

IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT, STATE OF FLORIDA

CLAY COUNTY PORT, INC.,

Appellant,

vs.

CASE NO.: 5D24-0369
L.T. No. : 2022-CA-000701

CITY OF GREEN COVE SPRINGS,
FLORIDA, ET AL.,

Appellees.

_____ /

**JOINT ANSWER BRIEF OF APPELLEE CITY OF GREEN COVE
SPRINGS, FLORIDA AND APPELLEES VIRGINIA S. HALL, AS
TRUSTEE OF THE VIRGINIA S. HALL REVOCABLE TRUST;
VIRGINIA S. HALL F/K/A VIRGINIA STEINMETZ, AS THE SOLE
SURVIVING TRUSTEE OF THE JP HALL, JR. SECOND
AMENDED AND RESTATED REVOCABLE TRUST; CHS, LLC, a
FLORIDA LIMITED LIABILITY COMPANY; AND LYMAN G. HALL,
AN INDIVIDUAL**

**ON APPEAL FROM THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
IN AND FOR CLAY COUNTY, FLORIDA**

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LLC, a Florida limited liability
company; and LYMAN G.
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STATEMENT OF THE CASE AND FACTS¹

Statement of the Case

Plaintiff-Intervenor Clay County Port, Inc. (“Clay Port”)² has appealed the final judgment entered in favor of Defendants City of Green Cove Springs, Florida (“City”) and Virginia S. Hall, as Trustee of the Virginia S. Hall Revocable Trust; Virginia S. Hall f/ka/a Virginia Steinmetz, as the sole surviving Trustee of the JP Hall, Jr. Second Amended and Restated Revocable Trust; CHS, LLC, a Florida limited liability company; and Lyman G. Hall, an individual (the “Halls”). R.2762-2810. The initial plaintiff, Pegasus Technologies, Inc. (“Pegasus”), filed the underlying action pursuant to section 163.3215, Florida Statutes (“Section 163.3215”), which requires the trial court to determine whether a development order is “consistent with the [local government’s] comprehensive plan”³ R.20-54, 1418. Plaintiffs, including Appellant Clay Port as

¹ References to the record on appeal, including transcripts on file other than the trial proceedings, will be cited as “R. ” followed by applicable paragraph or section numbers. References to the trial transcripts will be cited as “T. ”, followed by the page number shown on the *bottom center* of each page of the transcript as assigned by the clerk of the lower tribunal (as opposed to the original transcript page number) and original line numbers from the transcript.

² Clay County Port, Inc. is a Virginia corporation, not a governmental entity. R.1419 at IV.H.

³ This statutory cause of action will be referred to throughout as a “Consistency Challenge.”

subsequent intervenor, alleged that a development order issued by the City to the Halls – specifically, a rezoning – is inconsistent with the 2045 City of Green Cove Springs Comprehensive Plan (“Comprehensive Plan”). R.1421 at VI.B.

Less than two months prior to trial, the relevancy of an entirely different statutory provision, Chapter 333, Florida Statutes, which sets forth the limited circumstances under which a local government must adopt airport zoning regulations (“Chapter 333”), was raised for the first time in this action by Clay Port, and thereafter, its relevancy became a significant issue of dispute between the parties. The court denied without prejudice the Defendants’ joint motion in limine to exclude evidence relating to Chapter 333 (R.1464-66), and as a result, both sides presented evidence at trial relating to Chapter 333. The court entered a 40-page final judgment in favor of the Defendants, concluding as part of its analysis that Chapter 333 had no applicability to the Consistency Challenge in this case. R.1470-1509.

Clay Port has appealed on the ground that the trial court improperly excluded evidence relating to Chapter 333. Plaintiff Pegasus, which as noted above initially filed the complaint in the

underlying action, has not taken part in Clay Port's appeal. For reasons set forth herein, the Final Judgment should be affirmed.

Additional Factual Background

Reynolds Park, which is owned by Clay Port, is adjacent to the 13.92-acre parcel of property owned by the Halls ("Hall Property") and is designated "Mixed-Use Reynolds Park ("MURP") on the City's future land use map ("FLUM") in the Comprehensive Plan. R.1471,1477, & 1419 at IV A, H. The MURP land use category was established by the City at the request of Clay Port and *requires* a minimum of 20% residential uses and permits a maximum of 65% residential uses to be developed within Reynolds Park. R.1477. The airstrip within Reynolds Park, which is owned by Clay Port, is registered with the Florida Department of Transportation ("FDOT") as a private airport. R.1478 & 2210. The portion of Reynolds Park immediately adjacent to the Hall Property is a forested area referred to as Three Mile Swamp, which provides a buffer between the Hall Property and the airstrip and has trees up to 113 feet in height. The airstrip is approximately one-half mile (2,634 feet) from the eastern boundary of the Hall Property. R.1477-79 (Final Judgment); T.118, ln. 3-8 (testimony of Clay Port Corporate Representative);

T.250, ln. 12-251, ln. 18 & R.1857-59, T.350, ln.21-351, ln.5. (testimony of City Corporate Representative and Defendants' Trial Exhibits 6 & 7); T.182, ln.1-15 (testimony of Clay Port Aviation Expert). Clay Port has no current plans or timetable to convert the airstrip to a public use airport or to extend the airstrip. R.1480.

Policy 1.7.2(f) of the Comprehensive Plan's Future Land Use Element mentions "aviation and maritime industries" as *one of many* businesses authorized within the "employment center" of the MURP land use category. R.2383. Other uses listed in the employment center description include "multifamily residential opportunities," medical, technological and light industrial. R.2383. Neither Policy 1.7.2 nor any other provision in the Comprehensive Plan references Chapter 333 or any provision thereof; nor do they mention "airports," "airstrips" or "runways," private or public. R.1500, 2382-83.

The Hall's rezoning application was analyzed by and recommended for approval by the City's professional planning staff, including its Director of Development Services, Mike Daniels. R.1476. The rezoning application also was subject to three public hearings, first before the City's local planning agency, the Planning

and Zoning Board (“P&Z”); second before the City Council on the first reading of the rezoning ordinance; and third on the final reading of the ordinance before the City Council, which occurred on June 7, 2022. R.1474, 1476.

On that date, the Green Cove Springs City Council, through the adoption of three separate ordinances, approved (1) the annexation of the Hall Property into the City, (2) the amendment of the City’s FLUM to change the land use category of the Hall Property from County’s Industrial land use category to the City’s mixed-use (“MU”) land use category; and (3) the rezoning of the Hall Property to a planned unit development (“PUD”) to allow a residential multifamily development (the “Rezoning”). R.1474.

