FLORIDA MUNICIPAL ATTORNEYS ASSOCIATION

FLORIDA MUNICIPAL LAW REPORTER

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July - September 2006

Editor's Note: The following case law summaries were reported from July 1, 2006, through September 30, 2006.

Section 1. Recent Decisions of the Florida Supreme Court

FORFEITURE – FLORIDA CONTRABAND FORFEITURE ACT DOES NOT PREEMPT MUNICIPALITY FROM ADOPTING ORDINANCE AUTHORIZING SEIZURE AND IMPOUNDMENT OF VEHICLES USED IN COMMISSION OF CERTAIN MISDEMEANOR OFFENSES.

The Supreme Court quashed and remanded a decision of the Fourth DCA that held the Florida Contraband Forfeiture Act preempted local governments from adopting ordinances that authorize the seizure and impoundment of vehicles used in the commission of certain misdemeanor offenses. The court recognized the Act is limited to felony offenses, and concluded that it does not preempt the field of vehicle seizure and forfeiture for misdemeanor offenses. In addition, the court found there was no conflict between the Act and a City of Hollywood vehicle impoundment ordinance because they provide different remedies for different criminal conduct. It further noted the difference between impoundment and forfeiture. The court noted, but did not discuss, potential constitutional infirmities with the ordinance. *City of Hollywood v. Mulligan*, 31 Fla. L. Weekly S461 (Fla. July 6, 2006).

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

QUESTION CERTIFIED – WHETHER APPLICATION OF BEACH RENOURISHMENT STATUTE EFFECTS AN UNLAWFUL TAKING OF RIPARIAN OWNERS' PROPERTY.

The First DCA certified the following question to the Florida Supreme Court: Has Part I of Chapter 161, Florida Statutes (2005), referred to as the Beach and Shore Preservation Act, been unconstitutionally applied so as to deprive the members of Stop the Beach Renourishment, Inc. of their riparian rights without just compensation for the property taken, so that the exception provided in Florida Administrative Code Rule 18-21.004(3), exempting satisfactory evidence of sufficient upland interest if the activities do not unreasonably infringe on riparian rights, does not apply? *Save Our Beaches, Inc. v. Florida Dept. of Envt'l Protection*, 31 Fla. L. Weekly D1811 (Fla. 1st DCA July 3, 2006).

FORFEITURE – OWNER OF VEHICLE DID NOT WAIVE ENTITLEMENT TO PRELIMINARY ADVERSARIAL HEARING.

The Florida Contraband Forfeiture Act allows a person whose property has been seized to request an adversarial preliminary hearing by certified mail within 15 days of receiving the notice of seizure. In this case, the owner of a vehicle seized under the Act sent a request for an adversarial preliminary hearing by regular mail. The agency notified the person that the request must be made by certified mail. The person resent the request by certified mail, but by that time the 15-day period had elapsed. Accordingly, the agency did not set the matter for preliminary hearing and a court subsequently issued an order finding probable cause. The owner moved to set aside the order, arguing the agency should have set the matter for hearing because it received actual notice of his request within the 15-day timeframe. The trial court agreed. It set aside the order and returned the car to the owner. On appeal, the district court found the trial court properly set aside the order but erred in returning the car. *Department of Hwy. Safety and Motor Vehicles v. Churchill*, 31 Fla. L. Weekly D1843 (Fla. 2d DCA July 7, 2006).

BERT HARRIS ACT – BERT HARRIS ACT DOES NOT VIOLATE DUE PROCESS OR SEPARATION OF POWERS.

