927, 930 (Fla. 5th DCA 2004), a complaint for temporary and permanent injunction was filed against an unlicensed nursing home, and in response to the filing of the complaint, the defendant closed the nursing home. The trial court granted an injunction, and the nursing home argued that it was error because the facility had been closed, but the fifth district affirmed, concluding it was "a matter within the trial court's discretion."

I am concerned that the majority opinion will create uncertainty in cases where defendants are violating covenants, non-compete agreements and the like, long after suit is filed, and on the eve of trial announce that they won't do it anymore. I see no harm, let alone abuse of discretion, in entry of the injunction.

1

Clinton BLACK, Appellant,

v.

Lakeska KELSEY, Appellee.

No. 4D08-1086.

District Court of Appeal of Florida, Fourth District.

Oct. 22, 2008.

Rehearing Denied Oct. 29, 2008.

Appeal of a non-final order from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Catherine M. Brunson, Judge; L.T. Case No. 502007DR003149XXXXMB.

Clinton Black, Fort Lauderdale, pro se.

No brief filed on behalf of appellee.

PER CURIAM.

Affirmed. See Applegate v. Barnett Bank of Tallahassee, 377 So.2d 1150 (Fla. 1979).

STONE, WARNER and DAMOORGIAN, JJ., concur.

2

SAVE the HOMOSASSA RIVER ALLIANCE, INC., et al., Appellant,

v.

CITRUS COUNTY, FLORIDA, et al., Appellee.

No. 5D07-2545.

District Court of Appeal of Florida, Fifth District.

Oct. 24, 2008.

Rehearing Denied Feb. 19, 2009.

Background: Environmental group and area landowners brought action against county and property owner, challenging county's approval of property owner's application to build residential buildings on property adjacent to river, which was essential manatee habitat. The Circuit Court, Citrus County, Charles M. Harris, Senior Judge, dismissed action for lack of standing. Plaintiffs appealed.

Holding: The District Court of Appeal, Griffin, J., held that plaintiffs had standing to bring action.

Reversed and remanded.

Pleus, J., filed dissenting opinion.

1. Zoning and Planning ⇐30

A "local comprehensive land use plan" is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality; the plan is likened to a constitution for all future development within the governmental boundary. West's F.S.A. § 163.3167.

See publication Words and Phrases for other judicial constructions and definitions.

2. Zoning and Planning ⇐571

As a remedial statute, statute that enlarges class of persons with standing to challenge development order as inconsistent with local comprehensive land use plan is to be liberally construed to advance the intended remedy. West's F.S.A. § 163.3215.

3. Zoning and Planning ⇐571

The purpose of statute governing standing to appeal and challenge the consistency of a development order with a local comprehensive land use plan is to liberalize standing. West's F.S.A. § 163.3215.

4. Zoning and Planning ⇐571

A person's standing to bring a challenge under statute governing actions challenging a local government's development order as being inconsistent with local comprehensive land use plan depends on (1) whether the interests the person alleges are protected or furthered by the local government comprehensive plan, if so, (2) whether those interests exceed in degree the general interest in community good shared by all persons, and (3) whether the interests will be adversely affected by the challenged decision. West's F.S.A. § 163.3215(2, 3).

5. Zoning and Planning ⇐571

Under statute governing standing regarding actions challenging a local government's development order as being inconsistent with local comprehensive land use plan, requirement that a person must allege an interest that exceeds "in degree the general interest in community good shared by all persons" simply means that a party must allege that they have an interest that is something more than a general interest in community well being. West's F.S.A. § 163.3215(2).

6. Zoning and Planning ⇐571

Environmental group and area landowners had standing to bring action challenging county's approval of property owner's application to build residential buildings on property adjacent to river as being inconsistent with local comprehensive land use plan; group sought to protect river from problems associated with improper and ineffective storm water management systems, overpopulation of lands adjacent to river, and destruction of wetlands surrounding river, and group and landowners all had direct and demonstrated concern for protection of interests furthered by comprehensive plan that would be adversely affected by allowing development that violated plan. West's F.S.A. § 163.3215(2, 3).

7. Zoning and Planning ⇐571

The "greater-in-degree" part of the test for standing to bring action challenging a local government's development order as being inconsistent with local comprehensive land use plan self-evidently would be met if the plaintiff is an adjacent property owner. West's F.S.A. § 163.3215(2).

8. Zoning and Planning ⇐571

Statutory test for standing to bring action challenging a local government's development order as being inconsistent with

local comprehensive land use plan is directed to the quality of the interest of the person seeking standing; there is no requirement of a unique harm relative to the general population. West's F.S.A. § 163.3215(2, 3).

9. Zoning and Planning ⇐593

Dismissal of second amended complaint for lack of standing was required to be without prejudice rather than with prejudice in action challenging county's approval of property owner's application to build residential buildings on property adjacent to river as being inconsistent with local comprehensive land use plan; plaintiffs had not abused privilege to amend. West's F.S.A. § 163.3215(2, 3).

Denise A. Lyn, of Denise A. Lyn, P.A., Inverness, for Appellant.

Michele Lieberman, of Law Office of Michele L. Lieberman, LL, Inverness, for Appellee.

Carl A. Bertoch, Crystal River, for Intervenor, Homosassa Riverside Resort, LLC.

GRIFFIN, J.

Save the Homosassa River Alliance, Inc., James Bitter, Rosemary Rendueles, and Priscilla Watkins [collectively "Plaintiffs"] appeal the trial court's order dismissing, with prejudice, their suit against Citrus County, Florida ["County"] and Homosassa River Resort, LLC ["Resort"] on the ground that they lack standing.

Resort owns property adjacent to the Homosassa River ["River"] in Old Homosassa, Florida. The Homosassa River is an Outstanding Florida Waterway and an essential manatee habitat.[1] There are two buildings on Resort's site, containing fifteen residential condominium units. Resort applied to the County for a land development code atlas amendment "to allow the development and redevelopment of 87 condominium dwelling units, retail space, amenities and parking" on this property. The project would result in the construction of four four-story residential structures. On July 11, 2006, Citrus County's Board of County Commissioners enacted Ordinance No. 2006-A13, which approved Resort's application and amended the County's land development code to reflect the approval.