There were four conditions approved by the City as part of the Rezoning, including Condition Number 4, which required that a “disclosure notification shall be provided within the lease agreements for the multifamily units located on the property informing tenants that the proposed development is located in close proximity to the runway for Reynolds Park.” R.1475. Condition Number 4 was included at the request of Clay Port, following an email sent by Clay Port’s Executive Director to the City on April 26,

2022 (R.2209-10) and a subsequent in-person meeting between Clay Port's representatives and the City's staff. R.1475-76. In its April 26 email, Clay Port's aviation expert acknowledged that the airstrip in Reynolds Park was "not currently listed within the state and federal airport systems" and was a "private airport." R.2210.

In that same email, Clay Port also asked the City to communicate with FDOT's Aviation Section for guidance regarding the residential use of the Hall Property. R.1475, 2210, ¶5. The City did this as well. R.1475. Mr. Daniels spoke with FDOT staff and based on that communication; Mr. Daniels determined that approval of a multifamily residential development on the Hall Property was compatible with the existence of the airstrip located in Reynolds Park. R.1475-76.

Course of the Proceedings Below

The underlying action was one of three legal proceedings filed at or near the same time by Plaintiff Pegasus by which Pegasus sought to challenge the proposed residential multifamily development. R.1472-73. The other two proceedings were a petition for writ of certiorari (the "Certiorari Petition"), in which Pegasus argued that the City's approval of the Rezoning departed from the

requirements of its own land development regulations (R.1473), and a petition filed with the Florida Division of Administrative Hearings (“DOAH”). R.1472-73. The DOAH proceeding, which is the means through which parties may challenge a comprehensive plan amendment for compliance with state law, challenged the amendment of the City’s FLUM, adopted in conjunction with the Rezoning. R.1472-73.

The underlying action, in which Appellant Clay Port intervened as a plaintiff, is the only proceeding challenging the development that remains pending (through this appeal). The court below denied the Certiorari Petition on the same date it entered the final judgment in the underlying action. R.1473; 2677 & n.4. Pegasus did not seek further review of the Certiorari Petition. R.2677 & n.4. Pegasus had also voluntarily dismissed the DOAH proceeding, making the FLUM amendment final and effective. R.1472-73 & n.1.

The complaint in the underlying action alleged that the Rezoning was not consistent with certain provisions of the Future Land Use and Intergovernmental Coordination Elements of the Comprehensive Plan. R.20-27. The crux of the complaint was that a multifamily residential development was not permissible within the

MU land use category, which is applicable to the Hall Property, and that the City did not properly coordinate with the County regarding annexation of the Hall Property.⁴ R.20-27. The complaint set forth no allegations regarding an alleged failure to comply with Chapter 333. R.20-26. Nor did it mention airport zoning. R.20-27. Neither Plaintiff sought leave to amend the complaint.

Chapter 333 was first raised in the underlying action on May 10, 2023, less than two months before trial, in requests for admission served by Clay Port on the City (R.492) and during a hearing on Plaintiffs' motions for summary judgment on June 1. R.1339; Initial Brief ("IB") at 6. Although not raised in the then-pending motions for summary judgment, counsel for Clay Port argued during the June 1 hearing that the City had failed to adopt airport zoning regulations. R.1338-41; IB at 6. Thereafter, the relevancy of Chapter 333 became a focal point of dispute. On June 9, 2023, for instance, during the deposition of the City's corporate representative, Mike Daniels, Clay Port's counsel repeatedly asked

⁴ Neither of these original principal allegations have been asserted as grounds for appeal in the Initial Brief.

questions as to why the City had not adopted airport zoning regulations. R.1338-41; IB at 6.

Defendants jointly filed a motion in limine asking the trial court to exclude Chapter 333 related evidence at trial. R.1338-42. Defendants argued that a Consistency Challenge under Section 163.3215 is limited to the question of whether a development order is consistent with a local government's comprehensive plan, and that if the Legislature had intended for the consistency statute to authorize broader challenges, such as challenges based on compliance with other statutory sections, Section 163.3215 would have been worded differently. R.1339-40. Defendants noted that review of a development order on a basis other than consistency with the comprehensive plan is limited to certiorari proceedings (wherein the circuit court in its review capacity would analyze a departure from the essential requirements of law). R.1340. Defendants also noted that section 333.13(3), Florida Statutes, specifically empowers FDOT to enforce Chapter 333, including the power to file any actions necessary to compel compliance with the Chapter, and that any alleged violations of Chapter 333 should be

brought to the attention of FDOT, not raised in a Consistency Challenge. R.1340.

In addition to the arguments set forth in Defendants' written motion, counsel for the Halls pointed out (R.2826-2902) during the hearing that Chapter 333 applies to airports that are for public use or benefit, not private airstrips - such as that owned by Clay Port. R.2833, ln. 15 – 2834, ln. 24.

The court denied Defendants' motion in limine (R.1464 at ¶1) but speaking to counsel during the hearing, noted as follows:

. . . I'm inclined to agree with [the Halls' counsel] Mr. Franklin that I don't see, right now, the relevance of this, but I think the more prudent course is to at least give you an opportunity to convince me that somehow this is relevant to this proceeding.

R.2849, ln. 7-12.

At the outset of the trial on July 6th, the court acknowledged Defendants' continued objection to the Chapter 333 evidence but stated that it would not rule on the objection until its final judgment. T.119, ln.12 – ln.23. As a result, the trial court heard all the Chapter 333-related testimony, including testimony of Clay Port's aviation expert, Andrew Holesko (T.149, ln.5 – T.193, ln.3)

and cross-examination of City's Director of Development Services, Mike Daniels, regarding the City's consideration of Chapter 333 (T.450, ln.10 - 466, ln.2). The court also overruled objections by the City and permitted Clay Port's attorney to question the City's aviation expert, Michael Arnold, regarding Chapter 333's provisions and applicability. T.498, ln.8 - T.500, ln.8; T. 502 ln.21 - T.503, ln.3. *See also* IB at 7 (describing trial testimony relating to Chapter 333).

Both sides offered testimony regarding the proposed 59-foot height and whether it would constitute an "airport hazard" under Chapter 333. Plaintiffs' aviation expert, Mr. Holesko, testified as to the specific requirements in Chapter 333 regarding buildings that constitute "obstructions" and noise levels. He testified, and sponsored an exhibit demonstrating, that a 59-foot building on the Hall Property was *not* an obstruction for the existing airstrip runway. T.157, ln. 3 - T.160, ln.9 & R.1728. On cross-examination by counsel for the City, Mr. Holesko explained in his testimony that Part 77 of the Code of Federal Regulations provides the metrics for determining whether an airport hazard exists and whether an incompatibility based on noise exists and that those standards are

incorporated into Chapter 333 standards that apply to public-use airports. T.180, ln.3 - 18. Mr. Holesko agreed that based on the metrics set forth in the Part 77 Regulations, no airport hazard due to obstruction or noise exists with regard to the current airstrip because the mathematical criteria were met. T.181, ln.10 - T.182, ln.19.