A landowner aggrieved by the application of Brevard County's wetland ordinance brought action in circuit

court pursuant to the Bert J. Harris Private Property Rights Protection Act. On a motion for summary judgment, the circuit court determined the issue of liability in favor of the landowner. On appeal, the county challenged the constitutionality of the Act. The county contended the Act violates due process because it authorizes local governments to contract away their police powers and requires them to "buy-back" those powers in order to exercise them. In addition, the county argued the Act violates the separation of powers doctrine because it enlarges the judiciary's interpretation of a taking under the Florida Constitution and improperly delegates authority to the courts without sufficient standards to aid in its interpretation. The county further contended the circuit court failed to make findings required by the Act in determining whether the county was liable. The Fifth DCA held the Act's requirement that governmental entities provide relief to property owners does not affect the inherent power of a governmental entity and does not violate due process. The court found no separation of powers problems because the Act itself states that it provides a new cause of action separate and distinct from takings jurisprudence, and that the Act contains sufficient standards for guiding judicial interpretation. The Fifth DCA agreed with the county, however, that the circuit court failed to make the findings required by 70.001(6)(a) of the Act. *Brevard County v. Stack*, 31 Fla. L. Weekly D1895 (Fla. 5th DCA July 14, 2006).

Eminent Domain – No Compensable Taking When Access to Business Changed from Direct Access to Access from Frontage Road.

Business owners filed suit for inverse condemnation against the Department of Transportation (DOT), claiming that placement of their property on a frontage road (where it previously abutted the main road) resulted in a taking of their access to the property. On appeal, the Second DCA reversed a trial court finding that the plaintiffs' physical access to their property had been "substantially diminished" by DOT. The court recognized that at best, the plaintiffs had lost the most convenient access to their property, and that other means of access to the property existed in addition to access from the frontage road. *Florida Dept. of Transp. v. Fisher*, 31 Fla. L. Weekly D1904 (Fla. 2d DCA July 14, 2006).

Public Meetings – Meetings of "Professional Standards Committee" that Makes Recommendations on Charges Against Employees of Sheriff's Office Are Not Subject to Sunshine Act.

In this case, the Fourth DCA considered whether meetings of the Professional Standards Committee (PSC) of the Broward County Sheriff's Office, which deliberates on the subject of a deputy sheriff's discipline and issues a recommendation to the inspector general (who then makes final decisions on termination), fall within the scope of the Sunshine Act. The Fourth DCA held that meetings of the PSC are not subject to the Sunshine Act. It reasoned that because the PSC provided mere recommendations to the inspector general and did not deliberate with the inspector general, it did not exercise decision-making authority so as to constitute a "board" or "commission" within the meaning of the Sunshine Act. *Jordan v. Jenne*, 31 Fla. L. Weekly D1975 (Fla. 4th DCA July 26, 2006).

Declaratory Judgments – Applicants for Site Plan Approval Alleged Sufficient Need for Declaration of Their Rights as to Status of Site Plan.

The plaintiffs applied for site plan approval from the City of Fort Lauderdale. While the plaintiffs' site plan application was pending, it became apparent that all available dwelling units within the designated area encompassing the plaintiffs' property had been allocated to other developments. The plaintiffs proceeded with the site plan approval process and the city initiated the process to amend its comprehensive plan to allow for increased residential dwelling units in the area. At some point, the city took the position that the plaintiffs' site plan application was no longer "active." The plaintiffs filed a declaratory judgment action to determine the present status of their site plan application. The Fourth DCA reversed the lower court's dismissal of the plaintiffs' complaint for declaratory judgment. It noted that the plaintiffs expended substantial amounts of time and money in the site plan approval process, and concluded that the plaintiffs had a right to have determined the present status of the site plan application in light of the city's current plans to amend its comprehensive plan. *South Riverwalk Investments, LLC v. City of Fort Lauderdale*, 31 Fla. L. Weekly D1977 (Fla. 4th DCA July 26, 2006).

Public Records – No Error for Court to Adopt City's Proposed Final Judgment Verbatim Where Petitioner Had Ample Opportunity to Review and Object to Proposed Final Judgment.

A former city councilman brought action against the City of Plantation alleging the city denied him access to public records. After a hearing, the lower court asked the parties to submit written closing arguments. Both parties submitted proposed final judgments and served each other with a copy. Several months later the lower court adopted the city's proposed final judgment verbatim. On appeal, the Fourth DCA affirmed. It concluded

that it was not error for the lower court to adopt the city's proposed final judgment verbatim where the plaintiff was served a copy of the proposed judgment and given an opportunity to object to it. *Hillier v. City of Plantation*, 31 Fla. L. Weekly D2096 (Fla. 4th DCA Aug. 9, 2006).