Plaintiff Alliance is a not-for-profit corporation "committed to the preservation and conservation of environmentally sensitive lands and the wildlife in and around the Homosassa River and in Old Homosassa, Florida." Plaintiffs Bitter, Rendueles, and Watkins are individuals who own property in the area. On August 10, 2006, Plaintiffs filed this suit against the County, pursuant to section 163.3215, challenging the County's approval of Resort's application on the ground that it is inconsistent with the County's Comprehensive Land Use Plan, Citrus County Ordinance No. 89-04, as amended. On November 9, 2006, before the initial complaint was served on the County, Plaintiffs filed an Amended Complaint.

Resort was allowed to intervene in the dispute and the County filed a motion to dismiss, arguing that the Plaintiffs had failed to plead sufficient facts to establish standing. The trial court agreed and dismissed Plaintiffs' complaint, with twenty days to amend.

1. Resort's site is designated on the County's generalized future land use map, ("GFLUM"), as CL, Low Intensity Coastal Lakes, which allows a maximum density of one (1) unit per 20 acres, is located in Flood Plain A-11, and is located in the Coastal High Hazard Zone.

Plaintiffs filed their Second Amended Complaint against both the County and Resort, to which the County and Resort responded by filing a joint motion to dismiss. In their joint motion to dismiss, the County and Resort alleged that Plaintiffs had failed to establish standing because they had not sufficiently alleged (1) "any interest that exceeds in degree that of the general community," (2) "harm to such interests over and above that of their neighbors," or (3) "any nexus between the alleged comprehensive plan violations and the interests of the parties."[2]

The trial court heard arguments on the County and Resort's joint motion. At the hearing, Resort and the County essentially reiterated the points they had raised in their written motion and urged that the dismissal of the Second Amended Complaint be with prejudice. Plaintiffs argued that section 163.3215 gave affected citizens significantly enhanced standing to challenge the consistency of development decisions and that their allegations were sufficient to establish standing under this liberalized standard.

On about July 2, 2007, the trial court dismissed the Second Amended Complaint with prejudice, concluding that Plaintiffs had failed to sufficiently allege that their interests were adversely affected by the project in a way not experienced by the general population and because of insufficient "nexus" allegations. The trial court observed that "[t]here are no allegations that the county-approved plan permits improper runoff into the river or that the proposed development will itself (other than by adding people to the mix) adversely affect the quality of water or access to the river." Additionally, the trial court noted that "[t]here is no indication that residents living in this proposed project would add any more burden to the streets, storm drainage, river crowding, etc. than residents living elsewhere in the city."

Plaintiffs filed a motion for rehearing on July 11, 2007. In the motion for rehearing, Plaintiffs asserted that the trial court's analysis was not within the statute. They also objected that the trial court's dismissal "with prejudice" at that stage of the proceedings was premature and contrary to the existing case law. The trial court concluded that Plaintiffs had been given "ample opportunity to show standing if they could" and that they would not be helped by further delay. The trial court denied Plaintiffs' motion for rehearing.

The Second Amended Complaint

Plaintiffs' Second Amended Complaint contains lengthy allegations in support of their standing to bring this suit. The complaint begins by introducing each of the plaintiffs (Alliance, Bitter, Rendueles, and Watkins). Alliance is a not-for-profit corporation committed to the preservation of the lands and the wildlife in and around the Homosassa River and Old Homosassa, Florida. The complaint explains that the group has "embarked on a specific and focused course" to protect the River from problems associated with improper and ineffective storm water management systems, overpopulation of the lands adjacent to the River, destruction of wetlands surrounding the River, degradation of the River's water quality, and excessive boat traffic upon the River. The group con-

2. Specifically, the County and Resort assert in their motion:

> There exists no allegations within the complaint that establish how the height of the building or the net increase in units will adversely impact the Alliance' [sic] educational purpose or interest in the manatee, Bitter's ability to fish in the river, Rendueles' ability to bicycle through Old Homosassa, or Watkins' ability to walk down the streets in Old Homosassa.

ducts seminars to educate the area's residents about the River and how to preserve it. One of the Alliance's main objectives has been "the orderly development and preservation of the character of Old Homosassa." Members of the group use the River for both educational and recreational purposes; have invested substantial effort and funds to protect and preserve the River and its endangered manatees; and have served on the Old Homosassa Area Redevelopment Plan steering committee.

The complaint alleges that Bitter is an active Alliance member who owns property about three miles from Resort's site. He is conscious of governmental actions that affect the health of the Homosassa River and participates actively in public conversations regarding development of the area. Bitter fishes in the River, frequently boats along it, and often visits its shores "to admire the beauty and wonder of the River and its wildlife." Additionally, Bitter receives potable water from the Homosassa Special Water District, fire protection from the County's fire department, police protection from the County's Sheriff's Department, and emergency services by Nature Coast EMS. Finally, it is alleged that in the event of a natural disaster or a threat of a natural disaster, Bitter would have to evacuate his property via West Fishbowl Drive, which is a two-lane road in Homosassa. "West Fishbowl Drive ... is along the evacuation route for [Resort's] property...."

Rendueles owns canal-front real property less than a mile from Resort's site.[3] Rendueles worked on the County's Old Homosassa Overlay steering committee and actively participated during the County's public hearings on Resort's application. Additionally, it is alleged that Rendueles "enjoys the beauty of nature by traveling down the Homosassa River and walking and bicycling along the streets in Old Homosassa." She often visits the River's shores "to admire the beauty and wonder of the River and its wildlife." Rendueles receives potable water from the Homosassa Special Water District, fire protection from the County's fire department, police protection from the County's Sheriff's Department, and emergency services by Nature Coast EMS. In the event of a natural disaster or a threat of a natural disaster, Rendueles would evacuate her property via W. Yulee Drive, which is a two-lane road in Homosassa.