With regard to the Hall Property, on which 59-foot buildings are proposed for the multifamily development, Mr. Holesko acknowledged, “Yes, that parcel of land could have a building in excess of 100 feet and not be an obstruction to FAR [Federal Aviation Regulations] Part 77, 20 to 1 visual approach to the existing runway.” T.181, ln.15 - 18. He also was asked if Chapter 333 requires a local government to adopt airport zoning regulations for a private airport; he answered, “I think that is up to the local municipality.” T.179, ln.5 - 10.

Defendants’ aviation expert, Michael Arnold, testified that the 59-foot-tall buildings in the proposed multifamily development would not constitute an obstruction, and that even buildings constructed up to 120 feet would not constitute an obstruction (and thus not qualify as an “airport hazard” as defined in Section

333.01, Florida Statutes). T.480, ln.22 – T.482, ln. 14. Mr. Arnold further testified that the proposed multifamily development would be compatible with any noise impacts due to airport operations even if the airport were a “public use” airport under Chapter 333. T.490, ln.3 - T.492, ln.3.

At no time did either Plaintiff ask to proffer testimony or evidence regarding Chapter 333 that was otherwise excluded. At the close of the proceedings on July 7, the parties and the court discussed and agreed to submit proposed final judgments in lieu of closing argument. T.620, ln. 8 – T.628, ln.18. Plaintiffs’ joint written submission included their argument on the relevancy and applicability of Chapter 333. R.2715 - 2722; IB at 8.

Disposition Below

The trial court’s final judgment set forth 9 pages of factual findings (“Final Judgment”, R.1471 - 1480), including the following: that the City (through Mr. Daniels) had determined that the proposed residential development was compatible with the existence of the airstrip in Reynolds Park and that Mr. Daniels did so following a discussion with FDOT and upon consideration of current land use categories and zoning on the County and City

properties surrounding the Hall's Property, including Reynold's Park (R.1475 - 76); that the airstrip on Clay Port's property is registered as a private airport (R.1478); that Clay Port has no current plans or timetable either to convert the airstrip to a public-use airport or to extend the airstrip (R.1480); that no evidence was presented at trial "that the buildings proposed in the PUD Rezoning could constitute an obstruction to air navigation under state and federal standards at the existing airstrip" (R.1479); and that no evidence was presented at trial "that noise levels at the Property resulting from air operations at the existing airstrip will exceed state or federal standards." R.1479.

The court then devoted more than 15 pages to carefully reviewing and analyzing each of Plaintiffs' challenges to the Rezoning's consistency with various provisions of the Comprehensive Plan. R.1488-1509. With regard to Chapter 333, the court noted that it had heard expert testimony from both sides on Chapter 333-related standards but stated that it was sustaining the Defendants' standing objection:

Finally, portions of the testimony of Plaintiffs' aviation expert, Mr. Holesko, and of the City's aviation expert, Michael Arnold, addressed

regulatory standards relating to potential air traffic obstructions and noise levels. Chapter 333 and these regulatory standards are not relevant in *this* case. A comprehensive plan consistency challenge under Section 163.3215, Fla. Stat., is a creature of statute As such, a consistency challenge is limited to the question of whether a development order “result[s] in an inconsistency with the comprehensive plan.” This is not an action based on compliance with federal regulations, state statutes or regulations, or even local code provisions. Such matters are extrinsic to and not incorporated into the 2045 Plan.

R.1503 (citations omitted). The court further concluded that “even if applicable to a §163.3215 challenge, no evidence was offered at trial that the Rezoning violates any such standards.” R.1504.

On September 9, 2023, Plaintiffs filed a motion for rehearing arguing that the court made various errors of law when it determined that Chapter 333 did not apply to a Consistency Challenge. R.2462-81. Plaintiffs also filed a notice of their intent to request judicial notice of Clay County’s intent to consider airport zoning regulations at a future date. R.2723-54. During the hearing on the rehearing motion, the trial court expressed skepticism as to how Plaintiffs could argue “newly discovered evidence” with regard to a notice and proposed regulations of Clay County that *did not exist* at the time of the trial, noting: “. . . there’s no way Judge

Lester could have considered that because it happened months afterwards.” R.2925, ln.12-18.⁵

The court denied the motion for rehearing (R.2755-58), noting: “Plaintiffs’ Motion for Rehearing asserts errors of law in Judge Lester’s Final Judgment and requests that the undersigned successor judge correct those errors. It is well settled that ‘a successor judge may not correct errors of law committed by his predecessor *Groover v. Walker*, 88 So. 2d 312, 313 (Fla. 1956);” R.2756 (additional citations omitted). This appeal follows.

⁵ Clay Port contends it offered the trial court “newly discovered evidence” (IB at 9) but does not raise in its Initial Brief any alleged error by the trial court in connection with the rehearing motion; nor could Clay Port do so. Clay Port’s argument was based, not on evidence “newly discovered”, but on events (i.e. the potential amendment of local law of a non-party governmental entity), that had not yet occurred at the time of trial.

SUMMARY OF ARGUMENT

Clay Port presents its issue on appeal as an *evidentiary* one, contending the trial court erred in “excluding” evidence “of Florida’s statutes concerning airport zoning requirements” (IB at 1); however, this asserted basis for its appeal fails simply by reference to the record, which reflects no exclusion of evidence. In fact, it reflects the opposite. The trial court denied Defendants’ pretrial motion in limine and did not rule on Defendants’ standing trial objection until its Final Judgment. In fact, the trial court noted in the Final Judgment that it heard expert testimony offered by each side relating to Chapter 333. In addition, Clay Port points to no specific evidence that was excluded; nor did it proffer any evidence during the trial that was not admitted by the court that it contends would have changed the outcome. In short, no evidence was kept from the factfinder - here, the trial court itself. Clay Port’s appeal fails on this basis alone.

In addition, however, the trial court correctly determined that Chapter 333 was inapplicable to its consistency analysis. By its express terms, Chapter 333 does not create state zoning near airports. Rather, it requires local governments to adopt airport

zoning laws under certain limited conditions in order to regulate “airport hazards” under standards established by the Federal Aviation Administration. The court held that Section 163.3215 requires solely that it determine whether the development order is consistent *with the comprehensive plan*. Here, the Comprehensive Plan contains no reference to Chapter 333, and the trial court properly adhered to the Legislature’s statutory directive when it determined in the Final Judgment that Chapter 333 was not applicable to Plaintiffs’ Consistency Challenge.

The trial court nonetheless heard the Chapter 333 evidence introduced by the Plaintiffs, including the testimony of Clay Port’s aviation expert. It also permitted Clay Port to cross-examine the Defendants’ aviation expert regarding the requirements of Chapter 333. After hearing this evidence, the trial court correctly determined that Plaintiffs had presented no evidence that the proposed multifamily development violated any standards of Chapter 333. For all these reasons, the Final Judgment should be affirmed.