Public Records – Error to Require Defendant to Produce Records as Sanction for Its Failure to Respond to Discovery Subpoena.

Knight-Ridder, Inc., brought an action against the Coconut Grove Playhouse, Inc., seeking inspection of its records under the Public Records Act, and alleging the Playhouse was a public agency within the meaning of the Public Records Act. The lower court issued an order setting a hearing, and Knight-Ridder served a subpoena on the Playhouse for certain documents to be produced at that hearing. At the hearing, the Playhouse contested allegations that it was a public agency and failed to produce the requested documents. The lower court entered an order finding the Playhouse failed to comply with the subpoena, and ordered the Playhouse to produce the documents requested. On appeal, the Third DCA found the lower court erred in issuing what amounted to a default judgment against the Playhouse. The district court concluded the lower court should not have ordered disclosure of the records without first making specific findings that such an extreme sanction was warranted. *The Coconut Grove Playhouse, Inc. v. Knight-Ridder, Inc.*, 31 Fla. L. Weekly D2102 (Fla. 3d DCA Aug. 9, 2006).

Assessments – Charter Schools Are Not Exempt from Special Assessments because of Their Status as Public Schools.

A charter school filed an action seeking a declaration that it was exempt from payment of special assessments imposed by a community development district. The Fifth DCA reversed and remanded a summary judgment in favor of the charter school. It found that charter schools are not exempt from special assessments due to their status as public schools because, unlike other public schools, the Legislature has failed to create a statutory exemption for charter schools. *Remington Community Dev. Dist. v. Education Found. of Osceola*, 31 Fla. L. Weekly D2130 (Fla. 5th DCA Aug. 11, 2006).

Inverse Condemnation – No Taking of Property by Department of Environmental Protection and County Arising from Denial of Environmental and Conditional Use Permits to Operate a Construction and Demolition Debris Landfill.

The Florida Department of Environmental Protection (DEP) denied a landowner's permit for the continued operation of a construction and demolition debris landfill. DEP found that operation of the landfill constituted a public nuisance because of odors emitted from the facility. The landowner sought administrative review of DEP's permit denial. Thereafter, Osceola County denied the landowner's request for a conditional use permit to continue operation of the landfill. The landowner filed an action against the county and DEP seeking damages under the Bert J. Harris Private Property Rights Protection Act and under a theory of inverse condemnation. The landowner subsequently withdrew his request for administrative review of DEP's permit denial and filed a "Notice of Acceptance of Agency Action" in which he waived any rights to challenge the propriety of DEP or the county's denial of the permits. The trial court determined the landowner was entitled to relief under his Harris Act and inverse condemnation claims. On a motion for rehearing, the Fifth DCA concluded there was no evidence to support the trial court's conclusion. It determined the landowner would not be entitled to compensation from either the county or DEP when his permits were denied based on determinations that the facility was a source of noxious odors and constituted a public nuisance. It found the trial court erred in reviewing the propriety of the county's and DEP's permit denials. In addition, the court concluded there was no evidence that DEP or the county effected a compensable taking in refusing to allow the landowner to take actions to close the landfill. *Osceola County v. Best Diversified, Inc.*, 31 Fla. L. Weekly D2143 (Fla. 5th DCA Aug. 11. 2006).

Eminent Domain – Expansion Plans Were Too Speculative for Consideration as Evidence of Business Damages Caused by Road Widening Project.