Watkins owns real property within Homosassa, Florida. She participates in Alliance's activities and actively participated during the County's public hearings on Resort's application. Watkins frequently kayaks on the River; bicycles along W. Halls River Road and W. Fishbowl Drive; and enjoys walking down Old Homosassa's uncrowded streets and roads. Watkins receives potable water from the Homosassa Special Water District, sewer services from Citrus County, fire protection from the County's fire department, police protection from the County's Sheriff's Department, and emergency services by Nature Coast EMS. In the event of a natural disaster or a threat of a natural disaster, Watkins would evacuate her property via W. Halls River Road, a two-lane road in Homosassa, which is along the evacuation route for Resort's property.

Plaintiffs allege that "[b]ecause of the County's adoption of a development order which is inconsistent with its adopted Comprehensive Plan[,] [Plaintiffs] will suffer an adverse effect to their interests

3. The canal that Rendueles' property is on is part of the Homosassa River system and opens to the River at Resort's site.

furthered by the local government comprehensive plan...." In paragraph 27, Plaintiffs generally list protected interests that they claim will be adversely affected by the County's approval. Specifically, Plaintiffs allege:

> The Alliance and Property Owners, including the members of the corporation, will suffer adverse effects to interests protected or furthered by the adopted Plan, as amended, including but not limited to their property interests, their interest in protecting and maintaining the existing water quality of the Homosassa River, their interest in protecting the endangered Manatees, their interest in sufficient water and wastewater infrastructure, their interests in efficient and equitable distribution of land uses in the area, their interests in reasonable investment-backed expectations in their area, their interests in land use, their interests in preserving the character of Old Homosassa, their interests related to health and safety, including the safety and efficiency of recreation facilities and streets, police and fire protection, densities or intensities of development, including the compatibility of adjacent land uses, their interest in environmental or natural resources and their interest in wetland preservation.

In paragraphs 9 through 12, Plaintiffs allege how the harm they would each suffer "exceeds the harm caused to the public in general." With regard to Alliance, Plaintiffs allege:

> 12). Alliance will be harmed to a degree that exceeds the harm caused to the public in general because of the Alliance's investment of resources and volunteer activities to protect the health and welfare of the Homosassa River and to encourage environmentally sound development practices around the Homosassa River. Its tireless efforts to educate the public and to encourage clean and environmentally sound development will be for naught if the County continues to allow development that is inconsistent with the goals and objectives of its Comprehensive Plan.

With respect to each of the individual plaintiffs, Plaintiffs allege that Resort's proposed development activities would increase the number of people in the area and, accordingly, increase demands relating to public services, evacuation, traffic, and infrastructure.[4] It is alleged that, given their proximity to "the project and given [their] use of the same water system, roadway system ... waterway system," and in the case of Watkins, sewer system, "[Plaintiffs] will suffer harm to a greater degree than that of the public in general." Plaintiffs additionally allege that Bitter would "be harmed to a degree that exceeds the harm caused to the public in general" because of his participation in the local government process and his volunteer efforts to preserve and protect the River; that Rendueles would "be harmed to a degree that exceeds the harm caused to the public in general" due to her proximity to the development, her location in the Coastal High Hazard Area, and her location within the Old Homosassa Redevelopment Area; and that Watkins would "be harmed to a degree that exceeds the harm caused to the public in general" because of her proximity to the development, her location within the Coastal High Hazard Area, her use of the River, and her active use of the roads and streets within Old Homosassa.

4. Plaintiffs assert that the water system that the individual plaintiffs would share with Resort had "expressed concerns regarding the volume of water it will be able to supply because of [Resort's] project demands."

Finally, the complaint contains allegations concerning the interests the comprehensive plan is intended to protect and how Resort's proposed project is inconsistent with the plan. Plaintiffs allege that the plan's provisions are intended to:

a) Preserve, protect, and restore County's natural resources....

b) Protect and maintain the water quality of the ... Homosassa ... [River]....

c) Provide the GFLUM be recognized as the primary document used by County in land use regulation and in guiding future growth.

....

e) Provide that where County's LDC[5] conflicts with or overlaps other regulations, whichever imposes the more stringent restrictions shall prevail.

f) Limit residential structures in the coastal high hazard area to two (2) stories.

g) Prohibit the expansion of R–2 occupancies in the coastal high hazard area.

h) Limit structures in the Old Homosassa Redevelopment Area to two (2) stories over the first living floor.

i) Require all structures constructed in the Old Homosassa Redevelopment Area to provide for a 10 foot step back of the second story over the first story.

j) Require all development in the Old Homosassa Redevelopment Area to further the character and vision provided for Old Homosassa and to be compatible with existing structures in the area.

k) Prohibit the development or expansion of general commercial uses within Old Homosassa.

The complaint then alleges that the proposed development is inconsistent with the Plan, because it:

a) Allows for the expansion of R–2 residential dwelling units in the coastal high hazard area.

b) Allows for the construction of three (3) story over parking residential structures in the coastal high hazard area.

c) Allows for the construction of structures that are not compatible with the character and vision of Old Homosassa.

d) Allows for the construction of four (4) residential structures which do not provide for a step back of stories.

e) Allows for increases in residential dwellings in the coastal high hazard area.

f) Allows for the expansion or development of new commercial uses within Old Homosassa.

g) Allows for the development of residential uses upon lands designated as GNC within Old Homosassa.

The trial court's order indicates that it dismissed Plaintiffs' Second Amended Complaint because it found that Plaintiffs had failed to sufficiently allege that their interests were adversely "affected by the project in a way not experienced by the general population." Additionally, the trial court's order adopted the "nexus" argument of Resort and the County, ruling that "there must be some nexus between the alleged evil of the challenged action and the adverse [e]ffect claimed."

5. The Old Homosassa Redevelopment Area Plan is incorporated into the County's Land Development Code as section 4680.

Controlling Law

[1] "A local comprehensive land use plan is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality. The plan is likened to a constitution for all future development within the governmental boundary." *Machado v. Musgrove*, 519 So.2d 629, 631–32 (Fla. 3d DCA 1987) (citations omitted). *See also* § 163.3167, Fla. Stat. (2007). Once a comprehensive plan has been adopted pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, "all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan" must be consistent with that plan. § 163.3194(1)(a), Fla. Stat. (2007); *see also* § 163.3164(7), Fla. Stat. (2007).