ARGUMENT

STANDARD OF REVIEW: Appellant Clay Port has framed the issue on appeal as an evidentiary one. IB at 1, 9, 32. Appellees agree that to the extent Clay Port has sought review of an evidentiary decision of the trial court, such evidentiary decisions are reviewed for abuse of discretion. Defendants contend that Clay Port should be limited to the sole issue it presents on appeal, which is an evidentiary one; however, in the event the Court reaches issues regarding the trial court's decision as to the applicability of Chapter 333, such decisions regarding a statute's application present matters of law subject to *de novo* review.

In addition, the trial court's Final Judgment sets forth 9 pages of factual findings. R.1471-80. Where, as here, a trial court acts as the finder of fact, its factual findings are given great deference and should be upheld if they are based on competent substantial evidence in the record. See *Wekiva Springs Reserve Homeowners v. Binns*, 61 So. 3d 1190, 1191 (Fla. 5th DCA 2011). To the extent the parties' arguments in this appeal implicate the trial court's findings, those findings should be upheld because they are based on competent substantial evidence.

I. SECTION 163.3215, FLORIDA STATUTES, REQUIRES THE TRIAL COURT TO DETERMINE CONSISTENCY “WITH THE COMPREHENSIVE PLAN,” NOT COMPLIANCE WITH EVERY “STATE LAW”.

Clay Port argues in general fashion that “Evidence of applicable state law is relevant to whether the PUD is consistent with the entire Comprehensive Plan.” IB at 14 (Heading I). In doing so Clay Port offers an interpretation of a statutorily created cause of action that grossly exceeds its plain language and alters the scope of what the Legislature has authorized Florida courts to review in a Consistency Challenge.

Section 163.3215(3), which describes the cause of action, states:

(3) 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, . . . a development order, as defined in s. 163.3164, *on the basis that the development order materially alters the use or density or intensity of use on a particular piece of property, rendering it not consistent with the comprehensive plan adopted under this part.*”

(Emphasis added). A Consistency Challenge is a “creature of statute.” *City of Coconut Creek v. City of Deerfield Beach*, 840 So. 2d 389, 394 (Fla. 4th DCA 2003). As such, it is limited by the

express terms of Section 163.3215 to the question of whether a development order “materially alters the use or density or intensity of use on a particular piece of property” such that it “result[s] in an inconsistency with the comprehensive plan.” *Conservancy of Sw. Fla., Inc. v. Collier Cnty.*, 352 So. 3d 481, 489 (Fla. 2d DCA 2022). The focus is on the development order and the comprehensive plan at issue. Questions of compliance with other regulatory laws, even local codes, are “extrinsic” to a comprehensive plan and cannot be raised in a Consistency Challenge under Section 163.3215. *Id.* at 486.

Clay Port nonetheless urges the Court to expand the scope of the underlying Consistency Challenge beyond the Comprehensive Plan and to consider an alleged failure by the City to adopt airport protection zoning regulations under Chapter 333. Clay Port does not allege that provisions of Chapter 333 are incorporated by reference or otherwise cited in the City’s Comprehensive Plan. Nor does Clay Port cite any statutory law or cases that would support considering compliance with “state law” generally as part of a Consistency Challenge. Clay Port instead attempts to find some connection between Chapter 333 and the City’s Comprehensive

Plan so that it may then argue that the Rezoning violates the Comprehensive Plan by violating Chapter 333.

To that end, Clay Port argues that Policy 10.1.1 of the Comprehensive Plan, which is part of the Private Property Rights Element and uses the term “state law,” somehow incorporates Chapter 333 into the Comprehensive Plan. Specifically, Clay Port cites to Policy 10.1.1., which includes four sub-provisions and provides: “[t]he following rights shall be considered in local decision making: . . . b. The right of a property owner to use, maintain, develop and improve his or her property for personal use or for the use of any other person, *subject to state law* and local ordinances.” R.2461 (emphasis added). Clay Port asserts that this language effectively incorporates Chapter 333 into the Comprehensive Plan and that it requires the City to adopt airport zoning regulations before approving the Halls’ application for the Rezoning.

Clay Port’s interpretation is not supported by a plain reading of the language itself. The provision is a general statement that local governments should keep private property rights in mind (i.e. “consider” them) in their decision-making, and that those property rights in turn are subject to state and local laws. It does not

incorporate Chapter 333 or any other statute. Significantly, the cited language has its origins in Section 163.3177(6)(i), Florida Statutes, which requires every local government to include a “private property rights” element in a comprehensive plan. In fact, the language cited by Clay Port as evidence that the City meant to incorporate all “state law” is actually sample language recommended by the Legislature for use in a private property rights element. See §§163.3177(6)(i), Fla. Stat. It is inconceivable that the Legislature, through recommended form language, means for local governments to incorporate into their comprehensive plans every “state law” in existence. Such wholesale incorporation would be unworkable for local governments and would mean that circuit courts adjudicating Consistency Challenges would be required to assess the consistency of development orders not only with a comprehensive plan itself, but with all “state law.” Nothing in Florida law supports such an unworkable and burdensome interpretation. In fact, it is contrary to established law.

While “reference statutes” may validly incorporate the provisions of other laws, they must be written with “some reasonable particularity” to insulate them from constitutional

vagueness challenges. *See Se. Aluminum Supply Corp. v. Metro. Dade Cnty.*, 533 So. 2d 777, 778 (Fla. 3d DCA 1988). In *Southeast Aluminum*, for instance, the Third District held that language attempting to incorporate by reference “state law pertaining to contractor’s business” was unconstitutionally vague and overbroad. *Id.* The court concluded that the ordinance was “nothing more than a catchall because it fails to specify with any particularity the conduct proscribed by its provisions.” *Id.* at 777-78. *See also Goodman v. Kendall Gate-Investco, Inc.*, 395 So. 2d 240 (Fla. 3d DCA 1981) (finding reference in local government’s code to South Florida Building Code, which incorporated federal OSHA standards, not sufficient to incorporate federal OSHA standards into local government’s code).

Here, neither the Legislature, through the suggested form language, nor the City, by using that form language in its Comprehensive Plan, intended an unlawful and vague incorporation of Chapter 333 through use of the term “state law.” Clay Port’s interpretation would invite trial courts to invalidate development orders due to any perceived inconsistency with *any* state law. This is not what the language of Section 163.3215 authorizes or directs.

The trial court's task, as set forth by the Legislature, was to determine the consistency of the development order (here, the Rezoning) with the City's Comprehensive Plan. That is precisely what the court did here.

II. THE TRIAL COURT DID NOT "EXCLUDE" ANY EVIDENCE, BUT CORRECTLY DETERMINED THAT CHAPTER 333 WAS NOT RELEVANT IN THE UNDERLYING CONSISTENCY CHALLENGE.