The Department of Transportation (DOT) appealed the award of business damages in an eminent domain proceeding concerning parcels of land owned by the Target Corporation. The Fourth DCA reversed a lower court's denial of DOT's motion in limine to exclude Target's evidence that it proposed to relocate its garden center and to expand its existing store. The district court found that evidence of past company practice in expanding store locations was insufficient evidence of Target's future plans for the site, where Target failed to prove that it had taken any affirmative steps with respect to time, money or energy toward proposed store expansion and relocation of garden center, and where phase one of the approved site plan did not indicate such plans. *Department of Transportation v. Target Corp.*, 31 Fla. L. Weekly D2176 (Fla. 4th DCA Aug. 16, 2006).

Referenda – Proposed Citizen Initiatives to Amend Municipal Charter Were Not Unconstitutional or Inconsistent with State Law.

A political action committee submitted four petitions for referenda to amend the charter of the City of St. Pete Beach. The proposed amendments would require unanimous vote by the City Commission for comprehensive plan amendments affecting five or fewer parcels of land, and require referenda before final adoption of all other plan amendments, approval of a community redevelopment plan, or approval of increases in building heights. The circuit court determined that all of the proposed amendments except for the one requiring unanimous vote by the City Commission were unconstitutional because they were preempted by Chapter 163, F.S. On appeal, the Second DCA held that all four proposals were sufficient for placement on the ballot. As to the proposed amendment requiring a unanimous vote by the City Commission, the court determined it was simply a procedural rule and that it did not conflict with language in 163.3167(12) that prohibits referenda on plan amendments affecting five or fewer parcels of land. As to the remaining proposed amendments, the court concluded that they were not preempted by the statutory scheme set forth in Chapter 163. It found no reason why the proposed amendments could not "coexist" with current statutory framework, and that referenda were inferentially permitted by section 163.3167(12). *Citizens for Responsible Growth v. City of St. Pete Beach*, 31 Fla. L. Weekly D2196 (Fla. 2d DCA Aug. 18, 2006).

Injunctions – Court Erred in Entering Preliminary Injunction Requiring County to Reinstate Employee Where Employee Failed to Establish Irreparable Harm.

A Broward County employee was terminated due to her inability to perform an essential job function. The employee filed suit against the county, alleging discrimination and retaliation under the Florida Civil Rights Act and the Florida Whistle-blower Act. The Fourth DCA reversed a lower court order entering a preliminary injunction that required the county to reinstate the employee to her previous position. It determined the lower court erred in adopting the minority federal view that supports a presumption of irreparable harm in discrimination and retaliation cases. In addition, it found the lower court erred in failing to state in its order a factual basis to support each of the four elements required for a preliminary injunction, and in failing to require the posting of a bond. Finally, it found the lower court erred in issuing the injunction where the employee neither alleged nor proved irreparable harm. *Broward County v. Meiklejohn*, 31 Fla. L. Weekly D2219 (Fla. 4th DCA Aug. 23, 2006).

Ad Valorem Taxation – Building Constructed on County-Owned Land Is Not Exempt from Ad Valorem Taxation.

A 1995 lawsuit between Broward County and its property appraiser resulted in a Fourth DCA opinion that county-owned property is immune from taxation. Based on that ruling, an intervener in that lawsuit moved the lower court to declare past assessments on its property void and to refund taxes previously paid. The intervener was the lessee of a building constructed on county-owned property. The Fourth DCA reversed the lower court's order granting the lessee's motion. The court concluded the building was not exempt from ad valorem taxation because under the terms of the lease, the lessee was "endowed with sufficient indicia of ownership" to justify imposition of the tax. In addition, the court rejected the lessee's argument that imposition of an ad valorem tax on the building and an intangible tax on the lease constituted dual taxation. *Broward County v. Eller Drive Ltd. P'ship*, 31 Fla. L. Weekly D2303 (Fla. 4th DCA Sept. 6, 2006).

Public Nuisance – Owners of Residential Rental Property Were Denied Due Process at Hearing Before Nuisance Abatement Board Where Board Refused to Consider Evidence of Selective Enforcement.

