's constitutional challenge to the requirement of wetland buffers because the requirement was rationally related to the purpose of protecting wetland areas and drinking water from development activities. The trial court ruled in favor of the Developer on the two remaining counts, agreeing with the Developer that (1) the required grant of easement was unconstitutional, and (2) the required grant of easement was a taking that must be compensated. In reaching this conclusion, the trial court noted that because the easement caused a "loss of the ability to exclude, coupled with the complete loss of all reasonable economic use," that this was an unconstitutional taking that required compensation. The trial court awarded $135,000 plus attorney's fees and costs as compensation to the Developer.

On appeal, the Second District Court of Appeal ("Second DCA") affirmed the trial court's decision regarding the unconstitutional taking without any further discussion. However, the Second DCA reversed the trial court's ruling regarding the constitutional challenge of the County's ordinance requiring a grant of a conservation easement. The Second DCA based its reasoning on the fact that the statute of limitations had run its course for any *facial* challenges to the County's ordinance. While the Second DCA suggested that the analysis may be different for the Developer under an *as-applied* challenge, the *facial* challenge was limited by a 4-year statute of limitations which began when the ordinance was originally enacted in 1990.

Rebutting the idea that this ruling was a harsh result, the Second DCA explained that the Developer had not been stripped of a remedy; rather, the Developer could have chosen to argue an as-applied challenge to the County's code and claim that the provision violated the Developer's due process rights when applied specifically to its situation. The Developer instead chose to dismiss its as-applied challenge prior to trial. The Second DCA concluded by stating "in short, the requirements for wetlands buffers and conservation easements have been part of the County's [Code] since 1990. To fall within the statute of limitations, any challenge to the facial constitutionality of these provisions should have been brought by 1994."