FLORIDA MUNICIPAL ATTORNEYS ASSOCIATION

FLORIDA MUNICIPAL LAW REPORTER

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Editor's Note: The following case law summaries were reported for the period October 1, 2014, through December 31, 2014.

Section 1. Recent Decisions of the Florida Supreme Court.

Attorney's fees – Municipal corporations – Firefighter and police officer pension plan – Enforcement – Prevailing party attorney's fees provisions in Sections 175.061(5) and 185.05(5) apply to judicial proceedings to enforce claims under local law plans – Language in complaint pleading claim for "plaintiff's costs and attorney's fees" pleaded claim for attorney's fees with sufficient specificity

In this case, the Supreme Court of Florida considered whether the prevailing party attorney's fees provisions in Sections 175.061(5) and 185.05(5), Florida Statutes (2004), apply to lawsuits brought to obtain benefits under a firefighter and police officer pension plan established by local law. Chapters 175 and 185, respectively, establish minimum benefits and minimum standards for firefighter and municipal police pensions. The court held one is entitled to prevailing party attorney's fees under Sections 175.061(5) and 185.05(5), quashed the decision of the 2nd DCA and remanded for further proceedings. *Parker v. The Board of Trustees of the Pension Fund for the Firefighters and Police Officers in the City of Tampa*, 39 Fla. L. Weekly S645 (Fla. 2014).

Appeals – Non-final orders – Torts – Municipal corporations – Sovereign immunity – Bank's action against city asserting city failed to ensure a real estate developer posted adequate security for completion of infrastructure and failed to conduct reasonable investigation to ascertain authenticity and adequacy of letter of credit – Although district court improperly reviewed question based on writ of certiorari, city is entitled to benefit of amended Rule 9.130, which permits district courts to review non-final order finding that party is not entitled to sovereign immunity where claim to sovereign immunity rests on pure question of law – District court correctly found that city was entitled to sovereign immunity

Beach Community Bank filed an action against the City of Freeport, asserting the city failed to ensure a real estate developer posted an adequate security for completion of the infrastructure and failed to conduct a reasonable investigation to ascertain the authenticity and adequacy of the letter of credit, including whether the bank that issued the letter of credit was financially able to pay the letter of credit if it were called. The 1st DCA held the city was entitled to sovereign immunity in this case. The Supreme Court of Florida affirmed the 1st DCA decision, holding the city is entitled to the benefit of recently amended Rule 9.130, which permits district courts to review non-final order finding that party is not entitled to sovereign immunity where claim to sovereign immunity rests on pure question of law. *Beach Community Bank v. City of Freeport*, 39 Fla. L. Weekly 687 (Fla. 2014).

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

Public Records – Emails – Material prepared by agency attorney in anticipation of imminent civil litigation – Trial court's determination that responsive emails were exempt from disclosure was supported by competent, substantial evidence

Agrosource, Inc. appeals an order denying access to 22 emails that were the subject of a public records request, asserting the trial court did not conduct a proper inspection of these documents. The 2nd DCA affirmed, holding the materials prepared by agency attorney in anticipation of imminent civil litigation were exempt from disclosure. *Agrosource, Inc. v. Florida Department of Citrus*, 39 Fla. L. Weekly 2064 (Fla. 2nd DCA October 10, 2014).

Traffic infraction – Red light violations – Red light cameras – A city is not authorized to delegate police power by entering into a contract that allows a private vendor to screen data and decide whether a violation has occurred before sending that data to a traffic infraction enforcement officer to use as a basis for authorizing a citation – Only city's law enforcement officers and traffic infraction enforcement

officers have the authority to issue citations – City lacks authority to outsource to a third-party vendor the ability to make the initial review of computer images of purported violations and then use its unfettered discretion to decide which images are sent to traffic infraction enforcement officer – Dismissal of citation is appropriate remedy where private third party effectively decides whether a traffic violation has occurred and a citation should be issued

On a motion for rehearing, the 4th DCA withdrew its previously issued opinion and in a substitute opinion held a city is not authorized by Section 316.650(3), Florida Statutes, to delegate police power by entering into a contract that allows a private vendor to screen data and decide whether a violation has occurred before sending that data to a traffic infraction enforcement officer to use as a basis for authorizing a citation. The court found that the City of Hollywood lacks authority to outsource to a third-party vendor the ability to make the initial review of computer images of purported violations and then use its unfettered discretion to decide which images are sent to traffic infraction enforcement officer. *Arem v. City of Hollywood*, 39 Fla. L. Weekly D2175 (Fla 4th DCA October 24, 2014).

