

IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL
CIRCUIT IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

Captiva Civic Association, Inc., *et al.*,
Petitioners,

v.

Case No. 25-CA-4846

Lee County, *et al.*,
Respondents.

_____ /

ORDER DENYING RESPONDENTS' MOTION TO STRIKE

THIS CAUSE comes before the Court on Respondents' Motion to Strike portions of the Petitioners' Petition for Writ of Certiorari. Having reviewed the Motion and Petitioners' Response thereto, having heard argument from all counsel during a hearing on June 8, 2026, and being otherwise duly advised in the premises, it is hereby:

ORDERED AND ADJUDGED that, for the reasons explained below, Respondents' Motion to Strike is **hereby denied**.

Analysis

A motion to strike should only be granted for matters that are 1) wholly irrelevant, 2) have no bearing on the merits, and 3) have no influence on the decision. *McWhirter, Reeves, McGothlin, Davidson, Rief & Bakas, P.A. v. Weiss*, 704 So. 2d 214, 216 (Fla. 2d DCA 1998).

Striking pleadings is not favored and is a drastic action to be used sparingly by courts. *Bay Colony Office Bldg. Joint Venture v. Wachovia Mortg. Co.*, 342 So. 2d 1005, 1006 (Fla. 4th DCA 1977). Any doubts this Court may have are to be resolved in favor of the attacked pleadings. *Bay Colony*, 342 So. 2d at 1006. A motion to strike should be granted only if the material sought to be stricken is “wholly irrelevant,” having “no bearing on the equities” in the case, “and no influence at all on the [court's] decision.” *Id.* A motion to strike is appropriate only for claims that are “wholly irrelevant or for some reason improper.”

The references in the Petition for Writ of Certiorari that Respondents seek to strike are integral to the Court’s determination of the challenged zoning action’s compliance with Code Section 34-413(1). By its express terms, that section adopts “[t]he range of density or the uses permitted or encouraged under the Lee Plan” as its governing density and intensity standard.

Respondents argue that Petitioners’ reference to Comprehensive Plan provisions is an attempt to bring a Section 163.3215, Fla. Stat., action to enforce a comprehensive plan. Petitioners’ counter that references to the Comprehensive Plan provisions about which

Respondents complain are squarely within the appropriate scope of this certiorari action to enforce Code Section 34-413(1), which requires:

“Density or intensity of use permitted in any planned development shall be determined on a case-by-case basis in accordance with:

(1)The range of density or the uses **permitted or encouraged under the Lee Plan at that location;** [...]”

The matter before the Court in this certiorari action is a planned development approval directly governed by LDC Section 34-413(1) that adopts as its standard “[t]he range of density or the uses **permitted or encouraged under the Lee Plan at that location.**”

The Court must enforce the terms of the Code as written and must give effect to each word in the statute. *E.g., Amente v. Newman*, 653 So. 2d 1030 (Fla. 1995); *Dep’t of Educ. v. Cooper*, 858 So. 2d 394, 396 (Fla. 1st DCA 2003) (“Where the language [of a statute] is clear and unambiguous, it must be given its plain and ordinary meaning.”).

The Court cannot apply and enforce Code Section 34-413(1) without reviewing the relevant Lee Plan provisions that establish, in the words of Code Section 34-413(1), “[t]he range of density or the

uses permitted or encouraged under the Lee Plan at that location” – in this case, Captiva.

In this case, Petitioners argue that the relevant Comprehensive Plan provisions under the rezoning ordinance are:

1. **Goal 23** of the Plan’s Captiva Chapter: to “**maintain** the historic low-density residential development pattern of Captiva.”;
2. **Objective 23.2:** to “**continue** the long-term protection and enhancement of ... **existing land use patterns, unique neighborhood-style commercial activities** ... and historically significant features on Captiva.”;
3. **Policy 23.2.4** to: “[l]imit development to that which is in **keeping with the historic development pattern on Captiva**”; and
4. **Plan Policy 1.1.6** which limits density in the “Outlying Suburban” land use category to three units per acre, which, apropos of Goal 23, Objective 23.2, and Policy 23.2.4 above, has historically applied to both residential and guest/hotel units on Captiva.


The fact that these standards adopted by Section 34-413(1) are found in the Comprehensive Plan does not mean this is a statutory action under section 163.3215, Fla. Stat., to enforce the Comprehensive Plan or that they are not relevant to Certiorari arguments raised in opposition to the rezoning here. The Plan provisions incorporated by LDC Section 34-413(1) are the only Plan provisions raised here, and their application may be required in enforcing Section 34-413(1).

The Petition for Writ of Certiorari alleges a violation of LDC Section 34-413(1). The Motion to Strike asks the Court to ignore and essentially repeal the existence of that explicit Code provision prior to applying Section 34-413(1) to the rezoning ordinance and prior to judging the merits of Petitioners' claims. Such an interpretation would render the Code provision meaningless and superfluous – a prohibited interpretation. *Am. Home Assurance Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 367-68 (Fla. 2005); *Fla. Dep't of Rev. v. Fla. Mun. Power Ag.*, 789 So. 2d 320, 324 (Fla. 2001). Legislation “must be interpreted so as to give effect to every clause in it.” *Larimore v. State*, 2 So. 3d 101, 106 (Fla.2008).

The interpretation and application of Code Section 34-413(1) requires reference to, and only to, the Comprehensive Plan provisions that govern density and intensity on Captiva – the location of the subject property – Lee Plan Goal 23, Objective 23.2, Policy 23.2.4, and Plan Policy 1.1.6. The Court cannot fairly determine the rezoning’s compliance with Code Section 34-413(1) – which indisputably applies to this matter, if the Court’s authority to interpret and apply those specific Lee Plan provisions is abridged. The Court has the same jurisdiction over this claim as it does over claims of violations of any Code provision.

Respondents’ Motion to Strike is **HEREBY DENIED**.

DONE AND ORDERED in Chambers, at Fort Myers, Lee County, Florida.


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James Shenko, Circuit Court Judge YY8QF0he
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