



More details of GICIA v. Damfiwill made available

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More information has come to light regarding the Gasparilla Island Conservation and Improvement Association's lawsuit against Lee County, an individual and a Florida company regarding alleged violations of several acts and state statutes.

The suit was filed on June 5 with Lee County courts, naming the GICIA as the plaintiff and three entities – Lee County, an individual named Gary Newell and a Florida company listed with a registered agent of David Powers of Boca Raton – as the defendants.

Newell owns 161 Damfiwill. Kiwi Cuba II owns 143 and 151 Damfiwill.

The suit asks for injunctive relief and calls out violations of the Lee Comprehensive Plan and the Gasparilla Island Conservation District Act (GICDA), among other statutes, regarding these three of the five Damfiwill Street parcels of land.

The complaint revisited the origin of the GICDA, including the fact it was put in place to monitor the amount of dwelling units per acre. The GICDA limits density to a maximum of five units per acre, and the Lee County Comprehensive Plan limits maximum density to three dwelling units per acre.

The suit goes on to explain that on or about December 4, 2018 Kiwi Cuba II applied to Lee County for issuance of a minimum-use determination (MUD) for real property located at 143, 151 and 161 Damfiwill Street. Newell applied for the same on his

property at 161 Damfiwill. In order for any allowance to build on those sites, they would have to obtain the MUD for each single-family property.

Apparently on January 2 of this year Lee County Attorney Peter Blackwell stated that the MUD applications for 151 and 161 were going to be denied, and the cases were scheduled for a hearing in May.

In case summaries it was noted that 143, 151 and 161 Damfiwill did not meet the density requirements established by the GICDA or the County. However, Lee County attorneys determined that denying the applications would be “capricious, unreasonable and would deny economically viable use of the properties.” The summary also stated that “the principles of equitable estoppel would otherwise override the valid limitations imposed by the Act and the Plan.”

On May 8 the Board of County Commissioners approved the MUD for 143 Damfiwill, based on factors including the fact that a home had been built prior to the conception of the Lee Plan, that the property didn’t meet Lee Plan density requirements due to its size, because rejecting approval of the MUD could mean litigation against the County, because the principles of “equitable estoppel” could override limitations of the Plan, and because it would be “appropriate for the Board to adopt a resolution providing relief from the Lee Plan.”

According to Lee County records, that address has never seen a dwelling unit, and water and sewer services have never been connected there. There was, however, a boat shed there.

On May 8 commissioners also approved the MUD for 151 Damfiwill based on the fact there was a dock permitted on the property in the 1980s, and for the reasons listed above for the property at 143. The property at 161 Damfiwill was approved as well, for essentially the same reasons.

The GICIA’s attorney states in the complaint that the properties at 143, 151 and 161 Damfiwill Street were never intended to be dwelling lots, but to serve as dock lots. (The complaint lists the sizes of the lots, respectively, to be 40 feet wide, 30 feet wide and 50 feet wide.)

Summonses were drawn up last week to be served, and we will keep you updated as we know more. There is much more to the complaint than we can fit here, and if you would like to read the complaint you can go to leeclerk.org and search under case number 19-CA-003515. For more information regarding the proposed Damfiwill Project, go to damfiwill.com.