[2, 3] Prior to 1985, common law governed a third party's standing to intervene to challenge a development order as inconsistent with the governing comprehensive plan. *See Parker v. Leon County*, 627 So.2d 476, 479 (Fla.1993), *Citizens Growth Mgmt. Coal., Inc. v. City of W. Palm Beach*, 450 So.2d 204, 206–08 (Fla.1984). The common law rule provided that, in order to have standing to challenge a land use decision, a party had to possess a legally recognized right that would be adversely affected by the decision or suffer special damages different in kind from that suffered by the community as a whole. *Putnam County Envtl. Council, Inc. v. Bd. of County Comm'rs*, 757 So.2d 590, 592–93 (Fla. 5th DCA 2000); *Citizens Growth Mgmt. Coal., Inc.*, 450 So.2d at 206. In 1985, the Florida Legislature reacted to the Supreme Court's 1984 decision in *Citizens Growth Management* that the common law rules of standing applied to the Growth Management Act by enacting section 163.3215, Florida Statutes.[6] Its stated purpose was "to ensure the standing for any person who 'will suffer an adverse effect to an interest protected ... by the ... comprehensive plan.'" *Parker*, 627 So.2d at 479 (*citing* § 163.3215(2), Fla. Stat. (1985)); *see also Edu. Dev. Ctr., Inc. v. Palm Beach County*, 751 So.2d 621, 623 (Fla. 4th DCA 1999) (section 163.3215 is a remedial statute in that it "enlarged the class of persons with standing to challenge a development order as inconsistent with the comprehensive plan"). As a remedial statute, section 163.3215 is to "be liberally construed to advance the intended remedy...." *Edu. Dev. Ctr., Inc.*, 751 So.2d at 623; *see also Dunlap v. Orange County*, 971 So.2d 171, 174 (Fla. 5th DCA 2007). There is no doubt that the purpose of the adoption of section 163.3215 was to liberalize standing in this context. *See City of Ft. Myers v. Splitt*, 988 So.2d 28 (Fla. 2d DCA 2008).

[4] In part, section 163.3215(3), Florida Statutes (2007), provides:

> Any aggrieved or adversely affected party may maintain a de novo action for declaratory, injunctive, or other relief against any local government to challenge any decision of such local government granting or denying an application for, or to prevent such local government from taking any action on, a development order, as defined in s. 163.3164, which materially alters the use or density or intensity of use on a particular piece of property which is not consistent with the comprehensive plan adopted under this part.

6. The action underlying this appeal was brought pursuant to section 163.3215(3), Florida Statutes.

Further, section 163.3215(2), Florida Statutes (2007), provides:

> As used in this section, the term "aggrieved or adversely affected party" means *any person*[7] or local government *that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan*, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. *The alleged adverse interest* may be shared in common with other members of the community at large but *must exceed in degree the general interest in community good shared by all persons.* The term includes the owner, developer, or applicant for a development order.

(Emphasis added). Thus, a person's standing to bring a challenge under section 163.3215(3) depends on (1) whether the interests the person alleges are "protected or furthered by the local government comprehensive plan"; if so, (2) whether those interests "exceed in degree the general interest in community good shared by all persons"; and (3) whether the interests will be adversely affected by the challenged decision. *See* § 163.3215(2), Fla. Stat. (2007); *see also Fla. Rock Props. v. Keyser*, 709 So.2d 175, 177 (Fla. 5th DCA 1998).

[5] There is nothing obscure about the statutory language requiring a person seeking standing to allege an interest that "[exceeds] in degree the general interest in community good shared by all persons" to establish standing. It simply means that a party must allege that they have an interest that is something more than "a general interest in community well being." *See Keyser*, 709 So.2d at 177 [8]; *see also Stranahan House, Inc. v. City of Fort Lauderdale*, 967 So.2d 427, 434 (Fla. 4th DCA 2007).[9] The statute does not say that a party must be harmed to a greater degree than the general public. Not surprisingly, the case law assumes that an organization has an interest that is greater than "the general interest in community well being" when the organization's primary purpose includes protecting the particular interest that they allege will be adversely affected by the comprehensive plan violation. *See Stranahan House, Inc.*, 967 So.2d at 434. The old common law test was so narrowly drawn that there often was no means of redress for a comprehensive plan violation. The expanded statutory test eliminates

7. Section 163.3164(17), Florida Statutes (2007), provides that, as used in the Local Government Comprehensive Planning and Land Development Regulation Act, "[p]erson means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity."

8. In *Florida Rock Properties*, 709 So.2d at 177, this Court wrote:

> "[K]eyser's standing to challenge the Board's zoning decision depends on (1) whether the personal and professional interests he alleged are 'protected or furthered by' Putnam County's comprehensive plan; if so, (2) *whether those interests are greater than the general interest in community well being;* and (3) whether the interests are or will be adversely affected by the challenged zoning decision."

(Emphasis added).

9. In *Stranahan House, Inc.*, 967 So.2d at 434, the Fourth District wrote:

> Stranahan and Friends meet the test for standing outlined in *Florida Rock Properties v. Keyser*, 709 So.2d 175, 177 (Fla. 5th DCA 1998). The interests alleged are protected by the City's comprehensive plan, *they are greater than the general interest in community well-being*, and the interests will be adversely affected by the development.

(Emphasis added).

"gadfly" litigation, yet gives oversight to the segment of the public that is most likely to be knowledgeable about the interest at stake and committed to its protection. The statute expressly identifies by multiple examples the kinds of interests the legislature intended to protect:

> As used in this section, the term "aggrieved or adversely affected party" means any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, *including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources.*

§ 163.3215(2), Fla. Stat. (2007) (emphasis added).

