Florida Municipal Law Reporter

301 South Bronough Street, Suite 300 (32301) ● P.O. Box 1757
Tallahassee, Florida 32302-1757 ● (850) 222-9684

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Editor's Note: The following case law summaries were reported from January 1, 2009, through March 31, 2009.

Section 1. Recent Decisions of the Florida Supreme Court

Constitutional Amendment – Finance and Taxation – Local Taxes – Proposed Amendment Seeking 1.35-Percent Property Tax Cap Exempt from Single Subject Rule Because It Directly Limits Power of Government to Raise Revenue but Related Ballot Summary Is Misleading.

Cut Property Taxes Now, Inc. sponsored an initiative petition to amend the Florida Constitution pursuant to the initiative petition process. The initiative petition sought to establish a 1.35-percent property tax cap on all ad valorem taxes collected on any parcel of real property by counties, school districts, municipalities and special districts, unless a greater percentage was approved by voters. As with all initiative petitions, the Florida Supreme Court was required to determine if the tax-cap petition complied with the single-subject requirement of Article XI, Section 3 of the constitution and whether the ballot title and summary complied with §101.161(1), Florida Statutes. In considering the merits of the petition, the court reversed its course on existing single-subject case law that held the single-subject exemption would only apply to an initiative whose focus was strictly limited to methods of revenue raising. Instead, the court held the premise behind prior jurisprudence in this area was faulty and the very purpose of the exemption to the single-subject requirement was to allow a citizen's initiative limiting the power of government to raise revenue to embrace more than one subject. Further, the court explained, the exemption is an implicit recognition of the fact that an amendment limiting the raising of revenue by any one or more governmental entities will of necessity affect other revenue-raising entities and of necessity impact prior statutes or rules and other "authority from which the revenue-raising entity previously derived its taxing authority, i.e. home-rule charters." As such, the property tax cap petition at issue was exempt from the single-subject requirement because it directly limits the power of government to raise revenue. However, pursuant to its analysis under §101.161(1), Florida Statutes, the court held the ballot summary was misleading in that the summary set forth a single exception from the cap on "property taxes approved by voters." Yet, the amendment itself provided two exceptions: "(1) ad valorem taxes levied for the payment of bonds issued pursuant to Article VII, Section 12; and (2) ad valorem taxes levied for periods not longer than two years when authorized by a vote of the electors." Accordingly, the ballot summary was held misleading because it failed to indicate that any property taxes approved by voters cannot extend for longer than two years. Also, it does not refer at all to Article VII, Section 12, nor did it tell voters that voter approval is not required for all taxes levied for the payment of bonds under Article VII, Section 12. Additionally, the court held the ballot summary was misleading in that the summary provided for legislative distribution of taxes when the revenue from parcels "have reached the 1.35-percent cap; however, the amendment provides for legislative distribution when the revenue from parcels exceed the 1.35-percent cap." Finally, the court held the ballot summary misleading because it does not inform voters of the repeal of an existing Florida constitutional provision, Article VII, Section 9(b) which sets forth the millages that can be assessed by various local government units, school districts, water management districts and other special districts. For those reasons, the court ruled the proposal should not be included on the ballot. *Advisory Opinions to the Attorney General Re: 1.35-Percent Property Tax Cap, Unless Voter Approved*, 34 Fla. L. Weekly S102 (Fla. January 30, 2009)

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

Eminent Domain – Limitation of Actions – Trial Court Erred on Statute of Limitations and Ripeness Issues in Granting Summary Judgment to Defendant in Takings Action.

Several landowners sued Monroe County, alleging the county's adoption of the Monroe County Year 2010 Comprehensive Plan constituted an as-applied taking of their property. The landowners filed beneficial use determination (BUD) petitions pursuant to the comp plan, in which they argued that the comp plan and land-development regulations in effect under the plan deprive them of all