At a nuisance abatement board hearing, the owners of residential rental property asserted a defense of selective enforcement. The owners attempted to introduce evidence that the City of Sarasota's nuisance abatement efforts targeted predominately African-American neighborhoods. The board refused to consider the evidence, and rejected the owners' attempts to proffer the excluded evidence. The owners sought certiorari review in circuit court. The circuit court denied relief, but the Second DCA disagreed and quashed the order. It found the circuit court failed to apply the correct law because section 893.138(3) specifically provides that a property owner in a nuisance abatement proceeding shall have an opportunity to present evidence in his or her defense, and because the Equal Protection Clause prohibits selective enforcement of the law based on considerations such as race. *Powell v. City of Sarasota*, 31 Fla. L. Weekly D2349 (Fla. 2d DCA Sept. 13, 2006).

Development Orders – Date that Triggers Time Period within Which to File a De Novo Action Pursuant to Section 163.3215, F.S., Is Date on Which City Clerk Enters Development Order.

The City of Miami and a landowner sought a writ of prohibition to prevent the circuit court from proceeding

with a de novo action filed pursuant to section 163.3215, F.S., challenging the approval of a development order by the city. The city and landowner argued the petition was not timely filed. The petition was filed 31 days after the mayor signed the development order, but 30 days after the city clerk entered the order. The Third DCA concluded that the triggering event for "rendition" of a development order is when the city clerk entered the development order, not when the mayor signed the order. *5220 Biscayne Boulevard, LLC v. Stebbins, et al.*, 31 Fla. L. Weekly D2358 (Fla. 3rd DCA Sept. 13, 2006).

Annexation – Portions of County Charter Amendment Held Invalid.

Municipalities challenged an amendment to the Palm Beach County charter that established an exclusive method of voluntary annexation pursuant to section 171.044(4), F.S. Portions of the charter amendment authorized the county to establish methods of voluntary annexation by ordinance. The district court upheld the lower court's ruling, which excised three provisions of the charter amendment on the basis that a charter county must provide an exclusive method of voluntary annexation in the charter itself, rather than providing the method in an ordinance. The district court concluded that section 171.044(4) authorizes charter counties to provide their own method of voluntary annexation, and that it was proper for the lower court to sever the invalid provisions from the charter amendment. *Village of Wellington, et al. v. Palm Beach County*, 31 Fla. L. Weekly D2414 (Fla. 4th DCA Sept. 20, 2006).

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

Employment – Employer Entitled to Summary Judgment on Claim Under the Family and Medical Leave Act.

A Sheriff's Office employee filed a complaint against his employer, alleging interference with his rights under the Family and Medical Leave Act (FMLA), and retaliation for exercising his rights under FMLA, the Age Discrimination and Employment Act and the Florida Civil Rights Act. In this case, the employee had a history of job performance problems and abruptly took a leave of absence pursuant to FMLA without prior notice to his employer. After the employee returned to work unannounced, his employer required him to take an additional two days of leave and return to work with a Return to Work Authorization. The employee was paid for all the leave that he took and was reinstated to his prior position and pay. The employee continued to receive criticism of his job performance, however, and was subsequently demoted. The Eleventh Circuit upheld the district court's grant of summary judgment in favor of the employer where the employee had received all benefits guaranteed by FMLA and had not shown that his demotion was causally connected to any protected conduct. *Drago v. Jenne*, 19 Fla. L. Weekly Fed. C700 (11th Cir. June 27, 2006).

Speech – Content-Based Sign Ordinance that Discriminated Against Political Signs Failed to Survive Strict Scrutiny.

