IN THE DISTRICT COURT OF APPEAL
SIXTH DISTRICT OF FLORIDA

LEE COUNTY, FLORIDA, a political subdivision of the State of Florida,

Appellant,

Case No. 6D2025-0335

v.

L.T. Case No. 24-CA-2674

CAPTIVA CIVIC ASSOCIATION, INC., and WW SSIR OWNER, LLC,

Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

ANSWER BRIEF OF CAPTIVA CIVIC ASSOCIATION, INC.

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INTRODUCTION

Lee County, like WW SSIR Owner LLC ("SSIR") in its companion appeal, challenges a final judgment enforcing a Mediated Settlement Agreement between Captiva Civic Association and Lee County.[1] That Settlement Agreement enforces a longstanding 912-unit density limitation on South Seas Resort, a planned unit development on Captiva Island, by forbidding the County from issuing building permits for any dwelling units in excess of that limit—a limit which was initially established by a 1973 County zoning action.

The County attacks the judgment below in two ways. First, the County argues that the Settlement Agreement does not mean what it says. But the language of the Agreement could not be clearer: "The total number of dwelling units on South Seas Resort is limited to 912. No building permits may be issued by County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time." The trial court simply enforced the plain meaning of the text.

[1] That judgment has spawned two appeals, this appeal by the County and another by intervenor WW SSIR Owner, LLC ("SSIR") (6D2025-0268). The appeals are travelling together but are being briefed separately.

Second, the County attempts to renege on its deal. It argues that it had no power to enter into the Settlement Agreement; thus, the limitation within it cannot be enforced. But, as numerous Florida decisions make clear, the County, like every other litigant, is bound by the deals it makes, including agreements impacting the land development process.

The County's resort to "contract zoning" principles is equally unavailing. Even the County admits that the Settlement Agreement "falls outside" the definition of contract zoning. County Initial Brief (County IB) at 39. In this one respect, the County is correct—its contract zoning argument is a square peg that won't fit in a round hole. Simply stated, contract zoning refers to a contractual promise by the zoning authorities to rezone property in return for concessions by the owner of the property. But there is no such rezoning promise here. The Settlement Agreement merely reinforces a longstanding, previously approved, zoning density limitation on an already built development. No case has ever applied contract zoning principles to void an agreement under these or similar circumstances.

The trial court's final declaratory judgment enforcing the Settlement Agreement should be affirmed.

STATEMENT OF THE CASE AND FACTS

This litigation concerns the allowable density on South Seas Resort, a 304-acre master-planned residential, hotel, and commercial development on Captiva Island ("South Seas"). The development was originally approved by the County in a 1973 Zoning Resolution, (R823), and has been virtually built-out in accordance with that plan.[2] SSIR, the appellant in the companion appeal, is the current owner of 120 acres of South Seas. *See* County's IB at 7 (citing R493; A87). The Civic Association is a not-for-profit corporation created in 1936 and incorporated in 1959. (R10). Its goal is to "defend and preserve our comprehensive land use policy" and to "protect our residents' safety, the island ecology, and the unique island ambiance[.]" (R10, 437).

The Original 1973 Zoning Approval

In 1973, the initial developer of South Seas presented its plan for development in a zoning petition. (R384-87). The plan sought approval of "one of the finest resort/residential areas in the country

[2] Citations are to the Record and Appendix prepared in the County's appeal, case number 6D2025-0335. A similar record has been prepared in SSIR's companion appeal, 6D2025-0268, but the pagination between the two records is slightly different.

. . . . by focusing on . . . very low density and preservation of large natural areas." (R386). Its zoning request limited development to three units per acre—a density limit of 912 units over the 304-acre property. (R384-85, 823). In conjunction with this lower density on the resort as a whole, the developer sought the flexibility to reduce or eliminate buffers and setbacks and to cluster the development in pockets of higher density which would leave "other areas completely untouched." (R386).

The developer's submittal to the County supporting the petition extolled the benefits of the comprehensive planned development. (R384-87). The clustered, but lower density, plan would ensure a high-quality resort community with minimized traffic flows and maximized open space with the preservation of large natural areas. (R386). The developer closed its petition reiterating its commitment to the "right kind of development" and promising to "carry[] this commitment to the South Seas Plantation." (R387).

The petition was approved, and the County adopted Zoning Resolution Z-73-202 (the "1973 Zoning Resolution"), which rezoned South Seas to a 304-acre special zoning district, using a planned unit development ("PUD") concept plan, with the special limitation that

South Seas' density was specifically limited to three units per acre. (R372, 823). Between 1973 and 2002 (when South Seas was virtually built out), the developers built, marketed, and sold South Seas parcels and units in accordance with the commitments expressed and memorialized in the 1973 Zoning Resolution. (R243-45). Thus, hundreds of purchasers bought South Seas properties with the expectation that the developer would honor its commitment to low density development—912 units—over the 304-acre property. (R243-45, 385-86).

This density limitation was highly material to the approval of the developer's plan. Captiva is a small barrier island comprising only 725 acres. (R10). A single narrow, two-lane road provides access to the mainland. (R10). Large portions of the island are covered by native vegetation, including mangroves. (R245). As the commitments that led to the original zoning resolution recognize, all stakeholders of Captiva, including the original South Seas developer, the County and its officials, the residents on Captiva and nearby Sanibel Island, and the ultimate purchasers of property on South Seas, were concerned with maintaining the special character of the fragile barrier island and ensuring that development was consistent with

that character. (R384-87). The 912-unit density cap, established by the 1973 Zoning Resolution, has limited density on South Seas and has protected Captiva and its property owners from overdevelopment for more than 50 years.

The 2002 Administrative Interpretation

On July 30, 2002, the County issued Administrative Interpretation ADD2002-00098 (the "ADD" or "Interpretation"). (R234-49). The ADD was designed to document the "as built-as approved" status of the South Seas development and to determine how may units remained to be built at South Seas under the 912-unit limit of the 1973 Zoning Resolution. (R234-49). In so doing, the ADD reaffirmed the 912-unit density cap and inventoried the existing units throughout the 304 acres of South Seas. (R234, 237-38, 240, 242-46, 248).

As part of that inventory, the ADD noted that some units had been built and were operating as "lock-off" accommodations in violation of the allowable density allocation. (R237, 243). For example, a one-bedroom/two-bathroom unit with a "Murphy Bed" in the living room was constructed with two separate locked entrances, permitting the unit to be rented as two separate units—thereby

exceeding the number of units permitted on South Seas. The ADD terminated the use of lock-off units but failed to set a termination date when the density count would no longer exceed the allowable 912 units of the 1973 Zoning Resolution. (R242-45).