Clay Port contends throughout its Initial Brief that the trial court excluded relevant evidence that "materially impact[ed]" the case, and that such exclusion warrants reversal. IB at 1 (sole issue presented), 13 ("lower court erred in its evidentiary decision"), 16 (Argument II, noting "materially impact" standard for reversal and remand where "relevant evidence" is excluded), 32 ("lower court's evidentiary error was fatal and warrants remand"); however, Clay Port's framing of this issue is based on an incorrect characterization of what the trial court did. The trial court did not exclude any evidence relating to Chapter 333 during the trial. While Defendants objected to such evidence prior to trial through their motion in limine and at the beginning of the trial, through a standing objection the court did not grant Defendants' motions at either time

and instead admitted all of the Chapter 333-related evidence put forth by the Plaintiffs, including the testimony of their aviation expert and exhibits introduced with his testimony. R.1552-1727; R.1728; T.24, ln.6-10.

Clay Port attempts to characterize the trial court proceedings as if the case had been tried to a jury and the trial judge excluded evidence that would have altered the verdict had the jury considered it. In fact, *Robinson v. CSX Transp., Inc*, the case relied upon by Clay Port to support its argument, is based on precisely such circumstances, where a trial court excluded evidence from the jury's consideration. See 103 So. 3d 1006, 1009 (Fla. 5th DCA 2012) (noting trial court excluded evidence of a railroad employer's failure to provide certain equipment for employees). Certainly, where a trial court abuses its discretion by excluding evidence that a jury should consider, a new trial may be warranted. Here, however, the trial court *was* the factfinder, and it heard the Chapter 333 evidence. The court ultimately determined that Chapter 333 was not relevant or applicable to the Rezoning's consistency with the Comprehensive Plan. The court's decision was one of law as to whether a statute applies, not an issue of evidentiary exclusion that

may have changed the outcome of a trial had the evidence been heard by a factfinder. Thus, Clay Port’s central argument in this appeal is neither relevant nor applicable in the context of this case.

Clay Port’s remaining arguments do not point to any evidence that was excluded but attempt to characterize Chapter 333 in a way that makes it relevant to the Consistency Challenge. As explained below, each of these remaining arguments fails.

A. Chapter 333 is Incorrectly Described by Appellant as “Airport Zoning Law.”

Clay Port contends that Chapter 333 “sets forth a comprehensive statutory regime regarding zoning of airports and appropriate land uses for nearby parcels.” IB at 16. Clay Port’s description fundamentally mischaracterizes the statute. Chapter 333 does two things. First, it defines “airport hazard,” the presence of which may trigger a local government’s obligations to *adopt* their own airport zoning regulations. See §§ 333.03-333.09, Fla. Stat. Second, where a local government has not adopted airport zoning regulations, Chapter 333 sets forth a state permitting system (administered through FDOT) for obstructions (as defined in the statute) near airports. See §§ 333.025 and 333.135(3), Fla. Stat.

Chapter 333 does not attempt to create state zoning near airports or set forth local compatibility standards for developments near airports. As both sides' experts testified, such zoning and development decisions are left to local governments.

In outlining the circumstances under which local governments are required to adopt airport zoning regulations, Chapter 333 provides: "Every political subdivision having an airport hazard area within its territorial limits shall adopt, administer, and enforce. . . airport protection zoning regulations for such airport hazard area." § 333.03(1)(a), Fla. Stat. (emphasis added). An "airport hazard" is defined to mean "an obstruction to air navigation which affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities." § 333.01(3), Fla. Stat. An "obstruction" is defined as "an existing or proposed object, terrain, or structure . . . that exceeds the federal obstruction standards contained in 14 C.F.R. part 77, subpart C." § 333.01(12), Fla. Stat. ⁶

⁶ Clay Port contends: "The City's approval of the PUD also approved the creation of an airport hazard on the Property. *See* T.R. at 166:4-20." IB at 23; however, this cited portion of the trial transcript does not reference any testimony of the City's representatives or expert. Rather, it is a response to a hypothetical that Clay Port's counsel put to Clay Port's own expert.

Thus, Chapter 333 does not set forth general development standards or criteria that must be applied as to property that happens to be in the vicinity of an airport. Rather, it defines the circumstances under which local governments must adopt those regulations. Those circumstances are limited, and as explained more fully in Argument III herein, even if Chapter 333 had been relevant to the trial court's consistency determination (which it was not), there was no evidence of any "obstruction" creating an "airport hazard" in connection with the proposed multifamily development in the approved PUD Rezoning.

B. Section 333.03(1)(a) Does Not Apply to Private Airports.

Given the correctness of the trial court's determination that Chapter 333 did not apply to the trial court's consistency determination (given the limiting language of Section 163.3215 and the absence of any reference to Chapter 333 in the City's Comprehensive Plan), this Court need not reach specific issues as to what Chapter 333 requires or does not require. Nonetheless, even if the Court were to reach such issues, Clay Port's contention that Chapter 333 applies to strictly private airports with no public use is without merit.

Clay Port points out the separate definitions for “airport” and “public use airport,” and the reference to airports “owned or controlled by a political subdivision” (IB at 16-17). While it is true that Chapter 333 contains multiple definitions and references that use the term “airport,” none of those definitions include privately-owned non-public use airports. Despite lengthy discussion in its Initial Brief regarding the various definitions, Clay Port fails even once to set forth the Legislature’s actual definition of the term “airport” which, as defined in Section 333.01(2), is “any area of land or water designed and set aside for the landing and taking off of aircraft and used or to be used *in the interest of the public* for such purpose.” § 333.01(2), Fla. Stat. (emphasis added). In addition, section 333.02(1), which sets forth the Legislature’s findings regarding airport hazards, notes that airport hazards “. . . tend[]to destroy or impair the utility of the airport and the *public investment* therein.” § 333.02(1), Fla. Stat. (emphasis added).

Clay Port also attempts to invoke the legislative “absurdity” doctrine, arguing that “the City’s limitation of section 333.03(1)(a) to only public airports is absurd” because “airport hazards endanger lives and property near all airports, not just public airports, . . .” IB

at 19. However, that “limitation” is not the City’s but that of the Legislature, and it is a matter of legislative policy. The statute specifically includes the term “to be used in the interest of the public” when defining “airport” and does not use the terms “private” or “privately-owned.” The absurdity doctrine cannot be used to modify or expand what the Legislature has defined, drafted or intended through the plain language or to “second-guess and supplant the policy judgments made by the Legislature.” *State v. Hackley*, 95 So. 3d 92, 95 (Fla. 2012). It applies only where necessary to “override the literal terms of a statute only under rare and exceptional circumstances.” *Id.* (additional citations omitted). No such circumstances exist here.