The plaintiff, a candidate for judge, placed a campaign sign on her office property. A city code enforcement officer delivered a notice to the plaintiff, informing her that her political sign violated the city's sign ordinance. The notice stated that, under the ordinance, political signs were allowed only on residential properties. The plaintiff was never formally charged with violating the ordinance, and did not file an appeal with the city's board of adjustment. The plaintiff challenged the city's sign ordinance under Section 1983, alleging that it was unconstitutional facially and as-applied. The court determined that the plaintiff was not required to exhaust state administrative remedies before filing suit under Section 1983. In addition, it found the plaintiff's claims were sufficiently ripe where she was issued a clear notice of violation of the sign ordinance from the code enforcement officer, and where the plaintiff demonstrated she would have sustained undue hardship if the district court withheld adjudication. The court recognized the plaintiff's particular hardship in that if she complied with the ordinance she would have lost the benefit of displaying her political sign prior to the election. The court found no reason to abstain from issuance of a federal injunction where it would not interfere with any pending state proceedings. After evaluating the merits, the court concluded the provisions in question were content-based regulations that could not survive strict scrutiny. Although the ordinance contained a substitution clause, the court concluded that political signs were, nevertheless, subject to more regulatory burden than commercial signs. In addition, the city's interest in aesthetics and traffic safety were not sufficiently compelling interests, and the ordinance was not narrowly tailored to accomplish those interests. *Beaulieu v. City of Alabaster*, 19 Fla. L. Weekly Fed. C730 (11th Cir. June 30, 2006).

Speech – City Permanently Enjoined from Enforcing Section of Sign Ordinance.

The Eleventh Circuit affirmed the district court's entry of a permanent injunction barring the City of Trussville, Ala., from enforcing a section of its sign ordinance. The plaintiff was denied permits to erect billboards under the city's sign ordinance. The plaintiff challenged multiple provisions of the sign ordinance on various constitutional grounds, and sought a preliminary and permanent injunction to enjoin the city from enforcing the ordinance. The district court concluded the ordinance unconstitutionally favored commercial speech over noncommercial speech. It noted that noncommercial messages could not be as large as commercial messages in areas where billboards were permitted, and that permanent signs were allowed for commercial speech, but were not allowed for political messages. In addition, the district court permanently enjoined the city from enforcing a section of its ordinance that prohibits any sign "not specifically permitted in a zoning district as provided under the applicable section." In so doing, the ordinance would no longer contain restrictions that would prohibit erection of a noncommercial billboard. *KH Outdoor, LLC v. City of Trussville*, 19 Fla. L. Weekly Fed. C902 (11th Cir. Aug. 4, 2006).

Speech – Award of Nominal Damages to Plaintiff in Challenge to Sign Ordinance Was Appropriate.

The City of Trussville appealed a district court's award of nominal damages in the amount of $100 to the plaintiff, an outdoor advertising company that had been denied sign permits by the city. The district court had concluded that a portion of the city's sign ordinance unconstitutionally favored commercial speech over noncommercial speech. The court cured the constitutional deficiency by enjoining a different section of the ordinance. The city argued, based on the Eleventh Circuit's previous ruling in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg*, 348 F.3d 1278 (11th Cir. 2003), that the plaintiff was not entitled to nominal damages because it was not injured by the portion of the ordinance enjoined by the district court. The Eleventh Circuit disagreed. It distinguished this case from the situation in *Granite State* because in this case "the constitutional deficiency was found in the very section of the ordinance used to deny [plaintiff's] permits." *KH Outdoor, LLC v. City of Trussville*, 19 Fla. L. Weekly C1084 (11th Cir. Sept. 26, 2006).

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

Employment – City Entitled to Summary Judgment on Claims by Former Employee Under FMLA and Title VII.

A former employee of the City of Clearwater filed a complaint against the city alleging the city retaliated against her for exercising her rights under the Family and Medical Leave Act (FMLA), and retaliated against her in violation of Title VII of the Civil Rights Act for reporting alleged sexual harassment and filing a complaint against the city. The district court adopted the magistrate judge's report and recommendation and granted the city's motion for summary judgment as to all of the plaintiff's claims. The plaintiff failed to show the city's alleged delays in processing and approving her FMLA leave resulted in a denial of a right or benefit under FMLA, where she requested and was granted 12 weeks of leave. In addition, the plaintiff failed to demonstrate the city violated the FMLA when it refused to reinstate the plaintiff to her former position, where she failed to return to work after the conclusion of her requested leave period. Further, the plaintiff failed to establish that she had engaged in a FMLA-protected activity when the city terminated her, and offered no evidence of a causal connection between her use of FMLA leave and her termination. As to the plaintiff's Title VII claims, the magistrate concluded that she failed to establish a good faith and objectively reasonable belief that conduct of her co-worker constituted sexual harassment. Accordingly, the plaintiff failed to show that, by complaining of her co-worker's conduct, she engaged in the sort of statutorily protected expression that Title VII protects. Finally, the magistrate rejected the plaintiff's claims that she was retaliated against based on her participation in sexual harassment investigations because no Equal Employment Opportunity Commission complaint had been filed before she was terminated. *Bender v. City of Clearwater*, 19 Fla. L. Weekly D954 (M.D. Fla. Apr. 19, 2006).