The Civic Association challenges the ADD.

Concerned about the application of the ADD and its calculation of the existing and allowable unit counts, the Civic Association sued the County and the developer of South Seas, Plantation Development, Ltd. ("Plantation"). (R436-43). The purpose of the 2003 complaint was to ensure that South Seas complied with the 912-unit density limit in the original 1973 PUD and Zoning Resolution. As explained in its complaint, the Civic Association believed that South Seas had already exceeded the 912-unit cap, with the failure to properly count units with lock-offs as multiple units. (R438-39). The Civic Association also expressed concern that the ADD could be interpreted to permit an increase in the allowable density on the resort in violation of the 1973 Zoning Resolution. (R439-40). The Civic Association requested that the court declare the ADD to be invalid to the extent it strayed from the County's current zoning regulations. (R441).

The parties settle their litigation.

The Civic Association, Plantation, and the County mediated and settled the case. (R446-48). As a condition of their Settlement Agreement, the Civic Association withdrew with prejudice its challenge to the ADD. (R447). In return, the parties agreed on the calculation of the current as-built unit count. (R447). And most importantly, the parties agreed that current and future density at South Seas would remain at 912 units as approved by the 1973 Zoning Resolution and memorialized in the ADD. (R447). Paragraph 3 of the Agreement made this clear:

> 3. The total number of dwelling units on South Seas Resort is limited to 912. No building permits may be issued by County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time.

(R447). The parties agreed that their Settlement Agreement, including its 912-unit density cap, was "enforceable through application to the court." (R448).

The Settlement Agreement was approved by the trial court, (R348, 445), and was submitted to and approved by the Lee County Board of County Commissioners at a public meeting, (R252, 444-45).

After the settlement, the County continued to restate the 912-unit limitation established by the 1973 Zoning Regulation as reaffirmed and enforced by the Settlement Agreement. For example, not only did the 2002 ADD reaffirm that "current and future development" within South Seas is "limited to a development density of 912 units," in 2008, the County issued an administrative amendment to the ADD which approved the reallocation of 140 dwelling units used for employee housing toward hotel and residential units. (456-460). The County, however, emphasized that the reallocation was subject to the 912-unit density limit. (R457). In 2015, the County permitted a different reallocation of these 140 employee dwelling units but again confirmed the 912-unit density limit. (R461-65).

SSIR purchased its portion of South Seas in 2021. (R211, 292-93). In connection with its purchase, SSIR was advised of, and acknowledged, the 912-unit density cap and the past controversies over how the units already developed were to be counted. (R466). SSIR submitted a series of due diligence questions to the County asking about the 912-unit cap, including questions about the proper interpretation of the ADD—how the number of units was calculated

and the number of units that remained to be built. (R466-72). The answers provided to SSIR by the County confirmed the 912-unit cap, addressed the current unit count, answered questions relating to the definition of a unit (whether, for example, it included hotel rooms as well as residences), and described how the County would count and treat lock-offs. (R466-72). Apparently satisfied with the answers to these questions, SSIR proceeded with its purchase. (R211, 292-93).

The County amends its Land Development Code.

Despite the longstanding 912-unit density cap and the limit imposed by the Settlement Agreement on the County's authority to issue building permits, in September 2023, the County adopted amendments to its Land Development Code ("LDC") by Ordinance No. 23-22. (R473-92, 824-25). Before the enactment of Ordinance 23-22, the LDC, consistent with the 1973 Zoning Resolution and the Settlement Agreement, limited dwelling units on Captiva, including both residential and hotel units, to three units per acre. (R824-25). Ordinance 23-22 created a special exception for South Seas from Captiva's three-hotel-unit per acre limitation leaving no numeric limit

on hotel units permitted on South Seas. (R824-25).[3] This exception for South Seas, and only South Seas, would allow South Seas to exceed the three units per acre 912-unit cap, (R825), as the County concedes for the purposes of its brief, County IB at 17.[4]

Taking immediate advantage of the LDC amendments, in December 2023, SSIR submitted a Rezoning Application seeking approval to construct 359 new units, which would more than double the density on SSIR's portion of the South Seas property from the allowable 272 units to 631 units, thereby increasing density on South Seas from the cap of 912 units to 1271 units, a 40% density increase on South Seas as a whole. (R350-51, 493-503). SSIR's Rezoning Application is pending. (R351).

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[3] The County suggests that there may be a present or future disagreement over whether the 912-unit cap included hotel units. County IB at 20-21. There is no such controversy, as the trial court specifically found in its order granting summary judgment to the Civic Association. *See* (R823-24) (noting that 912-unit cap of the 1973 Zoning Resolution was "inclusive of hotel room units" and the ADD "identified and included 'hotel units' as part of the 912-unit density limitation"). In any event, neither the County nor SSIR have appealed this finding in their briefs.

[4] The Civic Association has appealed to this Court the final order of the Florida Division of Administrative hearings upholding those code changes. *Captiva Civic Association, Inc. v. City of Sanibel*, Case No. 6D2025-0271 (Fla. 6th DCA). That appeal remains pending.

This litigation begins.

The LDC amendments eliminating the three-hotel unit per acre density limit for South Seas immediately threatened the Civic Association's Settlement Agreement with the County, which prohibits the County from issuing building permits for more than 912 units on South Seas. The Civic Association responded by filing an action for declaratory relief against the County. (R10-16). The simple, one-count complaint recounted the regulatory framework going back to the 1973 Zoning Regulation, the 2002 ADD and its possible effect on the unit count, the litigation over the ADD, and the terms of the Settlement Agreement settling that litigation. (R10-16). The Civic Association asked the trial court to enforce the Settlement Agreement and reaffirm that South Seas is limited to 912 dwelling units and declare that the County is barred from issuing building permits for dwelling units exceeding the 912-unit density limit. (R16).

The County responded by moving to dismiss the complaint, arguing that declaratory relief was improper, the Settlement Agreement was unenforceable and the "current owner of South Seas" was an indispensable party. (R33-50). The trial court denied the County's motion, including its argument that the "current owner" of

South Seas was indispensable, without prejudice to the right of the "current owner" to intervene. (R183-85).

The Answer and Affirmative Defenses

The County then answered the complaint. (R186). It raised numerous affirmative defenses relating to the appropriateness of declaratory relief. (R189-93). The County also claimed that it had no authority to enter into the Settlement Agreement. (R189-93).

After the County filed its answer, SSIR moved to intervene, arguing that it was "the owner of the real property that is allegedly subject to the terms" of the Settlement Agreement. (R194). The Civic Association did not oppose SSIR's motion. Although there are hundreds of other owners of real property on South Seas, no other party attempted to intervene or oppose the Civic Association's efforts to enforce the 912-unit density cap. The trial court granted SSIR's unopposed motion. (R197).

