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Pine Island land owners sue county Say changes to growth plan deprived property rights

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Thirty-three Pine Island land owners are suing Lee County over private property rights they claim were violated when county officials made policy changes limiting growth on the island.

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The lawsuit was filed Friday by Dean & Dean Farms, a palm tree farmer, and others who together own about 3,000 acres on the island. The lawsuit alleges because of changes to Lee's Comprehensive Growth Management Plan, it has "deprived about 100 landowners of their full property rights."

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Through a series of amendments to the plan these properties "have lost a substantial portion of their fair market value," the suit says.

The suit is asking for one of two possibilities: Either rule the county's actions illegal and go back to the way things were on the island before growth was limited there, and give affected land owners any damages determined by a jury. Or, if the court decides the county's actions are valid, then the suit asks that affected land owners be compensated for their loss of potential to fully develop their land.

"The county's goal of preserving Pine Island from development might sound appealing and well intentioned to residents who aren't being impacted by these changes, but what about those who are?" said S. William Moore, a partner with the law firm Brigham Moore, representing the land owners.

"Most of these people have owned property on the island for many, many years and the arbitrary new regulations reduce their ability to develop their property by 97 percent," he said. "These owners aren't big developers and corporations. This is a huge financial hit."

County Commissioner Bob Janes, who represents the Pine Island area, hadn't seen the complaint Wednesday. "But I will say, this is something that is not unexpected. It's something we always suspected would be coming down the pike."

One of the problems the group has with growth restrictions is when the county dropped development density from one dwelling unit per acre to one dwelling unit per 30 acres. The suit claims this limits what residential property owners can do with their land.

The majority of the land in question is agricultural that has residential potential, which owners believe has been devalued. The county, however, provides a way for land owners to buy back the right to fully develop the portion that has been limited, by agreeing to restore a percentage of the property to its natural state.

"But when you have an agricultural use property, you have to do a pretty serious replanting to do that, and the county's own estimate was that it would be cost prohibitive," Moore said.

County Attorney David Owen has a copy of the lawsuit and it's under review, but he can't comment on it.

Here's how the plaintiffs claim the county has restricted residential growth: County commissioners voted earlier this year to modify the standards for roadway capacity for the island, through what is known as the 810/910 Rule.

The 810 rule restricts rezonings that would increase traffic on the only route on and off the island by setting a maximum annual average of 810 peak-hour, two-way trips on Pine Island Road through Matlacha. The 910 rule says when traffic through this area reaches an annual daily average of 910 two-way trips during the busiest times of day, county planners are to stop approving residential development. That 910 capacity was surpassed, so no new developments are allowed.

County officials have said they favor the older reference because it protects many buildings along Pine Island Road through Matlacha where expansion is constrained.

County commissioners had an independent appraiser measure the effects of the amendments on Pine Island's market value. The results of that study showed an estimated \$60 million in damages to affected lands. The lawsuit also claims the county's actions have resulted in a due process violation.

Moore said the county's actions single out land owners on Pine Island beyond what is expected of other Lee County land owners.

The county's staff, including the county attorney, had recommended against the the density changes.

"It is our goal to ensure that these owners are treated fairly and in a manner consistent with other property owners in Lee County," Moore said. "No one's constitutionally protected rights should be trampled, even to fulfill the wishes of the majority, without a true public need."

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