FLORIDA MUNICIPAL ATTORNEYS ASSOCIATION

FLORIDA MUNICIPAL LAW REPORTER

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October - December 2007

Editor's Note: The following case law summaries were reported from October 1, 2007, through December 31, 2007.

Section 1. Recent Decisions of the Florida Supreme Court

None reported.

Section 2. Recent Decisions of the Florida District Courts of Appeal

Firefighters – Pension Funds – Trial Court Erred When It Found, As a Matter of Law, That Town Had No Obligation to Fund Pension Plan's Actuarial Shortfall Present at the Time Town's Actions Resulted in Termination of the Plan.

The Town of Lake Park required its firefighters to make contributions to the Town of Lake Park Firefighters' Pension Plan in the amount of five percent of their earnings. The town and Palm Beach County entered into an interlocal agreement for fire protection and emergency medical services. Pursuant to the agreement, Palm Beach County agreed to provide the town with fire and emergency medical services. As a result of the agreement, Palm Beach County hired all of the town's firefighters. When the firefighters were hired by Palm Beach County, they became mandatory members of the Florida Retirement System. The town's pension plan for the firefighters was officially terminated and the Board had the sole authority to determine how plan assets would be distributed. They decided that accrued benefits should be paid out to plan members in the form of lump-sum distributions. The plan's asset value was less than the accrued benefits, as of the date of termination. It was the Board's position that the town was obligated to pay the difference between the asset value of the plan and the accrued benefits as of the date of termination. The town filed a complaint for declaratory relief. The trial court ruled that the town had no obligation to make any further payment to the Town of Lake Park Firefighters' Pension Plan. The Board of Trustees of the Town of Lake Park Firefighters' Pension Plan appealed a final summary judgment entered in favor of the Town of Lake Park, Fla. The Fourth District Court of Appeal reversed the trial court and found that Section 175.091(1)(d), Florida Statutes, required the town to make a mandatory payment of a "sum equal to the normal cost of and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in Part VII of Chapter 112." This same statute also clearly dictated that the benefits accrued to the date of termination were "nonforfeitable." The court found that there could be no impairment or reduction in benefits or other pension rights accruing to any firefighter plan member. *Board of Trustees of the Town of Lake Park Firefighters' Pension Plan v. Town of Lake Park, Florida*, 32 Fla. L. Weekly D2366 (Fla. 4th DCA Oct. 3, 2007).

Ordinances – Circuit Court Committed Violation of Clearly Established Law When It Reversed Code Enforcement Board's Finding That There Was No Violation of Ordinance.

The City of Coral Gables has an ordinance which prohibits a person from anchoring, mooring, or tying up a boat or craft to any waterfront property abutting the waterways and canals of the city, unless he or she is the owner of the property. A Coral Gables resident owned a 122-foot yacht and 100 feet of seawall along the waterway. The resident docked it on his own property, but part of the yacht extended into the neighbors "space" in the waterway. The Code Enforcement Board dismissed the neighbor's case because the yacht owner had anchored solely to his own property and that was the determinative fact under the requirements of the ordinance. The circuit court reversed the board's decision and awarded the neighbor relief because the yacht did extend over the neighbor's seawall as well. The Third District Court of Appeal heard this issue again on "second-tier" certiorari review and reversed the circuit court's decision. The court felt that the plain meaning of the ordinance must be adhered to. The ordinance spoke only to the place where the watercraft is anchored, moored or tied. *City of Coral Gables Code Enforcement Board vs. Yife Tien*, 32 Fla. L. Weekly D2434 (Fla. 3rd DCA October 10, 2007).

Zoning – Inconsistency with Comprehensive Plan – Applicant's Use of Property Was Essentially as Private Club, Rather Than as Public Park or

Recreation Facility, and Comprehensive Plan Did Not Permit Operation of Private Club within LDR Land Use Subcategory under Any of the Primary or Permissible Secondary Uses.