The County and SSIR jointly move for summary judgment.

The County and SSIR ultimately moved for summary judgment. (R306). SSIR and the County raised two arguments relevant to the County's Appeal. First, the County argued that the Settlement Agreement could not be interpreted to prohibit the County from

issuing building permits in excess of the 912-unit cap. (R330-31). Instead, the County argued that the Agreement permitted it to avoid its obligations merely by rezoning the property to allow more density. (R330-31). Second, the County argued that if the Agreement meant what the Civic Association said it did, then it was unenforceable because the County had no power to enter into such an Agreement in the first place. (R322-29). According to the County, either it had improperly bargained away its sovereignty by ceding its powers to a court or improperly tied its hands as to future zoning of the property in violation of "contract zoning" principles.[5] (R322-29).

The Civic Association responded that it was simply suing to enforce an unambiguous contract freely entered into by the County and approved by the County Commission at a public hearing. (R344, 348, 352-53). As the Civic Association pointed out, courts routinely enforce contracts made by governmental entities such as the County, even when they impacted land development rights. (R359-65). To allow the County to renege now would violate principles of fair play

[5] The County raised other arguments about whether declaratory judgment was appropriate or "ripe," but those arguments have been abandoned on appeal.

mandated by long-settled Florida precedent and impair the contract rights of the Civic Association, its members, and the hundreds of buyers who purchased property at South Seas based on the promise of the 912-unit density limitation. (R369-70).

The trial court agreed with the Civic Association's arguments and denied SSIR and the County's joint motion. (R744-51). After additional argument, the trial court reaffirmed these rulings and granted summary judgment for the Civic Association. (R823-30). The court then entered a final declaratory judgment affirming that South Seas is limited to 912 dwelling units and barring the County from issuing building permits over the 912-unit cap under the terms of the Settlement Agreement. (R983-91).

The Appeals

SSIR and the County each appealed. (R904, 966, 992, 1004). The Civic Association moved to consolidate the two appeals, which this Court granted to the extent that the two appeals would travel together but be briefed separately. *See* Order Mot. Consolidate, May 1, 2025. In this brief, the Civic Association responds to only the issues raised by the County. It has already responded to SSIR's "restrictive covenant" issue, the only issue raised by SSIR's appeal.

SUMMARY OF THE ARGUMENT

The Settlement Agreement means what it says. There is nothing complicated or ambiguous about these two simple sentences: "The total number of dwelling units on South Seas Resort is limited to 912. No building permits may be issued by County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time." And nothing else in the full text of the Agreement modifies or calls this obligation into question. This Court must enforce the plain language of the Agreement.

The Settlement Agreement is not a violation of the County's sovereignty. Courts readily enforce such agreements, regardless of whether these obligations may extend into the future. Nor is the trial court violating the principle of separation of powers by holding the County to its Agreement. The obligations being enforced by the court were created and agreed to by the County, not the Court.

The Settlement Agreement falls outside the definition of prohibited contract zoning, as even the County admits. None of the elements of contract zoning are present. The Civic Association is not a landowner seeking to develop or offer any concessions. The County has not promised the Civic Association or anyone else a zoning

change. And, most importantly, the County has not circumvented the normal land development framework because the Settlement Agreement is based on duly enacted land development regulations long in place. It is not illegal contract zoning for the County to agree to follow its own regulations.

Finally, there is no legitimate question about the trial court's power to enforce its order. Florida Courts recognize that trial courts always have the power to order whatever affirmative relief is necessary to make the court's declarations enforceable and meaningful.

ARGUMENT

The County, like SSIR, works hard to complicate this simple case. But their extensive discussions of restrictive covenants, sovereignty, and contract zoning are nothing more than diversions. The real question is whether the Civic Association can enforce the obligations the County freely undertook in its Settlement Agreement. Florida law is clear on this point; the government, like any private party, is bound by its word.

In Section I of this brief, we address the County's argument that the Settlement Agreement did not mean what it says. To the contrary, the Agreement is uncomplicated and clear. The County reaffirmed the 1973 Zoning Resolution's density limit of 912 units on South Seas Resort and promised not to issue building permits that would exceed the 912-unit density cap at any time.

In Section II we refute the County's argument that the Agreement was an *ultra vires* impingement of the County's future decision-making authority. Every contract executed by the government imposes restrictions and obligations, including obligations that may stretch long into the future, but the enforcement

of such contracts has never been seen as an impingement on the government's sovereignty or a violation of separation of powers.

Neither is this a case of prohibited contract zoning, as the County's brief admits. The Agreement made no promise to or from the Civic Association, or anyone else for that matter, to approve a zoning change. The Agreement concerns the issuance of building permits under a prior existing zoning. And to the extent that zoning is even relevant, the Agreement merely recognizes and enforces the County's obligations arising out of a duly-approved, and long-standing zoning action. No case that the County has cited (or we have found) has ever applied contract zoning to prohibit this sort of agreement.

Finally, we refute the County's contention that the trial court would have no power to enforce the declaratory judgment if the County were to disobey it. Florida law is clear that a trial court always has the power to award affirmative relief to make a declaratory judgment meaningful and effective.

Standard of Review

We agree with the County that the trial court's interpretation of the Settlement Agreement is reviewed *de novo*. *See* County IB at 26.

The trial court's entry of summary judgment, which was based on its decision to enforce the Settlement Agreement, is similarly reviewable *de novo*. *See* County IB at 26 (summary judgments reviewed *de novo*); *Fleetwing Corp. v. Rickets*, 377 So. 3d 221, 223 (Fla. 6th DCA 2024) (interpretation of a settlement agreement is a matter of law reviewed *de novo*).

I. The trial court correctly interpreted the plain language of the Settlement Agreement.

We likewise agree with the County on the basics of contract construction. The Settlement Agreement is interpreted like any other contract. County IB at 26-27. *See Dozier v. Scruggs*, 380 So. 3d 505, 508 (Fla. 5th DCA 2004) ("As mediated settlement agreements are contracts, they are governed by contract law, and 'construed in accordance with the rules for interpretation of contracts.'" (citation omitted) (quoting *Patrick v. Christian Radio*, 745 So. 2d 578, 580 (Fla. 5th DCA 1999))). Thus, the words the parties chose in memorializing their Agreement are of "paramount concern." County IB at 27. Simply put, courts are "bound by the plain meaning of the contract's text." *Allstate Ins. Co. v. Revival Chiropractic*, 385 So. 3d 107,113 (Fla.

