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Slusher v. Martin County, 859 So. 2d 545 (Fla. Dist. Ct. App. 2003)

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Subsequently, the Commission denied the application, stating that the proposed construction could lead to flooding, erosion, and icing, thus creating a negative effect on wells. Prestige Builders denied that there was any regulated activity on the property since there would be no activity on the wetland portion of the property. Prestige Builders further argued that the Commission had not enacted a regulation granting it authority over upland review areas.

First, the court addressed whether the Commission had statutory authority to regulate the upland review area without first enacting a formal regulation. The court applied the standard articulated in *State v. Courchesne*, which states, "in interpreting statutes, we look at all the available evidence, such as statutory language, the legislative history, the circumstances surrounding its enactment, the purpose and policy of the statute, and its relationship to existing legislation and common law principles." Accordingly, the court held that a commission must first enact a formal regulation to exercise authority over upland review areas. The court further held that the Commission improperly exercised its authority in denying the application since it had not enacted any regulation giving it authority over upland review areas.

Second, the court discussed whether the common law provided the Commission authority to deny the application. The court cited a string of relevant cases recognizing the authority of an inland wetlands commission to regulate activities in areas adjacent to wetlands or watercourses that would have negative impacts on such wetlands or watercourses. However, in each case, the local commission had enacted formal regulations over upland review areas.

Although the Commission adopted a regulation governing upland review areas after denying the application, the court found that such an amendment could not be retroactively applied to Prestige Builders. Thus, the court ruled in favor of Prestige Builders and ordered the Commission to grant the application for the nine-lot residential neighborhood.

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FLORIDA

Slusher v. Martin County, 859 So. 2d 545 (Fla. Dist. Ct. App. 2003) (holding the issuance of a well permit was improper because the district court misinterpreted their own rule by misconstruing the definition of an existing legal use).

James W. Slusher bought property in 1994 with a pond created for the purpose of raising fish. Soon thereafter, Martin County began operating a well adjacent to Slusher's property, which caused Slusher's pond to drain. The South Florida Water Management District ("District") had issued Martin County a permit to operate the well

adjacent to the pond; Slusher petitioned for an administrative hearing challenging the permit. The District denied Slusher's petition, and Slusher appealed to the Florida Court of Appeals contending the District should not have issued the permit due to the adverse effects the well had on his pond.

Rule 40E-2.301(1)(f) of the Florida Administrative Code ("Code") requires a well applicant to give reasonable assurances that a proposed water use will not interfere with presently existing legal uses. Section 1.8 of the Basis of Water Review for Water Use Applications within the South Florida Water Management District ("Basis") defines "existing legal use" of water as a water use that is authorized under a District water use permit or is existing and exempt from permit requirements. The District interpreted the last part of this definition to mean *expressly* exempt from permit requirements. However, because the definition of "existing legal use" was clear and unambiguous, the court determined the District misconstrued its own rule by adding the *expressly* requirement, and therefore did not give deference to the District's interpretation. Thus, because the District previously conceded that no permit was necessary for the pond, Slusher's use of the pond qualified as an existing legal use. Furthermore, no record existed that Martin County gave any reasonable assurances that their well would not interfere with Slusher's existing legal use.

The District further concluded that Section 3.6 of Basis—stating that a well permit should be denied only if significant reduction in water levels in an adjacent water body would occur to the extent that the designed function is impaired—should also preclude Slusher from relief. However, the original owner of the land provided undisputed testimony that the pond's designed function was to raise fish. Therefore, because the loss of the pond water impaired the designed purpose of the pond, the court found that the District's argument that the permit was properly issued was without merit. Thus, the court reversed the District's decision to issue Martin County a permit to operate a well because the District misinterpreted its own rules.

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GEORGIA

Gwinnett County v. Lake Lanier Ass'n, Nos. A03A2340, A03A2341, A03A2342, 2004 Ga. App. LEXIS 63 (Ga. Ct. App. Jan. 16, 2004) (holding (1) the Environmental Protection Division need not give public notice after changes are made to a permit draft to release highly treated wastewater into a lake, (2) the party challenging a permit must affirmatively prove a violation of anti-degradation regulations, and (3) the permit at issue was not invalid for failure to require limits on mercury and properly limited effluent fecal coliform and phosphorous).