FLORIDA MUNICIPAL ATTORNEYS ASSOCIATION

FLORIDA MUNICIPAL LAW REPORTER

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OCTOBER-DECEMBER 2013

Editor's Note: The following case law summaries were reported for the period October 1, 2013, through December 31, 2013.

Section. 1. Recent Decisions of the Florida Supreme Court.

None reported.

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

Eminent domain – Inverse condemnation – As applied taking – Trial court did not err in entering summary judgment for defendants, city and state, in action alleging that property owners had been deprived of all or substantially all reasonable economic use of property by virtue of changes in land use regulations since plaintiffs' purchase of property.

In 1970, the landowners purchased an undeveloped island in the Florida Keys. The landowners did not make any attempt to develop the property until 1997. In the intervening 27 years, several state and local laws that provided increasingly strict land use regulations went into effect. The City of Marathon denied the landowners' application to develop the property. The city determined the assignment of "points" under local development regulations and the landowners' inactivity in developing the property restricted any reasonable-investment backed expectations in the island's development. The landowners sued the city for inverse condemnation arguing they had been deprived of all or substantially all economic use of the property due to the numerous land use regulations enacted over the years. At the trial court, the landowners failed to put forth any evidence as to their plans or actions to improve the property, both prior to the original purchase and in the intervening years while land use regulations were being enacted. Furthermore, the landowners did not demonstrate any reasonable expectation of selling the property for development. Since the landowners did not put forth any of this evidence, the Third District Court of Appeal held the landowners failed to demonstrate any investment backed expectations in the property. *Gordon Beyer and Molly Beyer v. City of Marathon and the State of Fla.*, 38 Fla. L. Weekly D2286 (Fla. 3d DCA November 6, 2013).

Municipal Corporations – Trial court did not err in dismissing action by homeowners and neighborhood association against city seeking declaratory and injunctive relief to require city to prosecute an enforcement action against another property owner.

Homeowners and a homeowner's association sued the City of Coral Gables for declaratory and injunctive relief seeking to compel the city to enforce its building and zoning codes against a property owner that rented private yacht slips and moorings within the city. The homeowners and homeowner's association alleged that the private yacht basin was being run in a manner that violated the city's building and zoning codes. The Third District Court of Appeal held that the lawsuit should be dismissed. The city had sovereign immunity based on the doctrine of separation of powers. This means that the judicial branch must not interfere with the discretionary functions of the legislative and executive branches of government absent a violation of constitutional or statutory rights. To hold otherwise would require the judicial branch to second guess the political and police power decisions of the other branches of government and would violate the separation of powers doctrine. The district court concluded that the city's discretion to file, prosecute, abate, settle or voluntarily dismiss a building and zoning enforcement action was a purely executive function that will not be supervised by the courts. Therefore, the city cannot be compelled by one private party to enforce its building and zoning laws against another private party. The enforcement of building and zoning laws is for the purpose of protecting the health and safety of the public, not the personal or property interests of individual citizens. *Detournay v. City of Coral Gables*, 38 Fla. L. Weekly D2552 (Fla. 3d DCA December 13, 2013).

Municipal corporations – Zoning – Rezoning – Circuit court did not apply incorrect law in denying challenges to city ordinance approving Seminole Tribe's application to rezone property within development to permit hotel and parking garages – Amendments to developments of regional impact (DRI) statute removed any substantial deviation to DRI criteria relating to the number of hotel rooms or percentage of parking spaces and eliminated hotel and motel developments from DRI review.