2024) (quoting *MRI Associates of Tampa, Inc. v. State Farm Mut. Auto. Ins. Co.*, 334 So. 3d 577, 583 (Fla. 2021)).

As this Court has observed, "the best evidence of [the parties'] intent is the contract's plain language." *Grovehurst Homeowners v. Stone Crest*, 365 So. 3d 1282, 1285 (Fla. 6th DCA 2023). Thus, "[w]here this language, as here, is clear and unambiguous, we look only to the plain meaning of the words in the contract." *Id.*

The plain language chosen by the parties presents no difficulty in interpretation here. The relevant provision of the Settlement Agreement straightforwardly identifies and confirms the density cap on South Seas and prohibits the County from issuing building permits over that 912-unit cap at any time. Here is that simple provision once again:

> 3. The total number of dwelling units on South Seas Resort is limited to 912. No building permits may be issued by County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time.

(R447).

The County does not quarrel with the meaning of this provision, all but conceding that these two straightforward sentences mean what they say. County IB at 27. The County's argument is that the

plain meaning of this provision can be changed by the "context" of the Agreement. According to the County, what the parties really meant by their agreement is that the County is barred from issuing building permits over the cap, but only until it approved a zoning change that permitted a higher density. County IB at 35.

This argument fails on several levels. First, on the most basic level, that is not what the Agreement says. If that is what the parties meant, they could easily have said so, but they didn't. As the County agrees, it is fundamental black letter law that a Court cannot add language to a contract that the parties did not include. County IB at 33 (citing *Coates v. R.J. Reynolds Tobacco Co.*, 365 So. 3d 353, 354 (Fla. 2023) ("[W]e do not add words to a statute in the guise of interpreting it")).

The County has always been clear that its interpretation would require adding new language to the Settlement Agreement. In its Summary Judgment motion, the County argued that the text of Paragraph 3 was meant to include "unless and until more units are approved through a public hearing." (R331). Of course, there is no "unless and until" language in Paragraph 3. And in its brief, the County argues that Paragraph 3 really meant to say that "No building

permits may be *lawfully* issued by County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time *under the then-existing ordinances*." *See* County IB at 24 (emphasis supplied). Again, these emphasized words do not appear in the Settlement Agreement.

Equally important, the County's interpretation conflicts with the language the parties actually chose. The parties agreed that the County would not issue building permits over the cap "at any time." As the Florida Supreme Court has recognized, words like "thereafter," "at whatever time," or "any and all times" convey meaning that the relevant contractual obligation extends to anytime in the future. *Chiapetta v. Jordan*, 16 So. 2d 641, 645 (Fla. 1943). *See also Doe 1 v. Archdiocese of Miami, Inc.*, 360 So. 3d 778, 780 (Fla. 3d DCA 2023) (giving "at any time" its plain meaning and reversing a trial court decision limiting these words).

Thus, to adopt the County's interpretation would not only add words that do not appear in the Agreement but also would require this Court to violate the settled canon of contract construction that a court must give effect to every provision in the contract. *Grovehurst*, 365 So. 3d at 1285 (courts must strive to read a contract to give effect

to all its provisions and must avoid any construction that renders a provision meaningless). If the contract were interpreted to be in effect only until there were a zoning change, then the court would be ignoring the plain meaning of "at any time'—essentially eliminating it from the Agreement. This a court may not do. *Id.*; *First Acceptance Ins. Co. v. At Home Auto Glass, LLC*, 365 So. 3d 1278, 1280 (Fla. 6th DCA 2023) (court must give every provision in a contract its full meaning and effect).

Moreover, the Court must interpret the Agreement in a reasonable way, and the County's interpretation is not reasonable because it would render the County's obligation meaningless. *See Grovehurst*, 365 So. 3d at 1285 (court must interpret an agreement "to accomplish its stated meaning and purpose") (quoting *Silver Shells Corp. v. St. Maarten at Silver Shells Condo. Ass'n*, 169 So. 3d 197, 203 (Fla. 1st DCA 2015). If all the County had to do to circumvent its obligations is change the zoning on South Seas, then the 912-unit limitation would be meaningless. The point is, the County could have negotiated such a limitation but did not. This Court cannot add provisions never negotiated by the parties or expressed in their agreement. *Coates*, 365 So. 3d at 354.

Nor is the County's "context" argument otherwise persuasive. The premise of the County's argument is that the 2003 litigation leading to the Settlement Agreement was merely a dispute over the method of calculating units. Thus, the Court would be wrong to interpret the Settlement Agreement in any way that would go beyond what it calls the "narrow" purpose of the litigation. County IB at 28-29.

That said, the County misunderstands what courts mean by "context." We agree that this Court must review the entire contract and interpret any individual provision in the context of the whole, which is all the County's cases say. *See Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) (court must look at all the textual and structural clues to determine the meaning of any provision including the context in which the language is used and the entire text of a statute); *Allstate*, 385 So. 3d at 113 ("Provisions in the texts of statutes and contracts cannot be viewed in isolation from the full textual context of which they are a part. 'Under the whole text canon, proper interpretation requires consideration of the entire text in view of its structure and of the physical and logical relation of its many

parts'" (quoting *Lab'y Corp. of Am. v. Davis*, 339 So. 3d 318, 324 (Fla. 2022))).

Nothing in the balance of the Settlement Agreement, however, contradicts the plain language of Paragraph 3 and the unambiguous promise it contains. The County's brief, which combs the balance of the Settlement Agreement in detail, is unable to highlight a single provision of the Agreement that conflicts with the 912-unit limitation or adds gloss to its meaning. *See* County Brief at 29-34.

The best the County can do is to point to Paragraph 2 of the Agreement, which it characterizes as an acknowledgment by the parties that there might be further public hearings relating to the South Seas master plan. The County misunderstands the Agreement. Paragraph 2 addressed the Civic Association's concern that a County staff person—the Director of Community Development—had exceeded his authority and could use administrative actions in a way that conflicted with the density limitations of the 1973 Zoning Resolution. Paragraph 2 settled this point by emphasizing that administrative approvals would be limited to such things as reallocating the existing dwelling units and that no other amendments to the ADD could occur without the transparency

of a public hearing. (R446-47). Significantly, paragraph 2, like the rest of the Agreement, says nothing about amending the 912-unit density limitation and its accompanying enforcement mechanism—the only truly substantive provision in the Agreement, and the very purpose of the Agreement itself.

Simply put, as the County concedes, the County's discussion of the balance of the Agreement cites no provision that conflicts with the plain language of paragraph 3. *See* County IB at 33 (conceding that the remainder of the agreement "adds little to the analysis of the disputed text"). The full text canon does not help the County.