Application of the statutory test is illustrated by comparing two of the leading cases previously decided by this court. In *Keyser*, Timothy Keyser had filed a lawsuit challenging the decision of the Putnam County Commission to rezone a 509 acre parcel of Florida Rock Properties' land from agricultural to mining. This Court held that Keyser's allegation that the Commission's decision "would adversely affect his quality of life by its negative impact upon wildlife populations and habitats in Putnam County" was insufficient to establish standing. 709 So.2d at 177. In explaining why the allegation was insufficient, this Court said, "Keyser never demonstrated any specific injury, only that the county would not be as bucolic as it once was. Keyser is a citizen with an interest in the environment and nothing more." *Id.*

In *Putnam County Environmental Council, Inc.*, a company owned a piece of land adjacent to the Etoniah Creek State Forest, which was zoned for agricultural use. The company and the local school board "applied for a special exception to the county's comprehensive plan to allow the construction of a regional middle school complex on" the company's property. 757 So.2d at 591. The application was approved, and the Putnam County Environmental Council ["PCEC"] subsequently filed a complaint, seeking to enforce Putnam County's comprehensive plan pursuant to chapter 163. The trial court concluded that PCEC lacked standing to challenge the order under section 163.3215 and dismissed the action on that basis.

It its complaint, PCEC alleged that its "primary organizational purposes and activities include the study and protection of natural resources and the advocacy of sound land use and growth management policies affecting the environment"; that its officers and members had "initiated and facilitated the original public acquisition of the Etoniah Creek State Forest"; and that "[a] substantial number of [its] members, along with non-members who participate in PCEC-sponsored activities, use the Etoniah Creek State Forest for recreational and educational purposes." *Putnam County Envtl. Council, Inc.*, 757 So.2d at 592. Additionally, PCEC alleged:

> The use allowed under the special exception will adversely affect PCEC's use and its members' use of the adjacent Etoniah Creek State Forest as natural resource area. The use of the subject parcel for a school will adversely impact the ability of the Division of Forestry to use controlled burns to manage the adjacent state forest. Without controlled burns, habitat for a variety of species in the Etoniah Creek State Forest will be reduced or eliminated, thus adversely affecting the ability of PCEC, its members, and others who participate in

PCEC-sponsored activities to observe or study those species. Also, without controlled burns, much of the forest will become overgrown with understory species, thus adversely affecting the ability of PCEC, its members, and others who participate in PCEC-sponsored activities to access and hike portions of Etoniah Creek State Forest. Furthermore, the physical presence of a school plant as well as the increased traffic and the activity, lights, and noise associated with a school facility, athletic fields, parking lots, and school bands are incompatible with Etoniah Creek State Forest's nature-based recreation and will discourage and interfere with the ability of wide-ranging species such as the black bear to reach or remain in the state forest. This will adversely affect the ability of PCEC, its members, and others who participate in PCEC-sponsored activities to observe or study those species....

Id.

[6] In holding that PCEC had made sufficient allegations to establish standing, this Court said:

> [H]ere PCEC's complaint alleged specific injuries that PCEC would suffer if a middle school complex was constructed on Roberts' property, including the destruction of the habitat of species being studied by PCEC members and the elimination of PCEC members' access to the forest and the forest's creatures by the overgrowth of the forest. The diminution of species being studied by the group is a harm particular to PCEC, making PCEC more than just a group with amorphous "environmental concerns." Accordingly, the allegations set forth in PCEC's complaint are sufficient to demonstrate the requisite level of interest.
>
> PCEC's involvement in the original acquisition of the land for use as a state forest and its continued, active connection with that state forest further demonstrate an interest greater than that which all persons share in the community good.

Id. at 593–94.

[7] On appeal, Plaintiffs begin with the premise that the trial court's dismissal order was based on the trial court's view that in order to have standing to mount a section 163.3215 challenge, the plaintiff must own real property adjacent to or very near the parcel at issue. It is true that there is much in the appealed order to suggest that was the court's view. We do not believe the court's analysis to be quite so narrow, however. It does appear that the trial court had difficulty envisioning how the "greater-in-degree" part of the statutory test for standing could be met if the plaintiff did not own adjacent real property. The "greater-in-degree" part of the test self-evidently would be met if the plaintiff is an adjacent property owner. Everyone else has to figure out how to surmount the tag-line test in *Keyser,*[10] i.e., how to be "something more" than just a "citizen with an interest in the environment."

The County contends that Plaintiffs' complaint lacks "facts sufficient to establish that the impact upon their educational efforts, enjoyment of the outdoors and use of government services is to a greater degree than others with the community," and that Plaintiffs have failed to establish precisely how the alleged comprehensive plan violations, which relate to increased height and density, would impact their interests (i.e. their educational efforts, enjoyment of the outdoors and use of government services) to any greater degree than the Old Homosassa community as a whole. In its separate Answer Brief, Resort similarly asserts that Plaintiffs failed to specifically identify an "adverse interest or impact that" they "could expect to occur due to [its] proposed hotel expansion" and failed to show that their "interests are adversely affected in a way not experienced by the general population."

[8] Plaintiffs contend that the trial court's dismissal should be reversed because they have alleged concrete and specific adverse interests that exceed in degree the general interest in community good shared by all. Plaintiffs maintain that it is not necessary for them to show that they will suffer a unique harm and reject the appellees' position as being outside the express language and intent of the statute. We agree with Plaintiffs that the statutory test is directed to the quality of the interest of the person seeking standing; there is no requirement of a unique harm relative to the general population.

The allegations of the Second Amended Complaint amply demonstrate that each of the plaintiffs has an interest that is greater than "a general interest in community good shared by all persons." The allegations show that the Plaintiffs all have a direct and demonstrated concern for the protection of the interests furthered by the comprehensive plan that would be adversely affected by allowing a development that violates the plan. An interpretation of the statute that requires *harm* different in degree from other citizens would eviscerate the statute and ignore its remedial purpose. It drags the statute back to the common law test. The statute is designed to remedy the governmental entity's failure to comply with the established comprehensive plan, and, to that end, it creates a category of persons able to prosecute the claim. The statute is not designed to redress damage to particular plaintiffs. To engraft such a "unique harm" limitation onto the statute would make it impossible in most cases to establish standing and would leave counties free to ignore the plan because each violation of the plan in isolation usually does not uniquely harm the individual plaintiff. Rather, the statute simply requires a citizen/plaintiff to have a particularized *interest* of the kind contemplated by the statute, not a legally protectable right.

