

Changing Ordinances Mid Stream – What Constitutes a Material or Substantial Change?

by Beth Shankel-Anderson

The Florida Supreme Court recently addressed a question of firm impression concerning the enactment of ordinances. The Court, responding to a certified question from the United States Court of Appeals for the Eleventh Circuit, held that the ordinance process must begin anew only when the original general purpose of the ordinance changes. Specifically, in *Neumont v. Monroe County*, 32 Fla. L. Weekly S581 (Fla. Sup. Ct. September 27, 2007), the Court held that changes to an ordinance during

the enactment process are only “substantial or material” if they change the ordinance’s general purpose.

Section 166.041, Florida Statutes (2003), sets forth the general procedural requirements for the enactment of ordinances by a municipality. “[S]trict compliance with the notice requirements of the state statute is a jurisdictional and mandatory prerequisite to the valid enactment of a zoning measure.’ Attempts of local government to grant zoning changes without compliance with procedural

requirements have been deemed invalid and void.” *Webb v. Town Council of Hilliard*, 766 So. 2d 1241, 1244 (Fla. 1st DCA 2000) (citations omitted); see also *Coleman v. City of Key West*, 807 So. 2d 84, 85 (Fla. 3d DCA 2001), rev. denied, 828 So. 2d 385 (Fla. 2002).

I. United States District Court for the Southern District of Florida

In *Neumont v. Monroe County*, 280 F. Supp. 2d 1367 (S.D. Fla. 2003), the United States District Court for the

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Case Summaries

by Stephanie Dobson Usina, Assistant General Counsel, Florida League of Cities, Inc.

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 Mat-

ter 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

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Chair's Report

by Elizabeth Hernandez



As we start the new year I wanted to thank our Immediate Past Chair Mary Farris for her work during the past year. As you know, the section continued to take the lead in

issues of importance to our attorneys, including attorney-client protections as well as cases of state-wide significance to our members. New Issues are already at the forefront and the section has been heavily involved through Ken Buchman and David Caldevilla concerning the proposed amendments to the "automatic stay" provision of Rule 9.310. The Appellate Rules Committee has until February 1, 2008 to submit the proposed rule amendments to the Florida Supreme Court. We will let everyone know of any deadline established to submit comments. If you would like to be involved in our efforts please email me directly at ehernandez@coralgables.com. The present plan

is to work on a single brief that can be submitted jointly by multiple interested parties, and we will circulate a draft before the submission deadline to interested parties.

Steve Brannock, the Chair of the Appellate Rules says that the Rule 9.310 amendment will be submitted to the Florida Supreme Court along with all other 3-year cycle amendments at the end of January 2008. From there, notice will be published in the Florida Bar News, and interested parties will be given the opportunity to submit written comments during February.

Since the 1940's, Florida law has afforded local governments an "automatic stay" whenever they sought appellate review of an order. Since 1978, the Florida appellate courts have consistently construed Florida Rule of Appellate Procedure 9.310(b)(2) as providing an automatic stay whenever any public officer in an official capacity, board, commission, or other public body files a timely notice of appeal concerning orders entered in any type of non-criminal litigation, includ-

ing orders issued by state agencies in administrative proceedings. The Florida Bar Appellate Court Rules Committee proposed and the Board of Governors approved an amendment to Rule 9.310(b)(2) to eliminate the automatic stay in appeals involving administrative actions under the Florida Administrative Procedure Act. We believe this amendment is based on an erroneous analysis and should be opposed by local governments.

The Certification Review Seminar and the Annual Meeting held last May in Bonita Springs was a huge success. The speakers were excellent and the members turned out in record numbers to participate. Good luck to Grant Alley, who is planning this year's Seminar and Annual meeting. He already has a great cast of characters lined up!

I hope that you will participate in the Section and bring your skills to the table so that we can all improve our skills and provide the best representation to our clients! I am grateful for the opportunity to serve as you Chair!

This newsletter is prepared and published by the City, County and Local Government Law Section of The Florida Bar.

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MEMORANDUM

January 14, 2008

To: City, County and Local Government Law Section Members and Affiliates
From: H. Hamilton "Chip" Rice, Jr., Chair, Marsicano Award Committee
Re: Ralph A. Marsicano Award

As you know, the Ralph A. Marsicano Award has been the most coveted and respected award presented by our Section to an individual who over a period of time has made significant and outstanding contributions to the development of Local Government in Florida.

The Ralph A. Marsicano Award Committee is soliciting nominations for the 2008 Marsicano Award.