Recognizing this problem, the County argues that the real "context" the Court should consider is the intent of the parties in bringing and defending the litigation over the ADD. According to the County, the Civic Association was concerned only with the method of calculating units; thus, the Agreement should be narrowly construed to accomplish that, and only that result. County IB at 29.

The County is misusing the full text canon. Nothing in the caselaw cited by the County suggests that interpreting the language of the parties to a Settlement Agreement requires parsing the intentions of the parties in bringing or defending the litigation leading

to the settlement. Indeed, this sort of examination would be little different from trying to interpret a statute primarily by parsing the intentions of the legislators supporting the bill. *Progressive Express Ins. Co. v. Simonmed Imaging*, 363 So. 3d 1196, 1201 (Fla. 6th DCA 2023) (trying to divine legislative intent improperly shifts the "focus of interpretation from the text and its context to extraneous considerations" (quoting *Advisory Op. to Governor re Implementation of Amend. 4, The Voting Restoration Amend.*, 288 So. 3d 1070, 1078 (Fla. 2020))). Litigation history is no more relevant than legislative history in determining what the parties meant by their agreement. Settlement agreements, like statutes, are interpreted by the language chosen by the parties, not their underlying motivations in the litigation. *See id.* (rejecting the search for "external considerations" such as legislative history in interpreting a statute's text).

Similarly, the County misunderstands the process of settlement agreements. The parties can choose to settle any controversy or reach any agreement when they come to the bargaining table. The County cites no authority suggesting that settlements must be limited to what one party or the other, in hindsight, claims that the litigation was all about.

Moreover, even if this sort of "litigation context" were relevant, it does the County no good because the County fundamentally misunderstands the purpose of the 2003 litigation over the ADD. The dispute over the calculation of units was merely a means to an end. And the end was to ensure that the County would not allow any "backdoor" means around the long-settled and duly-approved 912-unit cap. As the Civic Association made clear, the ADD was illegal because it allowed South Seas to "materially alter the permitted density of South Seas." (R442). The intent of the litigation was not just to establish the unit count, but to address South Seas' "noncompliance with the Lee Plan density limits." (R442).

Thus, the Settlement Agreement, considered in the full context of the 2003 litigation, did exactly as one would expect. It established the existing unit count and ensured that the County would honor the density cap going forward. Paragraph 3 means exactly what it says and exactly what the parties intended.

In short, the County may now regret its agreement, but the Settlement Agreement is clear. It unambiguously limits the County to building permits up to the 912-unit cap, and this limitation is consistent with the "context" of the agreement, however defined.

II. The County's promises in the Agreement are enforceable.

The balance of the County's brief attacks the Settlement Agreement as *ultra vires*. First, it complains that the trial court's enforcement of the Agreement interferes with the County's sovereignty. Next, the County complains that the Agreement constitutes prohibited contract zoning. Its final fallback is that the trial court would have no authority to enforce its own declaratory judgment. None of these arguments have merit.

A. The Agreement does not violate the County's sovereignty.

Once again, we agree on the basics. As the County must concede, the Settlement Agreement is enforceable like any other binding contract. County IB at 42 ("A 'circuit court mediation' admittedly, if successful, results in a binding contract."). *See Dozier*, 380 So. 3d at 508-09 (mediation settlement agreements are contracts interpreted like any other contract). That basic principle decides this case. The "public policy of the State of Florida, as articulated in numerous court decisions, highly favors settlement agreements among parties and will seek to enforce them whenever possible." *Sun*

Microsystems of California, Inc. v. Engineering and Mfg. Systems, C.A., 682 So. 2d 219, 220 (Fla. 3d DCA 1996).

Settlements between private citizens and the government are no different. "[T]he power of a public body to settle litigation is incident to and implied from its power to sue and be sued." *Kruer v. Board of Trustees of the Internal Improvement Trust Fund of the State of Florida*, 647 So. 2d 129, 133 (Fla. 1994) (quoting *Abramson v. Florida Psychological Association,* 634 So.2d 610, 612 (Fla.1994). Upholding and enforcing the settlement in *Kruer*, the Court held that, to do otherwise, would "have the effect of discouraging third parties from ever trying to settle their controversies with the governmental agencies of Florida." *Id.* (quoting the same).

These general principles concerning the recognition and enforcement of settlement agreements apply equally to settlements in cases that impact the government's land development approval powers. *See Zoning Bd. of Monroe Cty v. Hood*, 484 So. 2d 1331, 1332 (Fla. 3d DCA 1986) (enforcing a settlement agreement by the government settling a zoning dispute); *Stranahan House, Inc. v. City of Fort Lauderdale*, 967 So. 2d 1121, 1126 (Fla. 4th DCA 2007)

(same); *Molina v. Tradewinds Dev. Corp.*, 526 So. 2d 695, 696 (Fla. 4th DCA 1988) (same).

The County, ignoring these cases, argues that to enforce the Settlement Agreement would be to tie the hands of future County commissions, thus impacting upon the County's sovereignty; that is, its ability to exercise its police powers. County IB at 35. But every settlement imposes future enforceable obligations on the parties. Indeed, that is the very point of settlement agreements (like any contract)—to guide and limit the conduct of the parties in the future. Such limitations are the heart of any agreement.

If the County were correct, then *every* settlement agreement with the government would be unenforceable because *every* settlement imposes future obligations that tie the hands of the government. But no such sovereignty argument impeded the courts from enforcing the settlements in the cases discussed above. As these many cases approving settlement agreements demonstrate, courts routinely enforce the government's future obligations.

Indeed, the Florida Supreme Court specifically addressed and rejected this "transfer of sovereignty" argument in *State v. Gadsden Cnty.*, 229 So. 2d 587, 588 (Fla. 1969). In that bond validation case,

the question was whether Gadsden County could enter a contract pledging certain revenues to repay its bond obligations. *Id.* The agreement was attacked because it would bind the hands of future Gadsden County Commissioners. *Id.* Thus, the question was, could one commission tie the hands of a future commission through its binding contractual obligations. *Id.* According to the Florida Supreme Court, the simple answer was "yes." *Id.* The Court rejected the notion that such a contract was *ultra vires*: "The power to make any contract or authorize any contract includes the power to grant vested rights, which a future legislature cannot impair." *Id.*

This conclusion makes perfect sense. If the law were otherwise, a government entity could never take on a contractual obligation, because every obligation ties the hands of the government going forward. As the Supreme Court observed, "the Constitution contains no express limitation on the power of a legislature to authorize such a contract." *Id.* In short, the government's powers are always circumscribed by the contractual obligations it undertakes.