Americans with Disabilities Act – Plaintiffs Lacked Standing to Maintain Action for Injunctive Relief.

The plaintiffs, an individual who uses a wheelchair and a not-for-profit association, filed a complaint against Charlotte County, alleging that various county facilities fail to comply with the Americans with Disabilities Act (ADA). The district court concluded the individual lacked standing to maintain the action for injunctive relief

because he failed to credibly allege he would suffer future injury. It noted the individual lived 75 miles away from the property and had no connection to it, that he had been to the property only two times and stated no specific intent to return, and that he had filed numerous lawsuits under the ADA. In addition, it found the association lacked standing because its associational standing was predicated on the individual's standing. *Lamb v. Charlotte County*, 19 Fla. L. Weekly Fed. D739 (M.D. Fla. Apr. 21, 2006).

Employment – City Entitled to Summary Judgment on Action by Former Employee Under Florida's Whistle-blower Act.

A former employee of the City of Crystal River Police Department brought an action against the city pursuant to Florida's Whistle-blower Act. The plaintiff claimed the police chief allowed her to be harassed by her co-workers and that her position was eliminated in retaliation for the plaintiff voicing her concerns about various issues within the Police Department. The district court concluded that the plaintiff failed to produce sufficient evidence that the harassment by co-workers she suffered qualified as an adverse employment action. While the actions of her co-workers may have been unprofessional, they had no effect on her pay, benefits or tangible aspects of her employment. Moreover, there was no evidence that the police chief encouraged the actions of her co-workers. Further, the plaintiff offered no evidence of a causal connection between the elimination of her position and her alleged protected activities. The record showed that her position was eliminated as a result of the City Council's decision to reduce the police department budget. There was no evidence to suggest the City Council was motivated to eliminate the plaintiff's position by her alleged whistle-blowing activities. *Guido v. City of Crystal River*, 19 Fla. L. Weekly D998 (M.D. Fla. May 8, 2006).

Zoning – Special Exception Provision of Zoning Code Held Facially Unconstitutional.

After the City of Hollywood reversed a development review board's decision to grant a synagogue a permanent special exception to operate in a single-family zoning district, the synagogue sued the city alleging violation of various state and federal constitutional and statutory provisions. On the synagogue's partial motion for summary judgment, the district court held the provision of the city's zoning code that provided for special exceptions was unconstitutionally vague on its face. It determined the special exception provisions contained subjective criteria that would allow officials to covertly discriminate against places of worship. Further, it found the special exception provision operated as an unconstitutional prior restraint where it lacked narrow, objective standards for city officials to apply in reviewing applications, even though places of worship could operate in other parts of city without applying for special exception. It further concluded the special exception provision could not be severed from the rest of the zoning code without defeating the purpose of the code. Accordingly, the court ordered that the city grant the synagogue a permanent special exception, subject only to objective and definite conditions. In addition, the court ordered the city to enact a new special exception ordinance for places of worship, which contains "narrow, objective and definite standards" for guiding city officials. *Hollywood Community Synagogue, Inc. v. City of Hollywood*, 19 Fla. L. Weekly Fed. D771 (S.D. Fla. June 26, 2006).

Section 6. Announcements

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The 2007 Florida Municipal Attorneys Association Seminar will be held July 19-21, 2007, at Amelia Island Plantation.