Past recipients of the Ralph A. Marsicano Award are:

Ralph A. Marsicano	1976	William J. Roberts	1992
Paul S. Buchman	1977	Paul J. Marino	1993
Osee R. Fagan	1978	Alan C. Sundberg	1994
Richard E. Nelson	1979	Marion J. Radson	1995
No Award Given	1980	Sharon L. Cruz	1996
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Robert L. Nabors	1983	Michael K. Grogan	1999
Claude L. Mullis	1984	Joni Armstrong Coffey	2000
Harry A. Stewart	1985	M. Julianne Scales	2001
Samuel S. Goren	1986	Harry Morrison, Jr.	2002
John J. Copelan, Jr.	1987	Emeline Acton	2003
John-Edward Alley	1988	Frederick B. Karl	2004
Susan F. Delegal	1989	Robert Ginsburg	2005
James R. Wolf	1990	J.J. Brown	2006
Herbert W.A. Thiele	1991	Theodore C. Taub	2007

In order to assure the Section, acting through the Executive Council and the Ralph A. Marsicano Award Committee, that the very best nominations are received within the time frames provided in the bylaws, we recommend that you forward to us your nominee, along with a brief statement of the nominee's contributions to Local Government Law and to the Bar and the public generally. It is not necessary that this take any form and the nomination may be made with a minimum of biographical information, which can subsequently be pursued.

Nominees must be a member of The Florida Bar but need not be a member of the City, County and Local Government Law Section but, of course, those who have shown the dedication and interest by being members of the Section will be given every consideration as well.

Nominations must be forwarded to the City, County and Local Government Law Section liaison, Ricky Libbert, at The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300 by April 2. Copies may be sent to the Chair of the Ralph A. Marsicano Award Committee, H. Hamilton Rice, Jr., of Lewis, Longman & Walker, 1001 3rd Avenue West, Suite 670, Bradenton, Florida 34205.

We appreciate your consideration of this request.



The Florida Bar Continuing Legal Education Committee and the
City, County and Local Government Law Section present

City, County and Local Government Law Certification Review Course 2008

COURSE CLASSIFICATION: ADVANCED LEVEL

One Location: May 8, 2008 • Orlando

**Ritz Carlton Grande Lakes Resort • 4012 Central Florida Parkway
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Course No. 0618R

This course is intended to provide a comprehensive review of public finance, conflicts of interest/financial disclosure, ethics, public sector employment liability, eminent domain, sunshine law and public records, home rule and exercise of police powers, procurements, and land use/zoning and practice & procedures before local government legislative and quasi-judicial bodies.

8:10 a.m. – 8:30 a.m. **Late Registration**

8:30 a.m. – 8:35 a.m.

Welcome

*Grant W. Alley, City Attorney, Fort Myers
Chair; City, County and Local Government Law Section*

8:35 a.m. – 9:05 a.m.

Public Finance

*Grace E. Dunlap, Bryant, Miller & Olive, Tampa
Alexandra M. MacLennan, Squire, Sanders & Dempsey, Tampa*

9:05 a.m. – 9:35 a.m.

Conflicts of Interest/Financial Disclosure

*C. Christopher "Chris" Anderson, III, Commission on Ethics,
Tallahassee*

9:35 a.m. – 10:15 a.m.

Ethics

David R. Ristoff, Williams Ristoff & Proper PLC, New Port Richey

10:15 a.m. – 10:30 a.m. **Break**

10:30 a.m. – 11:30 a.m.

Public Sector Employment Liability

Erin G. Jackson, Thompson, Sizemore, Gonzalez, Tampa

11:30 a.m. – 12:15 p.m.

Eminent Domain

Mary Dorman, Dorman & Gutman, Tampa

12:15 p.m. – 1:30 p.m. **Lunch (included in registration)**

1:30 p.m. – 2:15 p.m.

Sunshine Law and Public Records Law

*Patricia R. Gleason, Director of Cabinet Affairs, Governor's
Office, Tallahassee*

2:15 p.m. – 3:00 p.m.

Home Rule and Exercise of Police Powers

Robert L. Nabors, Nabors, Giblin & Nickerson, Tallahassee

3:00 p.m. – 3:15 p.m. **Break**

3:15 p.m. – 3:45 p.m.

Procurements

*Michelle A. Wallace, Senior Assistant County Attorney, Pinellas
County, Clearwater*

3:45 p.m. – 5:00 p.m.

Land Use/Zoning and Practice & Procedures Before Local Government Legislative and Quasi-Judicial Bodies

*Mark P. Barnebey, Kirk Pinkerton, Bradenton
Herbert W.A. Thiele, County Attorney, Leon County, Tallahassee*

6:30 p.m. – 8:00 p.m.