reasonable economic use of the property. The BUD petitions were heard by the special master, who determined the landowners had been denied all use and value of the land. The Monroe County Commission subsequently approved the special master's recommendations. Monroe County subsequently filed a third-party complaint against the state. Both sides then filed cross motions for summary judgment. The trial court ruled in favor of the defendants but on ripeness grounds, holding the BUD petition process did not constitute final determination from the local government. A successor trial judge heard arguments and granted the defendants' summary judgment motion, concluding the landowners' claims constituted facial takings claims not as-applied takings claims, and as such they were time-barred since their 2004 complaint was filed more than four years after the comp plan was adopted in 1997. On appeal, the district court delineated facial takings claims where all reasonable economic value is lost upon the mere enactment of some regulation from as-applied takings claims in which the property at issue retains at least some reasonable economic value. After considering evidence that some of the landowners managed to obtain building permits or sell their property outright after adoption of the comp plan, the court concluded a facial takings claim, along with its 4-year statute of limitations period, did not apply. Additionally, the district court concluded the county's BUD process did represent final local government action, as it was designed to account for total or partial economic loss (i.e. facial and as-applied takings claims). The county's adoption of the special master's findings constituted final governmental action. Summary judgment was reversed and the case remanded. *Thomas Collins and Patricia Collins, Donald Davis; Aurelia Del Valle and Maria Del Valle, et al. v. Monroe County and the State of Florida*, 34 Fla. L. Weekly D64 (Fla. 3rd DCA December 31, 2008)

Eminent Domain – Inverse Condemnation – Special Districts – Trial Court Award of Compensation to Estate of Land Owner Affirmed Where Landowner Claimed Improper Exaction Because Landowner Refused Certain Off-Site Mitigation Requirements as Condition to Issuance of Development Permits.

The estate of a landowner sued the St. Johns River Water Management District (SJRWMD) claiming inverse condemnation. More specifically, the estate claimed the SJRWMD's imposition of certain off-site mitigation requirements as a condition to issuance of development permits (that would have allowed development of a greater portion of the owner's property than authorized by existing regulations) amounted to an improper exaction. The landowner sought to develop 3.7 acres of his property. In order to develop his property, the owner sought a management and storage of surface waters permit to dredge 3.25 acres of his property that existed as wetlands. The SJRWMD agreed to recommend approval of the permit if the owner would deed the remaining portion of his 14.2 total acres into a conservation area and perform off-site mitigation by either replacing culverts 4.5 miles southeast of his property or plugging certain drainage canals on other property some seven miles away. Alternatively, the SJRWMD demanded that the owner reduce his development plans to one acre and turn the remaining land into a deed-restricted conservation area. The owner refused to perform the off-site mitigation condition or reduce his development to one acre. The SJRWMD denied his permit and litigation ensued. The trial court concluded the SJRWMD effected a taking of the owner's property. The court applied the standard enunciated by the Supreme Court in *Nollan* and *Dolan*, which holds that a government can impose a condition on the issuance of a permit without effecting a taking if the "essential nexus" test is met (i.e. the condition serves the same governmental purpose as the developmental ban). There must also be a "rough proportionality" between the condition imposed and the impact of the proposed development. The trial court determined that the off-site mitigation imposed by the SJRWMD had no nexus to the development restrictions already in place on the owner's property, nor was it roughly proportional to the relief requested by the landowner. On review, the SJRWMD did not challenge the evidentiary basis of the trial court's decision. Instead, it challenged jurisdiction of the trial court and the nature of the takings claim. The district court of appeal affirmed the trial court's conclusion regarding the taking and dismissed the jurisdictional challenge, affirming that an exaction claim is a cognizable takings claim when the landowner refuses to agree to an improper request from the government, resulting in a permit denial. The district court also disagreed with the SJRWMD's argument that a cause of action did not exist because the condition imposed only required the owner to expend money and not make a physical dedication of land. The district court concluded that under existing case law, such a distinction is not legally significant and without merit. The order awarding compensation to the estate of the landowner was affirmed. *St. Johns River Water Management District v. Coy A. Koontz Jr. Etc.*, 34 Fla. L. Weekly D123 (Fla. 5th DCA January 9, 2009)

Eminent Domain – Trial Court Properly Entered Order of Taking in Favor of City that Sought to Acquire Land for a Roadway Extension Project that Extended Outside City Boundaries.

Landowners appealed a trial court's order allowing the City of Lakeland to take portions of their land by eminent domain to create a right of way that will allow for the extension of one road to another. The city sought to take land in Polk County that was entirely outside and not contiguous to the city's boundaries. On review the district court affirmed the order of taking, finding the city had the power to take the land by eminent domain and the city demonstrated a public purpose and a reasonable necessity to support the taking. The district court explained that the city clearly had the authority to exercise the power of eminent domain, and the eminent domain powers conferred by §155.411(3), Florida Statutes, and the city's charter were broad enough to permit a taking outside the boundaries of the city even for purposes of building a road.

