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Thomas v. S.W. Fla. Water Mgmt. Dist., 864 So. 2d 455 (Fla. Dist. Ct. App. 2003)

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tank, and presented evidence from a civil engineer and a soil scientist that these activities would not result in an impact to an inland wetlands or watercourses resource.

The court determined the gazebo and the septic tank both qualified as regulated activities because Koch planned to build them within 150 feet and 100 feet, respectively, from the Lake shore. Additionally, the Commission argued its northwest Conservation District's expert concluded these activities around the Lake would only degrade water quality, since septic systems greatly impact the water quality of lakes. In addition, the expert stated the water quality standard given to the Lake by the Connecticut Department of Environmental Protection ("CDEP") meant the CDEP potentially considered the Lake to serve as a drinking water supply or that the Lake was a tributary to a drinking water supply. Therefore, the Commission argued the excavation for the septic tank so close to the Lake was sufficient for the Commission to conclude that these activities would cause or had the potential to cause pollution of the Lake, and constituted significant impact activities as defined by Connecticut statutes. The court agreed the Commission was entitled to consider the possible adverse effects that the construction of the gazebo and installation of the septic tank would have on the Lake. The court stated these considerations, when combined with the Commission's expert testimony, yielded sufficient evidence for the Commission to deny permission for the gazebo and the septic tank. Koch failed to carry the burden of demonstrating the record did not support the Commission's decision.

Therefore, the court dismissed Koch's appeal and sustained the Commission's decision to deny the permit to build the gazebo and the septic tank because substantial evidence in the record supported the Commission's decision.

Stacy Hochman

FLORIDA

Thomas v. S.W. Fla. Water Mgmt. Dist., 864 So. 2d 455 (Fla. Dist. Ct. App. 2003) (holding that a subsequently enacted Florida statute supersedes a previously enacted statute and that the consumptive use of water is therefore controlled by the Southwest Florida Management District).

Milo Thomas ("Thomas") applied to the Southwest Florida Water Management District ("SFWMD") for a permit to increase his water consumption from 345,000 to 970,000 gallons of water per day. Due to the potential impact of the additional water consumption on the Northern Tampa Bay Water Resource Assessment Project area, the SFWMD denied his application. Thomas appealed the administrative decision, arguing that the SFWMD erred in denying his application for an increase because, as a property owner in Pasco County, he possessed

a water right superior to the rights of any user outside of Pasco County. Thomas relied on the Florida Water Production statute, § 373.1961(1)(e), and other evidence to prove the legislature's intent to preserve the water rights of the residents of Pasco County. The Florida District Court of Appeals disagreed based the supremacy and exclusivity of the SFWMD's permitting authority set forth in the Florida Superseded Laws and Regulations statute, § 373.217.

Thus, the court affirmed the decision of the SFWMD and held that the SFWMD possessed exclusive permitting authority pursuant to the Florida Superseded Laws and Regulations statute.

Christina Valerio

HAWAII

Lana'i Co. v. Land Use Comm'n, 97 P.3d 372 (Haw. 2004) (holding: (1) the land use commission's interpretation of agreement and order for water use to develop golf course was clearly erroneous; and (2) remand was necessary because evidence implying real estate developer breached agreement and order for water use existed).

Lana'i Company, Inc. ("LCI") sought to expand the Manele Bay Hotel on the island of Lana'i by constructing a golf course near the resort. The Land Use Commission ("LUC") approved LCI's petition to reclassify land for the golf course on the condition that LCI not use potable water from a high-level aquifer for the project. When LCI used water from the high-level aquifer, several parties appealed to LUC demanding that LCI stop such water use. LUC issued an order commanding LCI to stop using high-level aquifer water. LCI appealed to the Second Circuit Court, which reversed LUC's order. LUC and others appealed to the Hawai'i Supreme Court.

LCI's predecessor in interest filed a petition with LUC to amend the land use district boundaries at Manele, from rural and agricultural districts to urban districts, for purposes of developing a golf course. The following year, Lanaians for Sensible Growth ("Sensible Growth"), the Office of Hawaiian Affairs, and LCI signed a memorandum of agreement ("Agreement"). The Agreement stated that LCI would (1) not use water from high-level ground water aquifers to maintain or operate the proposed golf course; and (2) achieve all irrigation for the golf course through alternative, non-potable water sources. Sensible Growth and LCI submitted proposed findings of fact ("findings"), conclusions of law, and orders to LUC. LUC subsequently granted LCI's petition in 1991 ("1991 Order") and ordered reclassification of the Manele land.

Pursuant to the 1991 Order, the Maui County Council ("Council") submitted a letter to Maui's mayor. The letter noted that LCI sought use of water from a high-level aquifer in direct violation of the Agree-