Municipal corporations – Ordinances – Ordinance amending city's comprehensive plan to change zoning map designations of property is void because city failed to comply with notice provisions of Section 166.041, Florida Statutes – Government in the Sunshine – City's attorneys and commissioners violated Sunshine Law when they conducted a series of shade meetings at which they discussed a plan to readopt comprehensive plan amendment that been invalidated by court – Exemption to Sunshine Law was not applicable where discussions were not limited to the settlement of pending litigation

James Anderson appealed a final judgement arguing among other reasons, that a City of St. Pete Beach ordinance amending the city's comprehensive plan was invalid because the city failed to publish public notice in accordance with Section 166.041, Florida Statutes (2011). The 2nd DCA held the ordinance was invalid because the city failed to comply with the notice provisions Section 166.041 when the city conducted a series of shade meetings at which they discussed a plan to readopt a comprehensive plan amendment, in violation of the Sunshine Law. The court found the pending litigation exemption to the Sunshine Law did not apply because discussions in the shade meetings were not limited to the settlement of pending litigation. *Anderson v. City of St. Pete Beach*, 39 Fla. L. Weekly D2180 (Fla. 2nd DCA October 24, 2014).

Government in the Sunshine – Collective bargaining – Trial court properly found that the conduct of closed-door federal mediation sessions which resulted in mediation settlement agreement changing pension benefits of city employees in union constituted collective bargaining negotiations that violated Sunshine Law – Circuit court properly found that it had jurisdiction to determine whether collective bargaining had been held in compliance with Sunshine Law and to enjoin further violations – Court properly found that federal mediation sessions violated Sunshine Law, voided the mediated settlement agreement, and enjoined parties from conducting further proceedings entailing collective bargaining in private

In a consolidated appeal, Mayor Alvin Brown, the City of Jacksonville and the Jacksonville Police and Fire Pension Fund Board of Trustees appeal an order granting final judgement in favor of the appellee, Frank Denton. The 1st DCA affirmed the trial court decision and held trial court properly found that the conduct of closed-door federal mediation sessions that resulted in mediation settlement agreement changing pension benefits of city employees in union constituted collective bargaining negotiations that violated Sunshine Law. *Brown v. Denton*, 39 Fla. L. Weekly D2203 (Fla. 1st DCA October 24, 2014).

Traffic infractions – Red light camera violations – County court properly found that short-term renter of vehicle was denied due process and equal protection by statute which did not allow the issuance to her of a notice of violation rather than a uniform traffic citation, whereas owners or lessees of vehicle could be issued notice of violation – Statute at issue has now been amended to allow all individuals charged with committing a red light camera violation to be issued a notice of violation

The City of Fort Lauderdale appeals a final order from the county court dismissing a red light camera traffic citation on grounds that Section 316.0083(1)(d)3, Florida Statutes (2012), of the Mark Wandall Traffic Safety Act violated defendant June Dhar's equal protection and due process rights under the Constitution. The 4th DCA affirmed the county court decision, holding the court properly found that short-term renter of vehicle was denied due process and equal protection by statute, which did not allow the issuance to her of a notice of violation rather than a uniform traffic citation, whereas owners or lessees of vehicle could be issued notice of violation. The statute at issue has now been amended to allow all individuals charged with committing a red light camera violation to be issued a notice of violation. *City of Fort Lauderdale v. Dhar*, 39 Fla. L. Weekly D2210 (Fla. 4th DCA October 31, 2014).