Finally, contrary to Clay Port’s assertions, none of Florida’s appellate courts have held that Chapter 333’s requirements apply to private-use airports. Clay Port cites two decisions, the Second District’s decision in *Waring v Peterson* and the Third District’s decision in *City of Homestead v. U.S.* (see 137 So. 2d 268, 269 (Fla 2d DCA 1962); 346 So. 3d 1205, 1205 n.1 (Fla. 3d DCA 2022)), in support of this contention, arguing that the military airports in these cases were not “open for use by the public” but that courts

nonetheless applied the requirements of section 333 to these non-public airports. IB at 19, 20. Neither of these decisions addressed the definition of “airport” or the applicability of Chapter 333 to privately used airports, and neither involved a Consistency Challenge. *Waring* involved a constitutional challenge to a local government ordinance which adopted regulations under Chapter 333 regarding Drane Field in Polk County, Florida. See 137 So. 2d at 269. *Homestead* involved a settlement agreement under Florida’s Bert J. Harris statute. 346 So. 3d at 1205, n.1. As noted by Clay Port, the airports in those cases were military, and in discussing these decisions, Clay Port ignores the definition of “airport.” While military airports such as those at issue in *Waring* and *Homestead* could be construed to be areas of property “used in the interest of the public,”⁷ a purely private airport is not. Plaintiffs’ own expert explained this distinction. T.190, ln.13-18 (“ . . . private airport can be private owned, private use, or private owned public use”).

Had the Legislature intended to include private airports, airfields or airstrips that were not used in the interest of the public,

⁷ In addition, local governments are required to have comprehensive plan policies for named military installations. § 163.3175, Fla. Stat.

it could easily have included such language. Here, the trial court found - and Plaintiffs do not dispute - that the airstrip was registered as a private airport (R.1478), and that Plaintiffs have no current plans to convert it to a public use airport. R.1480. Thus, even if Chapter 333 were somehow relevant, neither the trial court nor the City erred in determining there is no requirement for local governments to adopt airport zoning regulations with regard to private airports.

C. The Trial Court Properly Determined that Section 333.03(1)(a) Was Not Relevant to the Underlying Consistency Challenge.

Clay Port contends that “[a]s a *practical matter*, section 333.03(1)(a) is relevant to this consistency challenge because the statute relates to appropriate zoning near an airport, and the PUD re-zones land near an airport.” IB at 21-22 (emphasis added). What Clay Port offers as a “practical” interpretation has no basis in Florida law. That Section 333.03 uses the terms “airport” and “zoning” does not make it applicable to every rezoning that occurs near an airport; nor does it make it relevant in the narrow confines of a Consistency Challenge. Section 333.03(1) requires local governments to adopt airport zoning regulations under very narrow

circumstances involving airport hazards. It says nothing about other zoning decisions (near airports or otherwise) or the comprehensive plan consistency of rezonings near airports.

i. The Comprehensive Plan Does Not Reference or Incorporate Chapter 333.

For reasons already set forth herein in response to Argument I, the Comprehensive Plan's reference to "state law" in Policy 10.1.1 does not incorporate Chapter 333 into the Comprehensive Plan. Pursuant to Section 163.3215, Clay Port may challenge a development order – in this case the Rezoning – but not the City's failure to enact other regulations such as airport zoning regulations.⁸

Moreover, while Defendants agree that the Comprehensive Plan's reference to "state law" is not "merely surplusage," Defendants do not agree that the reference to "state law" in Policy 10.1.1 resulted in a wholesale incorporation of every conceivable

⁸ Actions challenging the consistency of development orders and land development regulations for compliance with a comprehensive plan are authorized by different statutory provisions. Cf. §163.3215, Fla. Stat. and §163.3213, Fla. Stat. Any challenge of the City's land development regulations for failure to be consistent with the Comprehensive Plan would have to be brought under Section 163.3213, Florida Statutes. In addition, any challenge to the FLUM amendment for non-compliance with state law would be brought as an administrative proceeding under Section 163.3184(5), Florida Statutes. Plaintiff Pegasus brought such an administrative proceeding and then voluntarily dismissed it. R.1472-73, & n.1.

state law, including Chapter 333. Significantly, Clay Port does not identify any triggering circumstance or event set forth in Chapter 333 that gave rise to the alleged requirement for the City to adopt airport zoning regulations. Clay Port implies that the approval of the Rezoning may have given rise to the requirement. However, Chapter 333 does not provide that a rezoning triggers an obligation to adopt regulations.⁹ In fact, the statute doesn't even provide for a private right of enforcement. See § 333.13, Fla. Stat. (noting civil enforcement procedures by the local government itself or FDOT).

Irrespective of who has authority under the statute to enforce Chapter 333 however, the underlying action is not a regulatory enforcement proceeding by FDOT or an enforcement action taken by an airport owner or operator asking a court to order a local government to adopt airport zoning regulations. Rather, it is a Consistency Challenge which required the trial court to determine whether the Rezoning altered a “use, density or intensity of use” of

⁹ The only trigger in the statute is a date, July 1, 2017, which triggered the obligation for local governments with an “airport” (which as defined must be used in the interest of the public) to adopt such regulations if required to do so. § 333.135(2), Fla. Stat.

property in a manner that was not consistent *with the Comprehensive Plan.*

- ii. Section 333.03(1)(a) is Not Relevant to the Trial Court's Determination as to whether the Rezoning was Appropriate or Compatible Under the Comprehensive Plan.*

Clay Port also contends that the trial court, as part of its consistency analysis, was required to utilize Chapter 333 to determine what land uses are “appropriate” and “compatible” for land near the airstrip. In doing so, Clay Port cites selectively from section 163.3194(4)(a), Florida Statutes, which addresses a trial court’s review of comprehensive plans, and from two objectives of the City’s Comprehensive Plan’s Future Land Use Element. Clay Port misconstrues Section 163.3194 and its use of the term “other things” as well as the Comprehensive Plan’s use of “appropriateness” and “compatibility.”

Section 163.3194(4)(a), cited by the trial court in the Final Judgment, provides:

A court, in reviewing local governmental action or development regulations under this act, may consider, among other things, the reasonableness of the comprehensive plan, or element or elements thereof, relating to the issue justiciably raised or the appropriateness and completeness of the

comprehensive plan, or element or elements thereof, in relation to the governmental action or development regulation under consideration.

§163.3194(4)(a), Fla. Stat.