The court noted that it previously upheld the exercise of such eminent domain outside city limits in a case where the county did not object to the taking and, similarly, there was no objection by Polk County. Additionally, the court pointed to the public purpose behind the taking which arose from an interlocal agreement between the city and Polk County wherein both governments expressly acknowledged the road project was "necessary to provide adequate capacity to the area road system." In light of the interlocal agreement between the city and Polk County, the court refused to recognize any requirement to establish a public purpose that was exclusively or even primarily a municipal purpose of the city, as contrasted to a public purpose benefitting both governments. Finally, the court dismissed the argument that §335.0415, Florida Statutes, prevented entry of the order of taking based on the argument that upon completion of the roadway, the road would be maintained under the jurisdiction of Polk County. *Edna L. Kirkland et al. v. City of Lakeland*, 34 Fla. L. Weekly D284 (Fla. 2nd DCA February 4, 2009)

Counties – Zoning – Circuit Court Appellate Division Erred by Affirming County's Refusal to Rezone Petitioner's Property to Higher Density Classification Where Evidence Showed Surrounding Property Is Presently Used as Desired by Petitioner.

Richard Road Estates, owner of property in southwest Miami-Dade County, sought second tier certiorari review of a circuit court appellate division decision affirming the refusal of the Miami-Dade County Commission to grant a change in zoning of the petitioner's property from agricultural zoning (permitting one residence per five acres) to estate zoning (permitting one residence per one acre). There was indisputable evidence that the previous agricultural nature of the area no longer prevailed and that the surrounding property was being used as estate zoned or even more liberally. The disparate impact of requiring the petitioner's property to remain zoned as agricultural, while all surrounding parcels were used far more liberally resulted in reverse spot zoning according to the court's analysis. The county's justification for the disparate impact on the petitioner's property was that it desired to preserve the property's status as an area where excess rain water, which would otherwise accumulate on the surrounding land, is drained. The court felt the petitioner's property was forced to act as an uncompensated storm sewer for the neighborhood. As a matter of constitutional law, the court concluded such a policy was unrelated to zoning principles and could not be used to support the county's denial of the petitioner's requested change. More specifically, the court explained a zoning authority's insistence on considering the owner's specific use of a parcel of land is not zoning, but instead amounts to direct governmental control of the actual use of each parcel of land, which is inconsistent with constitutionally guaranteed private property rights. Accordingly, the circuit court was found to have departed from the essential requirements of law, entitling the petitioner to the certiorari relief sought and a remand of the matter to the circuit court. *Richard Road Estates, LLC v. Miami-Dade County Board of County Commissioners*, 34 Fla. L. Weekly D448 (Fla. 3d DCA February 25, 2009)

Vehicle Impoundment – District Court Reversed Prior Holding and Found Prostitution-Related Vehicle Seizure Ordinance Unconstitutional.

The district court granted rehearing on its prior ruling which found the City of Hollywood's vehicle impoundment ordinance valid. The City of Hollywood's vehicle impoundment ordinance at issue purported to authorize the city to seize vehicles whenever police officers have probable cause to believe the vehicle was used to facilitate prostitution, and hold such vehicles until the owner pays $500 plus towing and storage costs or posts bond in that amount. On rehearing, the court concluded the notice provision in the ordinance was insufficient on due process grounds because it failed to require notice to owners of the seized vehicle who are not present at the time of arrest. The court also concluded that the proper standard of proof for such ordinances should be clear and convincing evidence of unlawful conduct. Although the court acknowledged that the ordinance provided a sufficient innocent owner defense, affording immunity from impoundment in favor of an owner who makes a showing of no misuse of the property, it nonetheless reversed on insufficient notice grounds. *Colon B. Mulligan v. City of Hollywood, Florida*, 34 Fla. L. Weekly D589 (Fla. 4th DCA March 18, 2009)

Eminent Domain – Trial Court Properly Entered Order of Taking in Favor of City that Sought to Acquire Land for a Roadway Extension Project that Extended Outside City Boundaries.

On a motion for certification, the Fifth District Court of Appeal certified the following question to the Florida Supreme Court as one of great public importance: Where a landowner concedes that permit denial did not deprive him of all, or substantially all, economically viable use of the property, does Article X, Section 9(a) of the Florida Constitution recognize an exaction taking under the holdings of *Nollan* and *Dolan* where, instead of a compelled dedication of real property to public use, the exaction is a condition for permit approval that the circuit court finds unreasonable? *St. Johns River Water Management District v. Coy A. Koontz Jr., Etc.*, 34 Fla. L. Weekly D612 (Fla. 5th DCA March 20, 2009)

Counties – Comprehensive Plan – Land Development Code – Trial Court Erred in Awarding Bert Harris Act Remedies to Landowner Where Ordinance Which Prohibited Landowner's Development Merely Reflected Comprehensive Plan Requirements and Such Requirements Prevailed over Contrary Land Development Code Provisions.