Three residents challenged the City of Coconut Creek's zoning ordinances relating to the construction and expansion of a hotel and parking garages to service the

Seminole Coconut Creek Casino (tribe). Through its ordinances, the city approved the tribe's application to rezone 45 acres, expand a hotel and construct several parking garages. The three city residents opposed the expansion and maintained the city could not approve substantial changes within the development without complying with the mandatory requirements of Section 380.06(19), Florida Statutes (2010), the DRI statute. The city and tribe argued that the residents: (1) do not have standing, and (2) Section 380.06, Florida Statutes, does not apply to the subject ordinances. Additionally, the tribe pointed out the recent statutory change in Section 380.06(19), Florida Statutes, that had occurred during the 2012 legislative session. The tribe argued that even if the wrong law was applied to the city ordinance, there is no miscarriage of justice due to the amended statute removing any substantial deviation DRI criteria relating to the number of hotel rooms or percentage of parking spaces and eliminated hotel and motel developments from DRI review. The court held the recent statutory change in Section 380.06, Florida Statutes (2012), eliminates the possibility of a miscarriage of justice under the facts of this case and therefore, denied the petition. *Ripps v. City of Coconut Creek II,* 38 Fla. L. Weekly D2299 (Fla. 4th DCA November 15, 2013).

Section 3. Recent Decisions of the U.S. Supreme Court.

None Reported.

Section 4. Recent Decisions of the U.S. Court of Appeals, Eleventh Circuit.

Civil rights – Speech – Municipal liability – First Amendment claims that individual defendants caused disciplinary and personnel actions to be taken against plaintiff as a result of his engagement in political speech fail because plaintiff cannot establish that his speech played a substantial part in decision to conduct internal investigation or terminate him.

Plaintiff was employed as a police officer by the City of Melbourne. On numerous occasions, the plaintiff, while off-duty, publicly criticized the chief of police and city manager. The plaintiff also personally lobbied members of the City Council and campaigned on behalf of candidates he believed would be in agreement with his political views. During an internal affairs investigation that was initiated for a different matter, internal affairs reviewed videotape of traffic stops made by the plaintiff. The investigation revealed the plaintiff made several traffic stops without justification and engaged in a pattern of falsifying tickets and other documents. The plaintiff was subsequently terminated from the Police Department and arrested on criminal charges of misconduct. The plaintiff did not seek administrative review of the decision by the city manager, as allowed by city policy. The plaintiff sued the city under 42 U.S.C. § 1983 alleging, among other things, he was terminated because he engaged in protected political speech and suffered a violation of his First Amendment rights. For municipal liability to attach, a plaintiff must demonstrate an action was ordered or sanctioned by a municipality. In making this determination, a court must take into account whether the action at issue was made by a governmental official or body that has final policymaking authority for the municipality. In the instant case, the decision to terminate the plaintiff was made by the police chief, a subordinate of the city manager. As a result of this hierarchy, only the city manager could make a final decision regarding the plaintiff's termination. Since the plaintiff failed to avail himself of the administrative appeal process provided under city policy, the plaintiff never received a final decision concerning his termination. Without a final decision, the plaintiff could not put forward any evidence the municipality sanctioned or ordered his termination for exercising his First Amendment rights. Therefore, municipal liability cannot attach. *Francis R. Carter, Jr. v. City of Melbourne, Fla. Donald L. Carey, Jack M. Schluckenbier,* 24 Fla. L. Weekly Fed. C687 (11th Cir. September 23, 2013).

Telecommunications – Cellular telephone – Siting and construction of towers – Permits – Denial – Written decision – Written letter provided to cell phone company by municipal corporation explicitly denying request to build proposed cell tower, hearing minutes recounting the reasons for permit denial and summarizing hearing testimony, and verbatim transcript of hearing during which request was denied, when considered collectively, were adequate to satisfy the requirement of Telecommunications Act that denials of request to place, construct, or modify personal wireless service facilities be in writing.

The court's decision in the instant case is predicated on virtually identical facts and reasoning as *T-Mobile South, LLC v. City of Milton, Ga.,* 24 Fla. L. Weekly Fed. C625 (11th Cir. September 5, 2013). The City of Milton case was summarized in the July – September 2013 FMAA Reporter. *T-Mobile South, LLC, v. City of Roswell,* Ga., 24 Fla. L. Weekly Fed. C712 (11th Cir. October 1, 2013).

Section 5. Recent Decisions of the U.S. District Courts for Florida.

None reported.

Section 6. Announcements.

Mark Your Calendar

Florida Municipal Attorneys Association's next seminar: July 24-26, 2014, Hyatt Regency Coconut Point, Bonita Springs

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