Municipal corporations – Appeals – Certiorari – Petition for second-tier certiorari review of circuit court decision which had denied taxicab company's petition for writ of certiorari seeking review of City Council's decision reversing hearing officer's action granting taxicab company's application for a certificate of convenience and necessity to operate taxicabs within city – Petitioner taxicab company

is not entitled to second-tier certiorari review where circuit court afforded due process and applied correct law – Hybrid appeal process which allowed City Council to the hear appeal from hearing officer's decision, yet also allowed new evidence, was not shown to be prohibited by clearly established law – Petitioner has not shown that City Council denied it due process by applying different standards for issuing certificates of public convenience and necessity for different applicants

The Taxi USA of Pam Beach, LLC (Taxi) submitted an application for a certificate of public convenience and necessity with the City of Boca Raton. Taxi's application was initially approved by a city hearing officer, but later denied on appeal to the City Council. Taxi challenged the City Council decision by filing a first-tier certiorari proceeding with the circuit court. The circuit court denied Taxi's petition for writ of certiorari seeking review of City Council's decision reversing hearing officer's action granting Taxi's application for a certificate of convenience and necessity to operate taxicabs within city. Taxi sought second-tier certiorari review of the circuit court decision by the 4th DCA. The 4th DCA held Taxi was not entitled to second-tier certiorari review where circuit court afforded due process and applied correct law. *Taxi USA of Palm Beach, LLC v. City of Boca Raton*, 39 Fla. Weekly D2351 (Fla. 4th DCA November 21, 2014).

Real property – Eminent domain – Inverse condemnation – Bert J. Harris Private Property Rights Act – Limitation of actions – Property owners' action against county challenging amendments to comprehensive plan which established a Rural Fringe Mixed-Use District that identified plaintiffs' lands as "Sending Lands" for which mining was precluded and residential development was restricted, both of which were previous potential uses – Harris Act claim which was filed within four years of date the district court of appeals affirmed administrative determination that RFMD amendments were appropriate was timely filed – Plaintiffs properly alleged compliance with notice provisions of Act – Circuit court erred by dismissing Harris Act claim under theory that amendment had not been applied specifically to plaintiffs' property, as there was no dispute that plaintiffs' lands were designated as Sending Lands, a classification under which previous potential uses were prohibited or restricted – Circuit court erred in dismissing inverse condemnation claim on ground that ordinance had not been applied to plaintiffs' property – However, statute of limitations for regulatory taking began running when governmental entity made its final decision about permissible use of property and was not tolled while plaintiffs sought relief through administrative and judicial proceedings – Because claim for inverse condemnation was filed more than four years after claim became ripe, claim was time-barred – Inverse condemnation claim was properly dismissed, albeit for wrong reason

The Husseys sued Collier County claiming that the county's amendment of its comprehensive future land use plan destroyed any reasonable economic use of their land. Hussey's sought compensation under the Bert J. Harris Private Property Rights Act, and on a theory of inverse condemnation. The county's amendments to comprehensive plan designated the Hussey's property as "Sending Lands" for which mining was precluded and residential development was restricted, both of which were previous potential uses. Although the 2nd DCA found the Harris Act claim appropriate and timely filed, it reversed the circuit court holding on the Harris claim but affirmed the dismissal of the inverse condemnation claim due the statute of limitations tolling. In its holding, the 2nd DCA found the circuit court erred by dismissing Harris Act claim under a theory that the amendment had not been applied specifically to plaintiffs' property, as there was no dispute that plaintiffs' lands were designated as Sending Lands, a classification under which previous potential uses were prohibited or restricted. *Hussey v. Collier County*, 39 Fla. L. Weekly D2389 (Fla. 2nd DCA November 21, 2014).

Municipal corporations – Employees – Ordinance amending pension plan – City was not required to comply with a condition precedent established in city's previously enacted ordinance before amending pension plan – As city had authority to enact condition precedent, city had same undivided authority to eliminate that condition

The General Employees Retirement Committee appeals a final summary judgement upholding a City of North Miami Beach ordinance amending the terms of the city's pension plan. The Retirement Committee argued in amending the pension plan, the city failed to comply with a condition precedent established in the city's own previously enacted ordinance. The 3rd DCA affirmed the trial court's conclusion finding as a matter of law the city had no such obligation. *General Employees Retirement Committee v. City of North Miami Beach*, 39 Fla. L. Weekly D2523 (Fla. 3rd DCA December 12, 2014).