[9] In sum, we conclude that the Second Amended Complaint adequately alleges Plaintiffs' standing to challenge the County's alleged failure to comply with its comprehensive plan in approving Resort's project.[11] We accordingly reverse and remand for further proceedings.

REVERSED and REMANDED.

SAWAYA, J., concurs.

PLEUS, J., dissents, with opinion.

PLEUS, J., dissenting.

I dissent. The able and sage trial judge understood the case law and applied it properly. He correctly dismissed this case with prejudice for lack of standing because the plaintiffs repeatedly failed to allege any adverse effects, impact or harm they would suffer from the proposed development that was unique to them. Without it being unique to them, their interest cannot exceed in degree the general interest in the community good shared by all persons. The majority opinion eviscerates the "ad-

10. "Keyser is a citizen with an interest in the environment and nothing more." 709 So.2d at 177.

11. As for the trial court's denial of Plaintiffs' request to further amend the complaint in light of the dismissal, Plaintiffs had not abused the privilege to amend. Accordingly, the trial court also erred in dismissing Plaintiffs' complaint "with prejudice."

verse effect" element of the standing requirement in subsection 163.3215(2), Florida Statutes, and stands in direct conflict with the case law interpreting that statute.

Subsection 163.3215(2) defines an "aggrieved or adversely affected party" as "any person or local government which **will suffer an adverse effect** to an interest furthered by the local government comprehensive plan...." (Emphasis added). It further states that "[t]he alleged adverse interest may be shared in common with other members of the community at large but **must exceed in degree the general interest in community good shared by all persons.**" (Emphasis added).

The cases discussing this section have uniformly interpreted it as requiring factual allegations that plaintiffs will suffer adverse effects and that those adverse effects will be greater than those suffered by the community at large. *See Dunlap v. Orange County*, 971 So.2d 171 (Fla. 5th DCA 2007); *Stranahan House, Inc. v. City of Fort Lauderdale*, 967 So.2d 427 (Fla. 4th DCA 2007); *Payne v. City of Miami*, 927 So.2d 904 (Fla. 3d DCA 2005); *Edgewater Beach Owners Ass'n, Inc. v. Walton County*, 833 So.2d 215 (Fla. 1st DCA 2002), *receded from on other grounds, Bay Point Club, Inc. v. Bay County*, 890 So.2d 256 (Fla. 1st DCA 2004); *Putnam County Envtl. Council, Inc. v. Bd. of County Comm'rs*, 757 So.2d 590, 592–93 (Fla. 5th DCA 2000) *Florida Rock Props. v. Keyser*, 709 So.2d 175, 177 (Fla. 5th DCA 1998); *Pichette v. City of N. Miami*, 642 So.2d 1165 (Fla. 3d DCA 1994); *Sw. Ranches Homeowners Ass'n, Inc. v. Broward County*, 502 So.2d 931 (Fla. 4th DCA 1987).

Florida Rock, in my view, is a correct analysis of the statute. It tells us two things. Owning real property in the vicinity of the rezoning, and being concerned about the effects of the rezoning, is not sufficient to confer jurisdiction. The rezoning must have a specific impact or involve some harm on or to the property owner or his property.

For example, in *Dunlap*, this Court concluded that the plaintiffs had standing in part because "as owners of property fronting the lake on which Country Lake Estates is being developed, their interests will be affected by M/I Homes' boat ramp construction to an extent which is greater than those held by general members of the community who do not own such lake-front property." 971 So.2d at 175.

In *Stranahan House*, the Fourth District held that the plaintiff sufficiently pled an adverse effect by alleging that as the adjoining property owner, Stranahan House would be negatively affected by "increased traffic and the activity, lights, alteration of Stranahan's enjoyment of light and air, the visual and audio pollution caused by the development and the effect of the shadow cast over the Stranahan property at certain times of the year." 967 So.2d at 433–34.

In *Payne*, the Third District found that the plaintiffs had sufficiently alleged that they would suffer "adverse effects, exceeding the general interests shared by the community at large," by alleging they would suffer specific injuries to their ability to conduct business along the river due to depletion of available sites for marine industrial use by the conversion of industrial land to residential and commercial uses. 927 So.2d at 909.

In *Edgewater Beach*, the First District found that the plaintiff homeowners association demonstrated standing at trial by testifying that an adjacent proposed development would block members' ocean views, thereby reducing their property values, and it would place their recreational facilities in shade until noon. 833 So.2d at 220.

In *Putnam County Envtl. Council*, this Court held that the plaintiff organization sufficiently alleged adverse effects by asserting "specific injuries" it would suffer, including destruction of the habitat of species its members studied and elimination of members' access to the forest and its creatures by overgrowth from discontinuation of controlled burns. 757 So.2d at 593. This Court concluded that such alleged adverse effects were "particular" to the plaintiff organization, making it more than just a group with amorphous environmental concerns. *Id.*

In *Florida Rock*, this Court held that the plaintiff lacked standing because he failed to show that he would suffer an adverse effect or specific injury from the proposed development. Although the plaintiff alleged generally that the proposed development would "affect his quality of life" and that the County would not be as bucolic as it once was, this Court noted that the alleged injury should be "unique" and "specific" to the plaintiff. It further instructed, "Had Keyser lived adjacent to the property, and had he been able to show a specific impact the zoning change would have upon him or his property, he would have standing." 709 So.2d at 177.

In *Pichette*, the Third District affirmed a summary judgment for lack of standing because the plaintiffs failed to demonstrate that they would be affected by "noise, traffic impact, land value diminution, or and any other respect by the proposed zoning ordinance." 642 So.2d at 1166.