**Chairs Reception - All section members, seminar attendees,
and guests are welcome (included in registration)**

COURSE BOOKS: COURSE BOOKS WILL BE MAILED TO ALL REGISTRANTS PRIOR TO THE REVIEW COURSE BUT NOT AFTER April 4, 2008. IF YOU REGISTER AFTER April 4, 2008 YOU WILL RECEIVE THE COURSE BOOK ON-SITE ONLY. Bring your book with you or you will be required to purchase the book on-site if you desire a copy during the review course. A limited number of books will be available on-site.

Those who have applied to take the certification exam may find this course a useful tool in preparing for the exam. It is developed and conducted without any involvement or endorsement by the BLSE and/or Certification committees. Those who have developed the program, however, have significant experience in their field and have tried to include topics the exam may cover. Candidates for certification who take this course should not assume that the course material will cover all topics on the examination.

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HOTEL RESERVATIONS: A block of rooms has been reserved at the Ritz Carlton Grande Lakes Resort, at the rate of \$189 single/double occupancy. To make reservations, call the Ritz Carlton Grande Lakes Resort directly at (407) 206-2400. Reservations must be made by 4/16/08 to assure the group rate and availability. After that date, the group rate will be granted on a "space available" basis.

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Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

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CASE SUMMARIES

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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.

continued. . .

CASE SUMMARIES

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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.

CHANGING ORDINANCES

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Southern District of Florida examined the legal significance of amendments being made during the passage of an ordinance. The plaintiffs filed a class action challenging an ordinance adopted by Monroe County that placed restrictions on certain properties as vacation rentals. In their complaint, the plaintiffs sought, inter alia, a declaratory judgment as to whether the ordinance was void ab initio because it was enacted in violation of section 125.66, Florida Statutes. In particular, the plaintiffs alleged that: (1) the county violated the notice and hearing requirements set forth in section 125.66, Florida Statutes, because changes were made to the ordinance during its passage without renewing the enactment procedure; and (2) the county violated the technical requirements of section 125.66, Florida Statutes, regarding advertised notice and the publishing of the title of the ordinance. The plaintiffs and county subsequently filed cross motions for summary judgment.

In granting summary judgment for the county, the district court rejected the plaintiffs’ argument that the county violated the notice and hearing requirements set forth in section 125.66, Florida Statutes. In so doing, the district court rejected the plaintiffs’ contention that a substantial or material change requiring renewal of the enactment process is (1) any change to a proposed ordinance

that would change the actual list of permitted/prohibited uses; or (2) any amendment to a proposed ordinance during the enactment process, even if not a change to the actual list of permitted/prohibited uses.

II. United States Court of Appeals for the Eleventh Circuit

The plaintiffs appealed the district court’s decision to the United States Court of Appeals for the Eleventh Circuit. Because there was no precise Florida case law directly on point, the court had some doubt about the correct application of state law to the case and certified the following question to the Florida Supreme Court:

Whether, for purposes of Florida Statutes section 125.66(4)(b), a “substantial or material change” in a proposed ordinance during the enactment process ¼ is confined to a change in the original general intent of the proposed ordinance, or whether a substantial or material change includes (1) a changes to the “actual list of permitted, conditional, or prohibited uses within a zoning category,” or (2) a change necessary to secure legislative passage of the ordinance?

III. Florida Supreme Court

In answering the certified question, the Florida Supreme Court held that the changes to an ordinance during the enactment process are only “substantial or material” if they change the ordinance’s general purpose. Therefore, changes to the actual list of permitted, conditional, or pro-

hibited uses within a zoning category or changes necessary to secure legislative passage of an ordinance are not sufficient “substantial or material” changes to require that the enactment process begin anew.

The Florida Supreme Court noted that there are three possible definitions of “substantial or material change”: (1) a change to the actual list of permitted, conditional, or prohibited uses within a zoning category; (2) a change necessary to secure legislative enactment; and (3) a change in the original purpose of an ordinance. The Court addresses each of these possible definitions separately describing its reasoning for rejecting the first two possible definitions.

A. Any Change to the List of Permitted, Conditional, or Prohibited Uses

The Court rejected the Petitioners’ argument that any change to the list of permitted uses within a zoning category would require the enactment process to begin anew as “prohibitively restrictive.” The Court viewed this standard as being too tentative stating that input of any kind that would change the list of permitted, conditional, or prohibited uses within a zoning category would require a restart. The Court stated that this could potentially create a cycle that could repeat itself for an extended period of time, if not forever. The Court found that this scenario would have an ironic consequence – it would discourage counties from changing a proposed ordinance as a result of public input thereby disal-

lowing greater public input into the process.