Equally important, the County's argument disregards the rights of the Civic Association, the other party to the Agreement. As courts have long recognized, to release the government from its settlement

obligations would be unfair to those who enter into agreements with the government in good faith. *See, e.g., Abia v. City of Opa Locka*, 389 So. 3d 685, 686 (Fla. 3d DCA 2004) (The city "cannot take the benefit of the settlement agreement . . . and then later argue that the same agreement is unenforceable.").

Indeed, to ignore the government's obligations would be more than unfair; it would violate the Florida Constitutional provision prohibiting the state from impairing the contract rights of its citizens. Art. I, § 10, Fla. Const. Invoking Florida's Constitutional prohibition against the impairment of contracts, the Florida Supreme Court has prevented the State from backing out of its contractual obligations. Calling the protection of contracts both "fundamental" and "sacrosanct," the Court ruled that the government has only "a very severely limited authority" to "eliminate a contractual obligation it has itself created." *Chiles v. United Fac. of Florida*, 615 So. 2d 671, 673 (Fla. 1993). *See also, State v. Leavins*, 599 So. 2d 1326, 1332 (Fla. 1st DCA 1992) ("[E]ven greater scrutiny should be applied to legislation impairing public contracts (those involving the State).").

The County's brief ignores this Constitutional protection against the impairment of contracts. Instead, its focus is entirely

upon its own rights (and the rights of SSIR), while ignoring the vested contract rights of the Civic Association and vested rights of the hundreds of purchasers who bought property at South Seas in reliance on the promise of the 912-unit density cap. The County's so-called sovereignty does not give it the right to ignore its contractual obligations to the Civic Association or the vested rights of the hundreds of individuals who purchased property in South Seas in reliance on the promises made by the County as well as SSIR's predecessors.

The law could not be clearer on this point. Florida has long recognized the "well-accepted principle that virtually no degree of contract impairment is tolerable in this state." *Pomponio v. Claridge of Pompano Condo.*, 378 So. 2d 774, 780 (Fla. 1979). *See also State Dept. of Transp. v. Edward M. Chadbourne, Inc.*, 382 So. 2d 293, 297 (Fla. 1980) (recognizing the protection of vested contract rights and stating that Florida "has generally prohibited all forms of contract impairment.").

Indeed, the protection of parties' "vested rights" often limits what the government can do, imposing what amounts to permanent restraints on governmental action. As the Florida Supreme Court

observed in *Gadsden*, entering into contracts necessarily ties the hands of future legislators. 229 So. 2d at 588 ("The power to make any contract or authorize any contract includes the power to grant vested rights, which a future legislature cannot impair."). *See also Presmy v. Smith*, 69 So. 3d 383, 387 (Fla. 1st DCA 2011) (the government may not act to impair a vested right or impair a contract); *Williams v. Am. Optical Corp.*, 985 So. 2d 23, 27 (Fla. 4th DCA 2008) (government cannot eliminate vested rights by retroactive legislation (quoting *McCord v. Smith,* 43 So.2d 704, 708–09 (Fla.1949))); *Power v. Power*, 864 So. 2d 523, 525 (Fla. 5th DCA 2004) (court cannot eliminate a vested right memorialized by a settlement agreement).

This well-settled principle of protecting vested rights is often applied in the land development context. Many Florida cases hold that a government entity cannot recognize a right, by contract or otherwise, and then take that same right away by future legislative or other enforcement action. The government, like its citizens, is bound by the rules of fair play. As the Third District has observed, a "citizen is entitled to rely on the assurances or commitments of a zoning authority and if he does, the zoning authority is bound by its representations, whether they be in the form of words or deeds . . ."

City of Miami Beach v. Clevelander Ocean, L.P., 338 So. 3d 16, 22 (Fla. 3d DCA 2022) (quoting *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571, 573 (Fla. 2d DCA 1975)).

Thus, as many Florida Courts have articulated using the same famous quote first penned by the Second District, when the government engages in land development regulation, it is bound by the same rules of fair play as every one of its citizens.

> Stripped of the legal jargon which lawyers and judges have obfuscated it with, the theory of estoppel amounts to nothing more than the application of the rules of fair play. One party will not be permitted to invite another onto a welcome mat and then be permitted to snatch the mat away to the detriment of the party induced or permitted to stand thereon.

Town of Largo, 309 So. 2d at 572 (preventing the City from enforcing later-enacted zoning regulations contrary to the City's agreements with the developer).

Thus, as demonstrated by many decisions in the fifty years since *Town of Largo*, principles of estoppel and fair play are often invoked to protect citizens against subsequent acts of the government impinging upon their rights. *See Clevelander*, 338 So. 3d at 22 ("[L]andowners may acquire vested rights in the use of their land that protect them against the enforcement of subsequent legislation.").

For example, in *Clevelander*, this meant that the City of Miami Beach could not modify a previous agreement by a new ordinance. *Id.* at 23. Similarly, in *Castro v. Miami Dade County Code Enforcement*, 967 So. 2d 230, 234 (Fla. 3d DCA 2007), the court prohibited the county from enforcing a new set-back requirement inconsistent with its earlier actions. *See also Equity Res., Inc. v. Cnty of Leon*, 643 So. 2d 1112, 1119 (Fla. 1st DCA 1994) (protecting a land-owner's vested rights); *City of Lauderdale Lakes v. Corn*, 427 So. 2d 239, 243-44 (Fla. 4th DCA 1985) (requiring the City to approve a cite plan and issue a building permit based on the vested rights relied on by the developer).

And we emphasize that it is not just the Civic Association's rights in play here. What about the hundreds of buyers who purchased property in South Seas in reliance on the long-standing density limitation? What about the other citizens of Lee County who relied on these development limitations to assure safe egress from Captiva in the event of a coming storm? What about the rest of Captiva's citizens interested in preserving the unique character of the Island—the very character that the original developer promised it would protect and preserve if its original plan as embodied in the

1973 zoning application were approved. Refusing to enforce the Settlement Agreement would ignore the vested rights of all these citizens. As the Third District emphasized in *Clevelander*, the public interest in enforcing vested rights "is not strictly between the municipality and the individual litigant." 338 So. 3d at 22. Instead, "[a]ll residents of the community have a personal interest in maintaining the character of an area as established by comprehensive zoning plans and preventing one property from being damaged or diminished in value by the use of an adjacent property". *Id.*

Nor can it be argued that ignoring the Settlement Agreement is necessary to protect SSIR's vested rights. SSIR has no vested right to demand an increase in density. *See, e.g., Namon v. State, Dept. of Envtl. Regulation,* 558 So. 2d 504 (Fla. 3rd DCA 1990) (collecting cases and observing that landowners "are deemed to purchase the property with constructive knowledge of the applicable land use regulations" and have no vested property right to have them changed).