Clay Port reads section 163.3194(4)(a) as an incorporating provision, stating it “does not attempt to limit what ‘other things’ a court may consider in a consistency challenge.” IB at 26. And, as previously noted, “reference statutes” that incorporate other law must be clear as to what laws they incorporate. Section 163.3194 is not a reference statute. Rather, by its express language, this subsection focuses *inwardly* on the applicable comprehensive plan as a whole and *in pari materia*. It says nothing about incorporating laws extrinsic to the comprehensive plan at issue, and no case law arising from this subsection holds that a court undertaking a consistency review may or should consider state law or other regulatory laws *extrinsic* to the applicable comprehensive plan. Rather, this provision has been interpreted by reviewing courts as “a recognition of the court’s inherent power to take into account fundamental fairness questions as may arise from a strict application of the plan” (*Machado v. Musgrove*, 519 So. 2d 629, 635 (Fla. 3d DCA 1987)) and evidences “the legislature’s intent that

local governments be given some flexibility in applying the plans.” *Sw. Ranches Homeowner’s Ass’n v. Broward Cnty., Fla.*, 502 So. 2d 931, 937 (Fla. 4th DCA 1987). It requires that a reviewing court examine “the applicable provisions of the Plan as a whole, the most reasonable and holistic interpretation, based on both the text and the synthesis of the document” *Arbor Props., Inc. v. Lake Jackson Prot. All., Inc.*, 51 So. 3d 502, 505 (Fla. 1st DCA 2010).

Clay Port further argues that the Comprehensive Plan’s Future Land Use Element makes reference to the concepts of “compatibility” and “appropriateness,” and that, based on these references, the City was required to consider Chapter 333 in determining whether the Rezoning was “compatible” or “appropriate” given its location near Reynold’s Park. IB at 25-26. Clay Port mischaracterizes these terms as vague, aspirational goals in need of “gap-filling” with extrinsic laws, such as Chapter 333. They are not.

Objective 1.1 of the Comprehensive Plan, which Clay Port quotes from page 2375 of the record, is part of the Future Land Use Element and requires that “[n]ew Development and redevelopment activities shall be directed in appropriate areas of the City as

depicted on the future land use map (FLUM).” (R.2375, emphasis added). Clay Port cites to this provision (Objective 1.1) but omits the portion that references the FLUM as the guiding reference point for what activity is appropriate in a particular area of the City (as designated on the FLUM). R.2375. Here, the FLUM was amended to include the Hall Property in the MU land use category to permit multifamily residential use, and the challenge to the FLUM amendment in the DOAH proceeding was voluntarily dismissed by Clay Port’s co-defendant.

Clay Port also cites generally to page 2378 of the record (Objective 1.3 of the Comprehensive Plan) to argue that the City was required to incorporate the standards of Chapter 333 to assess “compatibility” of the Rezoning with the private airstrip. Objective 1.3, which is entitled “Character and Compatibility,” is also part of the Future Land Use Element but sets forth no such requirements. It provides “[t]he City shall establish *locational criteria* in the LDC- for future rezoning of sites to higher density and/or intensity districts” and that certain principles “shall be considered” in establishing LDC locational criteria, including “compatibility,” which is defined at Policy 1.3.2.a. (R.2378, Emphasis added). Clay

Port did not assert below, nor does it assert here, that the City failed to comply with any LDC “locational criteria” requirements.

Nonetheless, the trial court made multiple findings and conclusions regarding the compatibility and appropriateness of the Rezoning under the requirements of the Comprehensive Plan, based on facts and expert testimony offered by Defendants below. With regard to the “appropriateness” of the Rezoning in connection with the land use category shown on the FLUM (MU), the trial court undertook nearly 8 pages of analysis as to whether the Rezoning was consistent with the Hall Property’s designated MU land use category described under Objective 1.1 (defined in Policy 1.1.1.c). R.1488-1494. These findings with regard to the appropriateness of the Rezoning in the MU category have not been challenged in this appeal. Rather, Clay Port instead argues that the court was required to go beyond the MU land use category - as MU is defined in the Comprehensive Plan and the data and analysis underlying that plan – and instead look to Chapter 333. Here, nothing in the Plan, Chapter 333, or Section 163.3194 required the trial court do so. The trial court confined itself to the proper analysis and thoroughly and stringently analyzed the consistency of the Rezoning

with the applicable MU land use category of the Comprehensive Plan. R.1488-1494.

The trial court also set forth factual findings regarding the City's assessment of the *compatibility* of the Rezoning with the surrounding land uses (R.1476-1478). As part of its legal conclusions, the court undertook an analysis of Policy 1.3.2, concluding that "the PUD Rezoning is consistent with the 'principles' set forth in FLUE Policy 1.3.2." R.1494-95. This analysis was part of the trial court's lengthy discussion regarding various provisions of the Future Land Use Element and the compatibility of the Rezoning with surrounding areas. R.1494-1503. The court considered the compatibility of the proposed residential development with the MURP and the airstrip and even noted its consideration of the testimony of Plaintiff's expert, Andrew Holesko, with regard to how the Rezoning would affect a hypothetical expansion of the airstrip. R.1501. Ultimately, the court rejected these arguments, noting that even if it were to consider a hypothetical expansion of the airstrip at some unknown date in the future, ". . . nothing in the MURP or FLUE suggests that limitations or mitigation which may be required for a potential extension of an

airstrip in the MURP created an inconsistency with the 2045 Plan precluding a proposed permitted multifamily residential use on adjoining lands.” R.1502.¹⁰

Finally, the trial court did not find “gaps” in the Comprehensive Plan, as Clay Port suggests. IB at 27. The trial court pointed out that the Comprehensive Plan does not contain requirements regarding airports, airstrips or runways and that such considerations thus were not relevant as to whether the Rezoning was consistent with the Comprehensive Plan. R.1500-1503. The Final Judgment cites to the presence or absence of various provisions in the Comprehensive Plan as demonstrating consistency of the Rezoning with the Plan. No statute or case law holds or even suggests that a reviewing court may attempt to “fill gaps” in the applicable comprehensive plan with extrinsic state regulatory laws. Such an exercise would have the effect of creating or amending the planning objectives, goals and policies of a local government with no input from residents, staff, or the elected body of the local

¹⁰ Clay Port points to subsection 333.03(2)(d), which addresses mitigation measures for residential construction near “public use” airports. That inapplicable provision applies to “public use” airports and only where an “airport hazard area” is present. See Section 333.03(1) (defining applicability of Section 333.03(2)).

government. Such judicial policymaking is not contemplated by Chapter 163.

III. THE TRIAL COURT DID NOT COMMIT ANY ERROR THAT WARRANTS REMAND OR A NEW TRIAL.

Clay Port contends that the trial court *excluded* evidence, and that but for the error, the court may have reached a different result. IB at 28-29. Nowhere does Clay Port identify any evidence that was excluded from the trial court's consideration or how that evidence, if considered, would have resulted in a different result. To the contrary, the trial record is replete with evidence and expert testimony relating to Chapter 333, and as previously noted, the entire basis of Clay Port's appeal - as set forth in its issue presented (IB at 1) - fails because the trial record shows *no* exclusion of evidence, let alone evidence that would have warranted a different result.