Petitioners Mary Anne and Anwar Saadeh brought this second-tier petition for writ of certiorari arguing that the circuit court departed from the essential requirements of law in denying their challenge to the City of Jacksonville's adoption of Ordinance 2005-487-E, rezoning certain residential property on the Arlington River. The First District Court of Appeal took the case on "second-tier" certiorari. After an initial legal challenge by the Saadehs, the City of Jacksonville adopted Ordinance 2005-487-E in order to rezone the Arlington River property to include "neighborhood parks, pocket parks, playgrounds or recreational structures which serve or support a neighborhood or several adjacent neighborhoods" in a residential low density district. The land use and development within Jacksonville is guided by the city's 2010 comprehensive plan and under this plan the Stanton Foundation's property is within a low density residential area. The District Court held that the Stanton Foundation was operating a private club on the Arlington River property and that such use was not permitted in the comprehensive plan, either as a primary use or secondary use. Therefore, the court remanded the case with directions for the circuit court to quash Ordinance 2005-487-E. *Mary Anne Saadeh and Anwar Saadeh v. City of Jacksonville and Stanton Rowing Foundation*, 32 Fla. L. Weekly D2516 (Fla. 1st DCA October 24, 2007).

Development Orders – Property Owner Could Not Challenge Consent Final Judgment Incorporating Litigation Settlement Agreement through Petition for Certiorari Challenging City's Approval of the Settlement Agreement Where the Property Owner Did Not Attack the Judgment, Either Directly or through a Collateral Proceeding – Circuit Court Applied Correct Law.

This petition for certiorari sought review of the circuit court's denial of the petitioner's challenge to the decision of the City of Fort Lauderdale approving a site plan for a property next to the Stranahan House, a historical home in Fort Lauderdale. The petitioner claimed that the court applied the incorrect law in denying its challenge to the two different decisions of the city. In the first, it challenged the city's approval of a litigation settlement agreement which was incorporated into a final judgment. The district court concluded that the petitioner, who failed to appeal the final judgment, could not attack it by petitioning to review the settlement agreement. In the second, the petitioner challenged the approval of an alternative site plan for the property. The district court concluded that the trial court did not depart from the essential requirements of law in denying relief on this petition. *Stranahan House, Inc. and Friends of the Park at Stranahan Inc., v. City of Fort Lauderdale and Coolidge South Markets Equities*, 32 Fla. L. Weekly D2702 (Fla. 4th DCA November 14, 2007).

Development Orders – It Was Error to Dismiss Complaint for Declaratory Judgment and Injunctive Relief Challenging City's Approval of Alternative Site Plan on Grounds That Issues Raised Had Been Previously Adjudicated – Adjoining Property Owners Whose Property Was Designated as a Historic Site Had Standing by Alleging That Their Interests Were Protected by the City's Comprehensive Plan, That Their Interests Were Greater Than the General Interest in Community Well-Being, and That Interests Would Be Adversely Affected by the Development.

Stranahan House, Inc. and Friends of the Park at Stranahan House, Inc. appealed a trial court's final order in favor of the City of Fort Lauderdale and Coolidge-South Markets Equities, L.P. to the Fourth District Court of Appeal. The trial court's order dismissed Stranahan's complaint for declaratory judgment and injunctive relief. The district court of appeal held that the trial court erred when it found that it had previously adjudicated the issues raised in Stranahan's complaint. The trial court focused on the consent final judgment in determining that the issues raised were previously adjudicated. The consent final judgment contained clear findings that the original site plan complied with all applicable unified land development regulations (ULDRs) as they existed on September 8, 1999, and that the original site plan was consistent with the city's comprehensive plan. However, the consent final judgment contained no finding that the alternative site plan later agreed upon was consistent with the comprehensive land use plan, nor could it since the alternative site plan was not submitted until after the consent final judgment was entered. Nor was the issue of the alternative site plan's compliance with the comprehensive plan decided in any previous ruling of the trial court related to same litigation. In addition, the district court of appeal found that Stranahan did have standing. The court looked to the four corners of the complaint. In this case, Stranahan alleged that as the adjoining property owner, they would be negatively affected by "increased traffic and activity, lights, alteration of Stranahan's enjoyment of light and air, the visual and audio pollution caused by the development and the effect of the shadow cast over the Stranahan property at certain times of the year." Stranahan also alleged they were negatively affected by the city's failure to submit the alternative site plan to the historical preservation board for review and comment under the provisions of the comprehensive plan designed to evaluate the impact of such projects on historical sites. Under the test outlined in *Florida Rock Properties v. Keyser*, 709 So.2d 175, Stranahan and Friends met the test for standing. The case was reversed and remanded for further proceedings. *Stranahan House, Inc., and Friends of the Park at Stranahan House, Inc. v. City of Fort Lauderdale and Coolidge-South Markets Equities*, 32 Fla. L. Weekly D2591 (Fla. 4th DCA October 31, 2007).

