

City of Jacksonville v. Evans Rowing Club, LLC, No. 16-2019-CA-00065 (Fla. Circ. Ct. Apr. 8, 2019), cert. denied no. 1D19-1851 (Fla. 1st DCA June 18, 2020)

First District Court of Appeal Certifies Question to the Florida Supreme Court Questioning the Deference Standards Under Second-Tier Certiorari Review by Appellate Courts

Evans Rowing Club, LLC (“ERC”) is a local Jacksonville business that provides training for the sport of rowing—including private lessons, programs with local schools, and summer camps, among other programs offered. In 2018, ERC applied for a Certificate of Use (“COU”) from the City of Jacksonville (“the City”) which was issued by the City within three weeks of applying. The City originally approved the COU based on its determination that ERC was similar in use to a yacht club or country club, an acceptable use based on the property’s current zoning, but later revoked the COU when it realized that the property was not in compliance with the Zoning Code (“the Code”) fully. Specifically, the COU was revoked because the Code only allowed country club facilities in a residential community if it was part of the subdivision’s original site plan.

Based upon the violation of the City’s code, the City proceeded to file in court a request for (1) civil penalties against ERC, and (2) injunctive relief against ERC—as well as repeating these counts against ERC’s owners in their individual capacity. The court found in favor of the City and granted the City’s request for injunctive relief. Soon after, ERC petitioned under writ of certiorari to the First District Court of Appeal. The petition for writ of certiorari was denied by the appellate court. However, the denial was accompanied by three concurring opinions discussing the outcome at length and expressing concerns about the decision—as well as the appellate court’s ability generally to review land use decisions by local governments.

In the first concurrence, Judge Wolf addresses whether the 2018 amendment to the Florida Constitution—Article V, section 21—has changed how a court reviews local government decisions in second-tier review. Judge Wolf argues that the section does not change how courts address these issues. In his reasoning, Judge Wolf first notes that based on the plain language of the amendment, Florida voters would not have intended to accept the amendment with the intent of allowing courts broader discretion over local governments’ zoning regulations and decisions. The amendment specifically uses the language “state statute[s] or rule[s]”; there is no mention of land use regulations. Judge Wolf then concludes that “local land use regulations are not state statutes or rules” and thus would not be included under the amendment. Judge Wolf concludes by stating that a court’s very limited role in reviewing local zoning decisions is well settled in the law, and the court should not consider altering these principles.

On the other hand, in Judge Thomas’ concurring opinion, he states that he concurs solely based on the current Florida Supreme Court decisions that bind the appellate court, but expresses concern about the limited role courts play in these situations. Judge Thomas asserts that the Florida Supreme Court should revisit the courts role in zoning cases “in light of the electorate’s

command that courts no longer defer to administrative agencies in interpreting administrative actions ‘pursuant to general law.’” Judge Thomas argues that the deference courts are required to give to administrative agencies is too high. He argues that, while courts can defer to an administrative agency’s expertise, the courts’ power of judicial review should not be completely replaced by an administrative agency’s own rationale. Addressing Judge Wolf’s point that zoning regulations do not fall under “state statute[s] or rule[s],” Judge Thomas argues that zoning regulations fall under this category because all zoning decisions are required to comply with general law. Judge Thomas concluded by stating that if the decision were to be reviewed by the Appellate Court, the proper outcome would be to reverse in favor of ERC because the initial approval by the City was the correct interpretation of the City’s Code. However, he did express concern that because the lower court was not required to provide a written opinion detailing its reasoning, the appellate court would find it difficult to analyze the issue fully. Judge Thomas then certified the following question to the Florida Supreme Court:

SHOULD THE STANDARD OF REVIEW IN SECOND-TIER CERTIORARI CASES BE REVISED TO PROVIDE PLENARY REVIEW OF LOCAL ADMINISTRATIVE LAND-USE DECISIONS IN LIGHT OF THE CONSTITUTIONAL REQUIREMENT THAT COURTS MUST NOT DEFER TO STATE ADMINISTRATIVE DECISIONS?

Judge Makar authored the last concurring opinion, agreeing with Judge Thomas’ reasoning. Specifically, Judge Makar first agreed that not requiring the trial court to provide its reasoning in a written opinion left the appellate court “to grope in the dark and resort to guesswork” when reviewing these types of cases. He further argued that the standard of review on second-tier review—departing from the essential requirements of law—was an anomaly in Florida’s legal system, pondering why a “single circuit judge has greater authority than a panel of appellate judges.” Judge Makar concludes that under the current requirements, the appellate court is unable to grant relief to ERC.