Nor would SSIR have any possible case for estoppel. When SSIR purchased its portion of South Seas in 2021, the density limitation

had been in place since the 1973 Zoning Resolution, and South Seas had largely been built out in accordance with those limitations. SSIR made extensive inquiries as part of its due diligence as to how that density was calculated. It then purchased its property with full knowledge of those limitations and has no basis to claim some special exemption from the normal rules of contract and estoppel. To use SSIR's "rights" as an excuse to refuse to enforce the contract is to ignore the rights of the Civic Association and every other owner in South Seas who purchased their property in reliance upon those limitations.

In short, the County signed a contract. Like every other contracting party, the County is bound by its promises. And like every other contracting party, the Civic Association has the right to expect the courts to enforce the County's obligations.

Such enforcement does not, as the County erroneously argues, violate the principle of separation of powers by ceding future zoning decisions to the Court. County IB at 40-44. The Agreement does no such thing. To begin with, as noted above, the Agreement has nothing to do with rezoning a property; it addresses only the County's

issuance of building permits, an essentially non-discretionary function in compliance with an existing zoning approval.

Equally important, the limitation on the County's power to issue building permits was not created by the trial court. The Settlement Agreement's limitation on building permits was an enforcement mechanism adopted by the County and follows naturally from the density limitations long-embraced by the South Seas plan of development approved by the County in 1973. In other words, the trial court did not impose the 912-unit limitation, the County did. The limitation followed from the County's duly-enacted 1973 zoning ordinance, which was recognized in the ADD, recognized in the subsequent regulation of South Seas, and recognized once again in the Settlement Agreement. The trial court simply enforced a contract obligation freely entered into by the County—an obligation that was consistent with the County's own duly enacted 50-year-old land development plan.

As the Supreme Court has held in a similar context, the enforcement of the government's obligations by the court is not a violation of the separation of powers. *See Chiles*, 615 So. 2d at 673. In *Chiles*, the State argued that the court had no power to enforce

the State's obligations to a union. *Id.* at 672. The Court's rejection of the argument was clear. *Id.* at 673. The State is a party to the contract, and, like any other contracting party, it is bound by its agreements: "Separation of powers does not allow the unilateral and unjustified legislative abrogation of a valid contract." *Id.*

B. The Settlement Agreement is not illegal contract zoning.

The County argues that the promises it made in the Settlement Agreement are not enforceable because the Settlement Agreement constitutes illegal contract zoning. As the County correctly explains, "'Contract zoning' refers to an agreement between a property owner and a local government where the owner agrees to certain conditions in return for the government's rezoning or enforceable promise to rezone." County IB at 38 (citing *Chung v. Sarasota County*, 686 So. 2d 1358, 1359 (Fla. 2d DCA 1986)).

But even the County is forced to concede that the Settlement Agreement does not fit the definition of contract zoning under settled law. County IB at 39-40 ([T]he Civic Association "is technically correct that its contract falls outside the literal definition of 'contract

zoning.'"). The County is correct but understates the wide gulf between the Agreement in this case and prohibited contract zoning.

This gulf is no mere "technicality." *None* of the key elements of prohibited contract zoning are present. The Civic Association is not a landowner. It did not seek rezoning. The County did not promise to rezone anyone's property. And the Settlement Agreement does not circumvent the land development process. To the contrary, it merely recognized regulations duly enacted and enforced by the County for more than 50 years.

Look at the conduct prohibited in the County's cases. For example, in *Chung*, a property owner and Sarasota County settled a case. 686 So. 2d at 1359. In their settlement agreement, the County agreed to rezone the landowner's property in return for certain concessions by the landowner. *Id.* The Second District held that the County's promise to rezone was unenforceable because it circumvented the normal zoning approval process. *Id*. at 1359-60.

The same is true in the balance of the cases cited by the County in its brief. In *Morgran Co. v. Orange Cty.*, 818 So. 2d 640, 641 (Fla. 5th DCA 2002), a developer agreed to donate 50 acres to the city for use as a park in return for Orange County's promise to expeditiously

grant rezoning. As in *Chung*, the court condemned this end around the usual zoning approval process. *Id.* at 642. A landowner cannot obtain zoning by offering to pay for it by a donation of property.

This same sort of *quid pro quo* was likewise condemned in *P.C.P. Partnership v. City of Largo*, 549 So. 2d 738 (Fla. 2d DCA 1989). As in *Morgran*, the developer was seeking to enforce the City's promise to rezone his property in return for his donation of a downtown parcel to the City. Id. at 739-40. The promise of zoning in return for the landowner's donation was, not surprisingly, condemned as *ultra vires*. *Id*. at 741.

The Settlement Agreement here has none of the features of the agreements condemned in *Chung*, *Morgran*, and *P.C.P.* As the County concedes, the Civic Association is not a property owner. County IB at 40. The Civic Association did not, and does not, seek the rezoning of any property or any other sort of land development approval. The County has not promised to rezone any property. Indeed, the Agreement has nothing to do with zoning at all. The Agreement simply prevents the County from issuing building permits over the longstanding, County-approved 912-unit density cap previously established by a valid zoning action.

Nor is there any "end around" the normal land development process. The Settlement Agreement enforces a land development plan duly-approved over 50 years ago and consistently recognized many times in the years since—including the ADD and the Settlement Agreement itself.

In short, this case is about as far from illegal contract zoning as a case could be.

The County attempts to shoehorn this case into contract zoning principles by arguing that the Settlement Agreement ties its hands in perpetuity on any future zoning changes on the 304-acre property. Not true. The Settlement Agreement says nothing about zoning, and the County can still consider any zoning changes it deems appropriate subject to the limitations upon which the existing zoning approval was conditioned. The only limitation here is the density cap of a built-out planned unit development and the restriction on the issuance of building permits that the County authorized to enforce that cap. But as we discussed in Section I above, there is nothing unusual or improper about a contractual limitation on the County's future powers. To the extent that the County's hands are tied, it was the County itself that tied them.

It also bears repeating that requiring the County to honor the density cap is not a circumvention of the land development process; it is the enforcement of duly-enacted restrictions approved more than fifty years ago. In other words, the Settlement Agreement does not require the County to do anything that has not been already fully vetted and approved in the usual land development process. The County has cited no Florida case that applies contract zoning principles to nullify agreements that enforce regulations duly approved and long in place.