A land developer brought Bert Harris Act and equitable estoppel claims against Citrus County after opponents of

the development protested on the basis that the desired development violated the county's comprehensive plan. In 2001, the developer bought the land and applied for the necessary project permitting based on assurances from county staff that the development could proceed. However, in 1997, a comp plan amendment prohibiting the desired use was enacted. The corresponding land-development code provisions were not revised. Accordingly, both the county staff and the landowner relied upon outdated land-development code provisions in their assessment of the parcel's potential use. A 2003 ordinance, which simply conformed the outdated land-development code and the zoning maps to the comprehensive plan, specifically exempted the developer's project from its application. Nevertheless, that ordinance formed the requisite governmental action required to trigger the developer's Harris Act claim. The trial court accepted the land developer's Harris Act claim, agreeing that the ordinance created an undue burden on the developer's property. On review the district court reversed the trial court decision. The district court explained that the ordinance at issue created no inordinate burden on the subject property because it expressly exempted the subject property. The burden was created by the 1997 comp plan amendment, thus the 2003 Harris Act claim was untimely. The court also explained equitable estoppel grounds would not sustain the developer's cause because estoppel does not apply to transactions that are forbidden by law or contrary to public policy. Here, the comprehensive plan enjoyed legal primacy regarding allowable land uses and thereby prohibited the use sought by the developer. *Citrus County, Florida v. Halls River Development, Inc.*, 34 Fla. L. Weekly D613 (Fla. 5th DCA March 20, 2009)

Section 3. Recent Decisions of the United States Supreme Court

Speech – Public Parks – Circuit Court of Appeals Erred in Ordering City to Permit Placement of a Religious Monument in Public City Park Where City's Act of Accepting or Rejecting Certain Monuments Was Ultimately Held by this Court as Forms of Protected Government Speech and Not Government Regulation of the Speech of Others.

Pleasant Grove City, Utah, petitioned for reversal of a circuit court of appeals ruling that required the city to place a certain religious monument in a public city park. The city park was one that had previously allowed placement of several monuments by third parties, including a monument depicting the Ten Commandments. A religious organization known as Summum applied to erect a monument depicting tenets of its own, known as the Seven Aphorisms of Summum. The city rejected the application and the Summum lawsuit ensued wherein the group claimed the city violated the First Amendment's Free Speech Clause by accepting the Ten Commandments monument while rejecting the Summum monument. On review, the Supreme Court reversed the circuit court of appeals ruling, noting that traditional forum analysis does not apply to a venue such as a public park. Citing a prior decision, the court noted the forum doctrine applies where a government property or program is capable of accommodating a large number of public speakers without defeating the essential function of the land or program, while public parks can accommodate only a limited number of permanent monuments. As such, traditional forum analysis would not apply and the city's act of accepting certain donated monuments while rejecting others could be seen as a form of government speech. The court noted a government entity is entitled to say what it wishes. Barring comportment with the Establishment Clause or certain public officials' advocacy speech that may be limited by law, regulation or practice, governmental entities are entitled to select the particular views they want to express. Selection of permanent monuments should be seen as intentional expression of a city regarding the identity it desires to project to its residents and the outside world. Accordingly, the city acted within its right to convey government speech through its decision to reject the Summum religious monument while having previously accepted a Ten Commandments religious monument and the order of the circuit court of appeals was reversed. *Pleasant Grove City, Utah vs. Summum*, 21 Fla. Law Weekly Fed. S648 (U.S. February 25, 2009)

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

None reported.

Section 5. United States District Courts for Florida

None reported.

Section 6. Announcements

Mark Your Calendar

The 2009 Florida Municipal Attorneys Association Seminar will be held July 16-18, 2009, at the Hyatt Regency Coconut Point in Bonita Springs. For seminar information and a registration form, please go to *www.fmaa.us* and click on "Seminar Info," or contact Tammy Revell at (850) 222-9684 or *trevell@flcities.com*.

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Notebooks from the most recent FMAA Seminars are available for purchase. 2007 Annual Seminar notebooks are $50 each and 2008 Annual Seminar notebooks are $75 each. Please contact Tammy Revell at (850) 222-9684 or *trevell@flcities.com* for information.