

Nipper v. Walton County, 42 Fla. L. Weekly D171a (Jan. 17, 2017).

Injunctions for Zoning Violations and Skydiving: An Unlikely Pair

Walton County farmers were recently successful in appealing a judgment enjoining them from operating their skydiving business on their 290-acre farm. The farmers twice sought permission from the Walton County Planning Department to operate the skydiving business on their property but were denied. The Director of Planning and Development determined that the use was not allowed under the property's agricultural zoning. The farmers continued the skydiving business, and the county initiated a code enforcement action before the Walton County Code Enforcement Board ("CEB"). After holding a hearing, the CEB rejected the county's position and found that the farmer's skydiving business did not violate the county's zoning code. The county did not appeal.

Prior to the CEB decision, the farmers sought a declaration in circuit court that they could run their skydiving business pursuant to a state law exempting agritourism from local land use regulations. The farmers' state claim was denied, and the county's cross-claim for a permanent injunction to stop the skydiving business was granted.

The farmers appealed the injunction to the Florida First District Court of Appeal. The appellate court noted that in order to obtain an injunction against someone who is violating the zoning code, a county must show: (1) a clear legal right to the relief; (2) inadequacy of a legal remedy; and (3) irreparable injury if the relief is not granted. The appellate court focused on the first prong and examined if the county had shown a "clear legal right" to enjoin the farmers from operating a skydiving business at their farm. To demonstrate a clear legal right to injunctive relief, the county must show the farmers violated a law, a code, or ordinance. The appellate court noted that the CEB had jurisdiction to hear and decide alleged violations of all codes and ordinances in force in the county, and that the CEB, after a full hearing, did not find that the farmers were in violation. The appellate court held that the CEB decision undermined the county's claim of a clear legal right to enjoin the farmers' skydiving business.

Furthermore, the appellate court held that the zoning code does not clearly prohibit skydiving. The County's Comprehensive Plan specifically listed a nonexclusive list of allowed outdoor recreational activities. Since skydiving could be an outdoor recreational activity, the appellate court found no basis for the county's claim of a "clear legal right" to enjoin the farmers' skydiving business. Thus, the appellate court reversed the lower court's injunction.