Moreover, the County's arguments ignore that South Seas has already been virtually built out in accordance with the plan offered by the developer and approved by the County in 1973. In other words, the case is not a fight over what the new owners of a portion of South Seas can do with undeveloped land not already subject to a development plan. This case is a dispute over whether a development that has already been granted zoning approval and built out in accordance with the developer's own plans can be significantly altered 50-years after the County's original approval, and years after the developer marketed and sold property in South Seas in accordance with that plan. Increasing density now would ignore the

developer's original promises to the County as well as the promises made to the hundreds of purchasers who bought into the development as conceived, marketed, approved, and built.

Nor is the restriction enforced here perpetual. The density limitation goes hand in hand with the original plan of development offered by the developers for South Seas Resort, approved by the County, and ultimately executed by the developers. In other words, the density limitation applies to "South Seas Resort" as built. Look at the language of the Settlement Agreement. "The total number of dwelling units on *South Seas Resort* is limited to 912. No building permits may be issued by County for dwelling units within *South Seas Resort* that will cause that number to be exceeded at any time." (emphasis supplied).

But no development lasts forever. When this development is torn down, fully destroyed, or otherwise exceeds its useful life as a resort, the County's regulatory powers remain. The density restraint is tied to a very specific use on a fragile barrier island and lasts only

so long as South Seas remains the resort as it was proposed, approved, marketed, sold, and built.[6]

Indeed, how could the County act otherwise without violating the vested rights of all the current owners of South Seas, each of whom bought their property in reliance on the original plan with its promise of a high-quality development and low overall density. To flip the script, what if the County were to tell SSIR and its fellow South Seas owners that it had to significantly reduce density on this already built-out property? Such an order would create a strong argument that the County has violated the owners' vested rights. But, as discussed in Section I, this concept of vested rights applies equally to the owners who bought property in South Seas based on the promises long memorialized in the original planning of South

[6] If the 304-acre property was no longer a resort and was redeveloped for a completely different use (such as single family homes), the 1973 Zoning Approval, the 2002 ADD and the Settlement Agreement would no longer be relevant, and the 304 acres would surely revert to the land use regulations of the Captiva and Lee County LDC. In that circumstance, it is important to note that the LDC for Captiva limits both hotel and residential density to three units per acre – exactly the same density limitations as the 1973 Zoning Approval, the 2002 ADD and the Settlement Agreement. With this appeal, SSIR is seeking greater density than any other property owner on Captiva is entitled to have under the current LDC firmly in place since 1982.

Seas as embodied in the zoning regulations applicable to South Seas and its owners.

In short, it is not contract zoning to require the County to honor the rights it has already bestowed under duly-enacted land development regulations.

C. The Court has the power to enforce the Settlement Agreement.

The County argues that, even if the Agreement were enforceable, the trial court would be powerless to enforce it because it contains no provisions for affirmative relief. To the contrary, courts have broad supplemental powers in fashioning relief incident to the enforcement of declaratory judgments. *See City of Miami Beach v. State ex rel. Gerstein*, 242 So. 2d 170, 173 (Fla. 3d DCA 1970) (the court always has such supplemental powers as are necessary to support and enforce a declaratory judgment); *Hyman v. Daoud*, 194 So. 3d 392, 393 (Fla. 3d DCA 2016) ("Florida's trial courts must be afforded broad, albeit not unbridled remedial authority. Otherwise, the trial court's extensive declarations would be of little value to those seeking court intervention to resolve doubts regarding their rights, status and legal and equitable relations.") (citation omitted). *See also*

Smilack v. Smilack, 858 So. 2d 1072, 1074 (Fla. 5th DCA 2003) ("[A] trial court may enforce the provisions of a final judgment through any appropriate remedy."); *MCR Funding v. CMG Funding Corp.*, 771 So. 2d 32, 33 (Fla. 3d DCA 2000) ("[A] court has inherent and continuing power to enforce its own orders" even when it has not expressly reserved jurisdiction to do so.).[7]

Thus, there are many examples of courts granting the same sort of affirmative relief that the County complains of here. *See Castro*, 967 So. 2d at 234 (quashing code citations); *Corn*, 427 So. 2d at 244 (compelling the City to issue building permits and approve a site plan); *City of Miami v. 20th Century Club, Inc.*, 313 So. 2d 448, 449 (Fla. 3d DCA 1975) (affirming a trial court order compelling the city to issue a building permit); *Town of Largo*, 309 So. 2d at 572-73 (enjoining the city from enforcing restrictive zoning requirements and compelling approval of the developer's construction project); *City of Gainesville v. Bishop*, 174 So. 2d 100, 105 (Fla. 1st DCA 1965) (requiring the City to change its zoning ordinance and award a

[7] In its Amended Final Declaratory Judgment, the Court below "retains jurisdiction to enter further orders and grant supplemental relief pursuant to Section 86.061, Florida Statutes as may be necessary or proper to give full effect to this Final Judgment.

building permit); *Sakolosky v. City of Coral Gables*, 151 So. 2d 433, 433 (Fla. 1963) (approving injunctive relief requiring the issuance of a building permit).

As these cases demonstrate, it does not violate separation of powers or a city's sovereignty to award affirmative relief. The courts in these cases are doing no more than compelling the government to do what it should have done in the first place. *See Corn*, 427 So. 2d at 244 (rejecting the argument that granting affirmative relief usurps a legislative function). *See also Chiles*, 615 So. 2d at 673 (separation of powers does not allow the legislative abrogation of vested rights).

Finally, the County complains that the Final Judgment results in delegating enforcement discretion to the Civic Association. Not true. Under the Settlement Agreement and the Final Judgment, the County did not delegate police powers to a nonprofit corporation. Rather, the County just promised the Civic Association that it would properly use its police powers to comply with, and enforce, the lawful density limits of the approved zoning on the resort.

Surprisingly, the County then suggests that if it chooses to thumb its nose at the Settlement Agreement and the Final Judgment by issuing building permits in excess of the 912-unit cap, then the

Civic Association might pick and choose which permits to challenge. Really? In the first place, the County can avoid this so-called problem by honoring its agreements and complying with the Final Judgment. But if it chooses not to do so, there is nothing in this record that suggests that the Civic Association would be anything but single-minded in its protection of the density limitations on South Seas. And there is nothing to suggest that the trial court is not capable of fairly enforcing its own order.

In sum, this case is not complicated. The County made unambiguous promises, and the trial court enforced them. The trial court's Final Judgment enforcing the parties' Settlement Agreement should be affirmed.

CONCLUSION

For all these reasons, and those set forth in the companion briefing in SSIR's appeal, the Final Judgment enforcing the Settlement Agreement should be affirmed.

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I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on all counsel in the service list below on this 13th day of August 2025.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.045(b) and the word limitation requirements of Florida Rule of Appellate Procedure 9.210(a)(2)(B). This brief contains 10,257 words.

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