

1000 FRIENDS OF FLORIDA
MARTIN COUNTY CONSERVATION ALLIANCE
EVERGLADES LAW CENTER

Via Email

June 26, 2013

The Honorable Sarah Heard
Chair
Martin County Board of County Commissioners
2401 S.E. Monterey Rd.
Stuart, Fla. 34996

Dear Chairwoman Heard and members of the Commission;

Organizations like 1000 Friends of Florida, the Martin County Conservation Alliance, and the Everglades Law Center resort to the court system as a last resort when necessary to enforce land use laws designed to protect our community. When they do so, it is not to enrich themselves, their staff or their members financially. The work of these groups is performed on behalf of their citizen members, either by volunteers or by professional lawyers and planners who have chosen public interest career paths that are far less lucrative than those available to them in the for-profit sector.

Most of their work gets done outside of court and rarely garners headlines. Over the past 20 years and more, their efforts on behalf of regular citizens have resulted in countless improvements to, and helped make a reality, the Indian River Lagoon and other restoration projects that benefit the Treasure Coast's economy, the ecology, and the Martin County Comprehensive Plan. These organizations have donated thousands of hours to these efforts, making themselves experts on these critical issues when most citizens don't have the time to do so, and then putting in the work without getting paid by the hour like most consultants to advocate for results that benefit the greater public – not some private, for profit, client. These efforts resulted in a comprehensive plan that is recognized statewide for its commitment to a high quality of life for its citizens and a sound economy, both of which rely upon a healthy environment.

When their efforts to convince government officials that their decisions are bad for the public are unsuccessful, and they have no choice but to use the laws written to protect the public, the cost in terms of money, resources and personal sacrifice is high. They do not get compensated when their legal challenges prevail or result in settlements that change outcomes on behalf of the public.

In the recent legal challenge to the Valliere and Secondary Urban Boundary Services comprehensive plan amendments, their legal appeal to the Florida's First District Appellate Court was never even heard on the merits because two of the three judges hearing the case ruled that a *substantial* number of their members would not be *substantially* impacted by these land use changes, and it dismissed the appeal. The Court then surprised most observers by requiring the groups to pay the legal fees for the opposing parties, a move rarely taken in such cases. These are subjective standards, and the third judge dissented strongly, finding that MCCA and 1000 Friends should have been found to have standing and, at a minimum, that their legal claim to standing was strong enough that they surely should not have been sanctioned for claiming standing to appeal. The Florida Supreme Court, which reviews appeals court decisions only in certain limited cases, did not review the case and thus the majority appeals court sanction stands as final.

The dissenting appellate judge, many respected groups like Florida Legal Services, Inc., Florida Institutional Legal Services, Inc., Florida Justice Institute, Inc., Southern Legal Counsel, Inc., the Florida Wildlife Federation, and Disability Rights Florida, expressed strong concerns that requiring these public interest groups to pay the opposing party's legal fees will create a chilling effect and prevent public interest groups in any field (disability rights, children's health, education, mental health, veteran's rights, and others) from trying to enforce laws in court for fear of losing a close case and having to pay the other side's lawyers. They are correct. There are those who would like to see that result, and to ensure that only those with political pull and the means to pay expert witnesses and high – priced lawyers can seek the protection of the courts when a government decision doesn't go their way. They would like there to be no one who is able to stand up in court and represent the common citizen and the public.

The selfless work done to benefit the citizens of Martin County over the years by 1000 Friends of Florida, the Martin County Conservation Alliance and the Everglades Law Center has brought priceless benefits to the people of Martin County. The amount of legal fees incurred by the County in this recent case is minimal compared to those benefits, but they are significant to these public interest groups. The enormous amount of analysis and work expended by these groups at the County level and in court exposed major flaws and ambiguities in these land use amendments in an effort to protect the County's urban boundaries and quality of life. While the comprehensive plan changes were upheld under an extremely loose legal standard that required only that there be a "fair "debate" about their compliance with the minimum legal standards, the legal challenge supported the position of the current county commission and a majority of Martin County residents, and has created a blueprint for new amendments needed to prevent the long term adverse impacts the challenged plan amendments would allow.

We request that the County Commission, as it does from time to time in other situations, waive the award of attorneys' fees against 1000 Friends, MCCA and the Everglades Law Center, so as to ensure continued public participation and access to the courts to enforce the planning and other laws that mean so much to Martin County and Florida. The County should also begin the

process of using the information brought out during this legal challenge to fix the problems created by the Valliere and Urban Boundary amendments, which gave rise to this court case to begin with.

Sincerely,



Charles Pattison,
1000 Friends of Florida



Donna Melzer,
Martin County Conservation Alliance



Richard Grosso,
Counsel for Everglades Law Center

cc: All members, Board of County Commissioners
Mike Durham, County Attorney
David Acton, Asst. County Attorney