In *Southwest Ranches*, the Fourth District held that the plaintiffs sufficiently alleged standing by asserting that they were a group of landowners who would be directly affected by a proposed adjacent landfill's pollution, flooding and deterioration of the potable water supply. 502 So.2d at 934–35.

In the instant case, the plaintiffs failed to allege that they would suffer any adverse effect from the proposed development, much less any that would affect them to a greater degree than the community at large. The complaint alleges that the individual plaintiffs will suffer harm because the proposed development will increase demands on the potable water, sewer, traffic, evacuation, police and infrastructure systems. Simply alleging that development will increase demands on various resources does not equate to an adverse effect on an individual plaintiff. Instead, the complaint must allege ultimate facts showing *how* or *why* increased demands will result in adverse impacts to the plaintiffs. *See* Fla. R. Civ. P. 1.110(b) (requiring a "short and plain statement of ultimate facts showing pleader is entitled to relief"); *Williams v. Howard*, 329 So.2d 277 (Fla.1976) (noting that a "bare assertion" that one's legal rights will be affected, without alleging how or why, is not sufficient to establish standing to file a declaratory judgment action).

For example, will the increased numbers of people and demands arising from the proposed development degrade the plaintiffs' water quality? Will they reduce the plaintiffs' access to potable water? Will they increase the price plaintiffs pay for potable water? Will they reduce plaintiffs' access to fishing, boating and other activities in the Homosassa River? Will they cause increased response times from police and fire to plaintiffs' residences? Will they prevent plaintiffs from timely evacuating in an emergency? And, if so, how are any of these adverse effects suffered by the plaintiffs to a greater degree than the community at large? The complaint fails to allege any ultimate facts demonstrating that the plaintiffs will suffer adverse effects, much less adverse effects greater than the community at large.

The complaint also alleges that the Alliance and the individual plaintiffs will be adversely affected because their "investment of resources and volunteer activities" to protect the river, educate the public and encourage responsible development will be "for naught" if the County continues to allow development that is inconsistent with the Comprehensive Plan. A similar argument was soundly rejected by the United States Supreme Court in *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972), a case this Court followed in *Florida Rock*. There, the Sierra Club had attempted to establish standing under a similar statutory requirement in the Administrative Procedure Act that it allege an "adverse effect." Discussing the purpose for this requirement, the Court stated:

> The requirement that a party seeking review must allege facts showing that he is himself adversely affected does not insulate executive action from judicial review, nor does it prevent any public interests from being protected through the judicial process. It does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome. **That goal would be undermined were we to construe the APA to authorize judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process.**

Id. at 1368–69 (footnote omitted; emphasis added).

In this case, the majority concludes without any supporting analysis that the plaintiffs sufficiently allege that they will be "adversely affected by allowing a development that violates the plan." The majority's conclusion suffers from the same fatal flaw as the complaint itself—it is unsupported by any allegations of ultimate facts showing how or why the alleged violations will adversely affect the plaintiffs, and do so to a greater degree than the community at large.

More troubling is the majority's contradictory statement that a showing of harm is not required at all. It states:

> An interpretation of the statute that requires **harm** different in degree from other citizens would eviscerate the statute and ignore its remedial purpose. It drags the statute back to the common law test. The Statute is designed to remedy the governmental entity's failure to comply with the established comprehensive plan, and, to that end, it creates a category of persons able to prosecute the claim. The statute is not designed to redress damage to particular plaintiffs. To engraft such a "unique harm" limitation onto the statute would make it impossible in most cases to establish standing and would leave counties free to ignore the plan because each violation of the plan in isolation usually does not harm the individual plaintiff. Rather, the statute simply requires a citizen/plaintiff to have a particularized **interest** of the kind contemplated by the statute, not a legally protectable right.

This analysis is incorrect. By interpreting the statute as requiring only a particularized interest and not a particularized harm, it contravenes the plain language of the statute and conflicts with prior case law from this and other districts. It also leads to the danger described by the Supreme Court in *Morton*, as follows:

> It is clear that an organization whose members are injured may represent those members in a proceeding for judicial review. *See, e.g., NAACP v. Button*, 371 U.S. 415, 428, 83 S.Ct. 328, 335, 9 L.Ed.2d 405. But a mere "interest in a problem," no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization "adversely affected" or "aggrieved" within the meaning of the APA. The Sierra Club is a large and long-established organization, with a historic commitment to the cause of protecting our Nation's natural heritage from man's depredations. But if a "special interest" in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide "special interest" organization however small or short-lived. And if any group with a bona fide "special interest" could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so.

Id. at 739–40, 92 S.Ct. 1361.

As discussed above, Florida case law clearly requires more concrete injury than that alleged by the Plaintiffs. On this point the U.S. Supreme Court has previously recognized the requirement of an injury is specific—it requires a "concrete and particularized" injury in fact which "must affect the plaintiff in a personal and individual way," does not allow legal redress for any imaginable injury, and is not "an ingenious academic exercise in the conceivable." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 566, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). In *Lujan*, Justice Scalia expressed doubts that the Defenders of Wildlife had alleged sufficient injury to demonstrate standing, simply because a person's aesthetic viewing of a particular species in a particular area of the world was in danger of becoming less pleasurable. *Id.* at 566, 112 S.Ct. 2130. This argument is "pure speculation and fantasy." *Id.* To be sure, the Court opined that if a person could show they were observing a threatened species in a particular area of the world and that specific area was threatened, it was "plausible—though it goes to the outermost limit of plausibility" that such a person might have standing. *Id.* In this case, although the aesthetic viewing argument expressed by the Plaintiffs in this case stretches plausibility for the same reasons, it is somewhat closer to satisfying the constitutional requirement of standing because of Plaintiffs' demonstrated proximity. However, there is an additional problem with Plaintiffs' argument. To demonstrate such an injury, the party seeking redress must state "specific facts" demonstrating "that one or more of respondents' members would thereby be directly affected" by the challenged action. *Id.* at 563, 112 S.Ct. 2130. This was not accomplished here. Plaintiffs' bare-bones allegations that the increases in density will affect their use of the river is, without more, "pure speculation and fantasy" and is insufficient to show the requisite actual, concrete injury.