Elections – Counties – Amendment to County Charter which Sets Forth Detailed Election Requirements to Be Implemented in County Is Unconstitutional Because Amendment Conflicts with Provisions of Election Code.

The Sarasota Alliance for Fair Elections (SAFE) sponsored an amendment to the Sarasota County Charter. The amendment set forth detailed election requirements to be implemented in Sarasota County. The Board of County Commissioners, Secretary of State Kurt Browning and Supervisor of Elections Kathy Dent argued that the proposed amendment was expressly or impliedly preempted by the Florida Election Code, Chapters 97-106, Florida Statutes. The trial court held that state law did not expressly or impliedly preempt the field of elections and that the proposed amendment did not conflict with general law. The secretary, Board and supervisor appealed the final judgment of the trial court to the Second District Court of Appeal. The district court held that because of the pervasiveness of the Florida Election Code, the important public policy of election law uniformity, and the statewide and potentially nationwide consequences of enactments relating to the canvassing of votes, preemption precluded the SAFE amendment from becoming effective. In addition, they held the SAFE amendment unconstitutional stating any efforts to modify or "fine-tune" Florida's election laws should be addressed through uniform, statewide legislation. The district court certified the following question to the Florida Supreme Court: Is the legislative scheme of the Florida Election Code sufficiently pervasive, and are the public policy reasons sufficiently strong, to find that the field of elections law has been preempted, precluding local laws regarding the counting, recounting, auditing, canvassing, and certification of votes? *Florida Secretary of State Kurt S. Browning, Kathy Dent, and Board of County Commissioners of Sarasota County, Florida v. Sarasota Alliance for Fair Elections*, 32 Fla. L. Weekly D2573 (Fla. 2nd DCA October 31, 2007).

Code Enforcement – Landowner's Motion for Rehearing of Code Enforcement Board's Order Finding Landowner in Violation of Provisions of Code Was Not Authorized, and Did Not Toll Time for Seeking Certiorari Review.

The petitioners, the City of Palm Bay and the City of Palm Bay Code Enforcement Board, sought prohibition review of an appellate order of the circuit court denying the city and Board's motion to dismiss a petition for writ of certiorari in which the respondent, Palm Bay Greens, LLC, sought review of a decision of the Board finding Palm Bay Greens in violation of certain city code provisions. The city's prohibition petition argued that the circuit court appeal was untimely. The circuit court held a hearing on the city's first motion to dismiss and decided that the rendition date of the Board's original order was tolled until the date the Board sent Palm Bay Greens the letter informing them that the motion for rehearing was denied. The circuit court then entered an order denying the city's motion to dismiss. The city thereafter filed a motion for reconsideration of the denial of the order citing *Spradlin v. Town of North Redington Beach*, 14 Fla.L.Weekly Supp. 215 (6th Jud. Cir. Pinellas Co. Nov. 16, 2006), in which the circuit court concluded that it lacked jurisdiction to review an order of a code enforcement special master where the special master considered an unauthorized motion for rehearing. In this case, the district court concluded that Spradlin was correct. A motion can suspend rendition of an order only if the motion is authorized under the rules governing the proceeding in which the order was entered. A lower "tribunal's" inherent authority to reconsider an order does not transform a motion for rehearing into the kind of motion that suspends rendition. *City of Palm Bay and City of Palm Bay Code, Etc., v. Palm Bay Greens, LLC*, 32 Fla. L. Weekly D2897 (Fla. 5th DCA December 7, 2007).

Section 3. Recent Decisions of the United States Supreme Court

None reported.

Section 4. Recent Decisions of the United States Court of Appeals, Eleventh Circuit

None reported.

Section 5. Recent Decisions of the United States District Courts for Florida

None reported.

Section 6. Announcements

FMAA Web Site
Please visit the FMAA Web site at *www.fmaa.us* for municipal attorney news, an online version of this newsletter and discussion boards.

FMAA Seminar Notebooks Available
Notebooks from the 2006 and 2007 FMAA Seminars are available for $40 each. Please contact Tammy Revell at (850) 222-9684 or *trevell@flcities.com* for information.

Mark Your Calendar
The 2008 FMAA Seminar will be held July 17-19, 2008, at the Ocean Reef Club in Key Largo.