Clay Port also attempts to argue that certain conclusions reached by the trial court were not supported by the record, focusing on the trial court's statement that "even if [Chapter 333 is] applicable to a § 63.3215 challenge, no evidence was offered at trial that the PUD Rezoning violates any such standards. R.2800"; IB at

30. Citing this Court's decision in *Barrett v. Barrett*, Clay Port contends that the trial court's statement fails to offer this Court an opportunity for "meaningful review" (IB at 30); however, *Barrett*, which addresses a trial court's obligations to make specific findings regarding entitlement to alimony (see 313 So. 3d 224, 229 (Fla. 5th DCA 2021)), is inapplicable. Here, the court decided, as a matter of law, that Chapter 333 did not apply to its consistency analysis, and that the record was devoid of evidence that the Rezoning violated Chapter 333.

Moreover, the trial court's statement *was* supported by the record. While the court ultimately determined that Chapter 333 was not relevant, it made several explanatory findings as to the lack of evidence that an "airport hazard" would exist by virtue of the Rezoning, including the findings that: "[n]o evidence was presented at trial that the buildings proposed in the PUD Rezoning could constitute an obstruction to air navigation under state and federal standards at the existing airstrip" and that "no evidence was presented at trial that noise levels at the Property resulting from air operations at the existing airstrip will exceed state or federal standards." R.1479.

These statements in turn were amply supported by the record. Plaintiffs' own aviation expert testified and sponsored an exhibit demonstrating, that a 59-foot building on the Hall Property was *not* an obstruction for the existing airstrip runway. T.157, ln.3 -160, ln.9; 180, ln.3 - 182, ln.19; R.1728. He also testified that neither the 59-foot height of the buildings in the proposed development nor noise concerns (given the distance between the airstrip and the proposed development) would render the development an "airport hazard" under the federal regulatory guidelines incorporated into Chapter 333. T.181, ln.10 – T.182, ln.19. Plaintiff's expert agreed that based on the metrics set forth in those guidelines, no airport hazard due to obstruction or noise exists regarding the current airstrip. *Id.* ¹¹

Clay Port cites two excerpts from the trial transcript which it contends demonstrate there was at least some evidence that the Rezoning violated Chapter 333. Clay Port first states that "[l]ooking through the proper lens, it is plain that the City failed to adopt airport protection regulations . . . , despite the PUD creating an

¹¹ Plaintiffs' expert agreed that under existing conditions a building of up to 120 feet in height could be constructed at the location of the proposed buildings and still meet the relevant FAA limitations for airport hazards. T.181, ln. 10-18.

airport hazard.” IB at 31(citing 450:1-460:1). It is unclear what Clay Port means to suggest as the “proper lens” to evaluate the cited testimony from the City’s representative, Mr. Daniels, but the referenced portion of testimony does not mention “airport hazards” at all; nor does it mention what constitutes an airport hazard under Chapter 333. These pages contain a portion of Clay Port’s cross-examination of Mr. Daniels, who testified as to a staff report he authored which opined that no airport master plan was required prior to the City’s approval of the Rezoning because the airstrip on Clay Port’s property was not a public-use airport. T.457, ln. 20 - 458, ln. 21.¹² This statement is entirely consistent with Florida law. See § 333.06(4), Fla. Stat. (“An airport master plan shall be prepared by each *public-use* airport licensed by the department under Chapter 330.”) (emphasis added).

The cited 10-page excerpt also includes the beginning of Mr. Daniels’ testimony that he conferred with FDOT as part of his analysis prior to recommending approval of the Rezoning and that

¹² Clay Port contends that the City (through Mr. Daniels) determined that none of Chapter 333 “applied.” IB at 5 (citing T.458, ln.10-14). Mr. Daniels made no such legal determination regarding the “applicability” of Chapter 333. He determined an airport master plan was required only for public use airports. T.457, ln.20 - 458, ln.14-21.

he assessed the impact of the proposed development on the adjacent airstrip. T.460, ln.3-16. Nothing about this testimony constitutes evidence of a violation of Chapter 333. In fact, it demonstrates the City's careful research and analysis.

Clay Port also contends that “[e]ven viewed through the improper lens used by the lower court, however, Clay Port still offered evidence that the PUD itself was inconsistent with Chapter 333’s requirements.” IB at 31 (citing T.166: 4 - 20). It is also unclear what Clay Port means by an “improper lens,” but this referenced testimony of Clay Port’s own expert is not evidence that the PUD Rezoning violated Chapter 333. Clay Port’s aviation expert was being asked a hypothetical by its own counsel: *if* the City were to adopt airport zoning regulations, would it permit the apartments that are part of the proposed development? Mr. Holesko’s response to this hypothetical regarding what the City would or would not do, was to speculate that the City would prohibit such buildings. Such speculative, self-serving testimony offered by Clay Port was not evidence of a violation of Chapter 333.

Finally, it should be noted that Clay Port’s description of the central issue in this case, as set forth in the final section of the

Initial Brief, is an attempt to shift the point of inquiry from the consistency of the Rezoning with the *Comprehensive Plan* in the manner required under Section 163.3215, to the *City's* actions in adopting or not adopting airport zoning regulations. Clay Port states: “. . . *the lower court's reasoning improperly places the focus of Chapter 333 on the specific details of the PUD. But, as several provisions demonstrate, the focus of Chapter 333 is on the City's duty to act.*” IB at 30-31 (emphasis added). This statement demonstrates Appellant's fundamental misunderstanding as to the nature of the underlying action. This case is not an action pursuant to Chapter 333; nor is it an action to determine the City's compliance or lack thereof with Chapter 333. It is a Consistency Challenge pursuant to Section 163.3215, which *requires* the court to focus on the PUD (i.e. the development order) and its consistency with the *Comprehensive Plan*. The trial court properly and thoroughly did so here.

CONCLUSION

Accordingly, for all of the foregoing reasons, Appellees, CITY OF GREEN COVE SPRINGS, FLORIDA, and VIRGINIA S. HALL, AS TRUSTEE OF THE VIRGINIA S. HALL REVOCABLE TRUST; VIRGINIA S. HALL F/K/A VIRGINIA STEINMETZ, AS THE SOLE SURVIVING TRUSTEE OF THE JP HALL, JR. SECOND AMENDED AND RESTATED REVOCABLE TRUST; CHS, LLC, a Florida limited liability company; and LYMAN G. HALL, an individual, respectfully request that this Court affirm the Final Judgment.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed electronically and was sent by e-mail from the Florida Courts e-filing portal system, unless otherwise noted below, on all counsel or parties of record listed below, this 10th day of July, 2024:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Answer Brief complies with Fla. R. App. P. 9.210(a), in that it does not exceed 13,000 words and that it is written in Bookman Old Style 14 point font.

/s/ Cristine M. Russell

Attorney