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.

None Reported.

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

None Reported.

Section 6. Announcements.

The Florida Municipal Attorneys Association's annual seminar will be held July 9-11, 2015, at The Breakers, in Palm Beach. Visit *http://fmaa.us* for seminar and registration information.

FMAA Seminar Notebooks Available

Notebooks from the 2014 FMAA seminar are available for $125.00 each. Please contact Tammy Revell at (850) 222-9684 or *trevell@flcities.com* to place your order.

Attorney General Opinions of Note.

Informal Opinion
November 10, 2014
The Superintendent of the Calhoun County School District requested Attorney General's Office assistance regarding the characterization of a video recording made during a meeting of the school board as a public record.

Citing AGO 04-15, the "office concluded that tape recordings were public records since they were made at the request of the executive director as an independent record of the proceedings and, unlike tapes or notes taken by a secretary as dictation, were intended to perpetuate the discussion at a staff meeting."

AGO 2014-09
November 13, 2014
Does Section 509.032(7)(b), Florida Statutes, permit the city to regulate the location of vacation rentals through zoning?

Section 509.032(7)(b), Florida Statutes, as amended by Chapter 2014-71, Laws of Florida, allows a local government to regulate vacation rentals, but continues to preclude any local law, ordinance or regulation which would prohibit vacation rentals or restrict the duration or frequency of vacation rentals. It would appear therefore, that zoning may not be used to prohibit vacation rentals in a particular area where residential use is otherwise allowed.

May the city prohibit vacation rentals which fail to comply with the registration and licensing requirements in Section 509.241, Florida Statutes?

Section 509.032(1), Florida Statutes, makes the Division of Hotels and Restaurants of the Department of Business and Professional Regulation the regulatory agency for transient lodging facilities. Section 509.241(1), Florida Statutes, makes operation of such facilities without a license a misdemeanor of the second degree. The statute specifically recognizes that local law enforcement may provide immediate assistance in pursuing an illegally operating facility, but does not otherwise authorize a local government to prohibit the operation of a vacation rental without proper licensure by the state.

AGO 2014-11
November 13, 2014
In light of Sections 205.0315 and 205.0535, Florida Statutes, is the Village of Pinecrest authorized to increase its business tax rates by up to 5 percent every other year upon no less than a majority plus one vote of the Village Council?

The Village of Pinecrest is not authorized to increase its business tax rates by up to 5 percent every other year upon no less than a majority plus one vote of the Village Council as it does not appear that the village has complied with the requirements of Section 205.0535, Florida Statutes, which would provide the village with the authority to make revisions to its business tax ordinance.

In light of Sections 205.0315 and 205.0535, Florida Statutes, is the Village of Pinecrest authorized to increase its business tax rates pursuant to the authority set forth in Section 205.043(1)(b), Florida Statutes?

Section 205.043, Florida Statutes, provides an alternative scheme for the levy of a business tax. The Village of Pinecrest has implemented the procedure in Sections 205.0315 and 205.0535, Florida Statutes, and may not rely on Section 205.043(1)(b), Florida Statutes, as authority to revisit its business tax ordinance.

Informal Opinion
November 26, 2014
The city attorney of the City of Naples asked for assistance in determining whether the unauthorized disclosure by a council member of information discussed during a "shade meeting" pursuant to Section 286.011(8), Florida Statutes, would violate the Government in the Sunshine Law or have other legal consequences.

The Attorney General's Office concluded "It appears that a member of the city council may have spoken in public about matters that were the subject of a closed council session to discuss settlement negotiations or strategy sessions relating to litigation expenditures. This action by the council member was done without the consent of the other members of the council. Whether this may represent a breach of the council member's duties under the city's ordinances or other local legislation or compromised the fiduciary duty the council member owes the city is beyond the authority of this office to determine. It does not appear, however, that this action would constitute a violation of Section 286.011(3), Florida Statutes."