Because the Second Amended Complaint was fatally defective, the trial judge did not abuse his discretion in dismissing it with prejudice. The standard for reviewing a lower court's dismissal with prejudice is abuse of discretion. *Sonny Boy, L.L.C. v. Asnani*, 879 So.2d 25, 28–29 (Fla. 5th DCA 2004). Refusal to allow amendment of a pleading constitutes an abuse of discretion unless it clearly appears that allowing the amendment would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile. *Id.* While amendments should generally be liberally granted so that cases may be concluded on their merits, "there is an equally compelling obligation on the court to see to it that the end of all litigation be finally reached." *Price v. Morgan*, 436 So.2d 1116, 1122 (Fla. 5th DCA 1983).

Thus, "a trial judge in the exercise of sound discretion may deny further amendments where a case has progressed to a point that liberality ordinarily to be indulged has diminished." *Id.*

The trial court's order denying motion for rehearing demonstrates that dismissal with prejudice was appropriate in this case because further amendment would be futile and would cause prejudice to the defendants. It states:

> After extensive argument on the defendant's and intervenor's motions to dismiss plaintiffs' Amended Complaint at which time it was thoroughly explained why the facts urged by plaintiffs did not meet the requirements for standing, the court dismissed plaintiffs' complaint but with leave to amend. Although the court inquired at that hearing what additional facts plaintiffs might be able to allege on amendment, plaintiffs' counsel objected to "going outside the record" and insisted that the court rule on the four corners of the complaint. The court gave plaintiffs the benefit of the doubt that they might have additional facts bearing on standing that could be alleged and permitted an amendment.
>
> Plaintiffs' second amended complaint also failed to allege sufficient facts showing that plaintiffs were any more affected by the challenged action of the County Commission than any other member of the community. And this is understandable. Plaintiffs cannot invent facts. They now live no closer to the project so that its noise affects them and the shadows case by the buildings still does not fall on plaintiffs' property.
>
> Although there was no contention before the County Commission that the project would affect the quality of the water in the Homosassa River, plaintiffs are unable to allege any greater right to the river than the general public. And although the number of units may permit some growth in the area and the buildings may not be consistent with the character of Old Homosassa, these allegations affect all of the citizens in Old Homosassa equally.
>
> When delay will prevent the construction of an approved but undesired development, then one may win by losing if the losing process is sufficiently long. In this case, it has been long enough. Plaintiffs have had ample opportunity to show standing if they could. Further delay will not help them.

The plaintiffs in this case made three attempts to plead standing and they failed. "Generally three ineffective attempts to state the same cause of action are enough." Henry P. Trawick, Jr., *Florida Practice and Procedure* § 14-3 at 267 (2007-08 ed.). Most trial judges use the "three strikes and you're out" standard. The record amply demonstrates that the plaintiffs were incapable of pleading sufficient ultimate facts to confer standing. As the trial court noted above, at the hearing on the First Amended Complaint, the court asked the plaintiffs' attorney what additional facts could be alleged and she objected to going "outside the record." Nevertheless, the court entered an order explaining why the complaint was deficient and gave the plaintiffs an opportunity to allege additional ultimate facts. The plaintiffs then filed the Second Amended Complaint, which was also deficient. At the hearing on the motion to dismiss that complaint, plaintiffs' counsel candidly stated:

> [W]e wouldn't have the second amended complaint, had they not filed a motion to dismiss. What they have been successful in doing is creating—you know, basically making sure that we have a non-assailable complaint once it's time for the matter to be finally resolved, because we have now had two opportunities to dot all the I's and cross all the T's after they have alleged we missed some of those.

At no time, either in their motion for rehearing or in this appeal, have the plaintiffs demonstrated what further amendment would be made if given another opportunity to amend. *See Price*, 436 So.2d at 1122 (noting that appellants failed to demonstrate what further amendment could be made if given the opportunity). Based on the trial judge's reasoning and the record facts supporting it, the plaintiffs have failed to prove that he abused his discretion in dismissing the case with prejudice. To conclude otherwise, as the majority does, is simply to ignore the appellate standard which we are bound to follow.

I feel compelled to add the following observations from my experience in this area of the law.

No doubt the plaintiffs in this case are honest, sincere people who care deeply about the future of the Homosassa River. My remarks about certain so-called "environmentalists gadflies" should not be interpreted as a reference to them.

The opinion of Judge Griffin will be cited and used to open the floodgates to the environmental gadflies of the world. They will file spurious complaints which challenge rezoning on the basis that it violates the comprehensive plan. Local government will be hampered in doing what it is supposed to do. Property rights will be trampled by the delays. People who disagree with local decisions will find solace in the judicial branch by virtue of this Court's new-found authority which opens the courthouse door to attempts to overturn the decisions of local, duly-elected officials. Every gadfly with some amorphous environmental agenda, and enough money to pay a filing fee, will be anointed with status simply because the gadfly wants to "protect the planet."

The environmental gadfly will win every time, not on the merits, but because, in the words of the trial judge, "[w]hen delay will prevent the construction of an approved but undesired development, then one may win by losing if the losing process is sufficiently long." For those who respect property rights, look out!

Jeffrey BERNSTEIN and Wendie Bernstein, Appellants,

v.

NEW BEGINNINGS TRUSTEE, LLC, Appellee.

Nos. 4D07-4007, 4D07-4969.

District Court of Appeal of Florida, Fourth District.

Nov. 19, 2008.

Background: Lessor brought action against lessees, seeking to evict them for non-payment of rent. The Seventeenth Judicial Circuit Court, Broward County, Ronald J. Rothschild, J., awarded partial summary judgment to lessor. Lessees appealed. The District Court of Appeal, Warner, J., 988 So.2d 90, found that lessor could not immediately evict lessees, because triable issue existed, and denied lessees' application for appellate costs without prejudice. Lessees' application for appellate costs in the Seventeenth Judicial Circuit Court, Broward County, Ronald J. Rothschild, J., was denied. Lessees appealed.