B. Any Change Necessary to Secure Legislative Passage of an Ordinance

The Court declined to adopt the definition that a substantial or material change includes “any change necessary to secure legislative passage of the ordinance.” The Petitioner argued that this type of change is a “cause-in-fact” of passage and, therefore, must be a substantial factor. In rejecting this argument, the Court found that the changes that are necessary to ensure passage might not be substantial or material and some substantial changes might be made for reasons other than securing legislative approval. The Court also rejected this argument because this test would require a subjective and speculative determination of every county commissioner’s intent when voting to adopt a county ordinance.

C. The General Purpose Standard

In adopting the general purpose test, the Court declared that only changes to the ordinance that would render the advertised title inaccurate or misleading should require the enactment process to begin anew. This standard was derived from the Florida Attorney General Opinion which states that “amendments can be made during passage of an ordinance when the amendment is not one **changing the original purpose.**” See Op. Att’y Gen. Fla. 82-93 (1982)(emphasis supplied). The Court noted that section 125.66 requires that the county advertise only the title of the proposed land use ordinance. The Court views this statutory requirement as consistent with its rationale for adopting the general purpose test. Specifically, the Court noted that “if a change renders the title inaccurate, then it has very likely altered the general purpose of the ordinance as well.”

IV. Conclusion

As the Florida Supreme Court stated, “of the three proposed definitions, the general purpose approach ... best serves the public’s interest in efficient and responsive local governments.” The Court rejected the Petitioner’s proposed definitions, and settled on the general purpose test because it allows the most flexibil-

ity during the enactment process while keeping the public informed by providing a clear and accurate title to the proposed ordinance. The general purpose test allows county commissions to adopt changes based on input it receives at public hearings while not interfering with the public’s rights to receive adequate notice of proposed changes through accurate titles of proposed ordinances. The Court referred to one amicus curiae who advocated adopting the general purpose test and described the process as follows: “choices can be made, minds can be changed, citizens can be heard, and so long as the original purpose of the ordinance is not altered, the ordinance can evolve and change without the local government having to renew the notice and hearing process.”

Beth Shankle Anderson is an attorney practicing in Tallahassee. She is a graduate, with cum laude honors, from Florida Coastal School of Law.

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2007 - 2008 Calendar of Events

EXECUTIVE COUNCIL SCHEDULE

May 8-10, 2008

Section Annual Meeting
Ritz Carlton, Orlando Grande Lakes

June 20, 2008

Bar Annual Convention
Boca Raton Resort & Club
Boca Raton

SEMINAR SCHEDULE

May 8, 2008

2008 Certification Review Course
Ritz Carlton, Orlando Grande Lakes

May 9-10, 2008

31st Annual Local Government Law in Florida
Ritz Carlton, Orlando Grande Lakes



The Florida Bar Continuing Legal Education Committee and the
City, County and Local Government Law Section present the



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HOTEL RESERVATIONS

A block of rooms has been reserved at the Ritz Carlton Grande Lakes Hotel, at the rate of \$189 single/double occupancy. To make reservations, call the Ritz Carlton Grande Lakes Hotel direct at (407) 206-2400. Reservations must be made by 4/16/08 to assure the group rate and availability. After that date, the group rate will be granted on a "space available" basis.

Schedule of Events

The 31st Annual Local Government Law in Florida seminar is the annual seminar sponsored by The Florida Bar City, County and Local Government Law Section. Our goal is to update practitioners from the private and public sector of local government law on newly developing cases and issues. This course assumes that attendees are conversant with basic issues of local government law, and this seminar's goal is to provide a broad based approach to issues facing local government lawyers.

Thursday, May 8, 2008

5:00 p.m. – 6:30 p.m.

**Meeting of Executive Council
City, County and Local Government Law Section**
(All section members welcome)

6:30 p.m. – 8:00 p.m.

Section Chair's Reception
(Section members, seminar attendees and guests are invited)

8:00 p.m. – 10:00 p.m.

Past Chairs' Circle Dinner
(Past chairs of the section and executive committee)

Friday, May 9, 2008

8:15 a.m. – 8:45 a.m.

Late Registration

8:45 a.m. – 9:00 a.m.

Opening Remarks
Elizabeth M. Hernandez, Chair, City, County and Local Government Law Section
Grant Alley, Program Chair, City, County, Local Government Law Section

9:00 a.m. – 9:45 a.m.

Gaining Code Compliance
Mark Moriarty, Assistant City Attorney, City of Fort Myers

9:45 a.m. – 10:15 a.m.

**Dealing With Pro-Se Litigants in Federal Court
Absolute & Qualified Immunity Issues**
Honorable Douglas N. Frazier, United States Magistrate Judge, U.S. Middle District Court

10:15 a.m. – 11:00 a.m.

Florida Constitution
Honorable James Wolf, District Court Judge, District Court of Appeals

11:00 a.m. – 11:15 a.m.

Break

11:15 a.m. – 12:00 noon

Florida Commission on Ethics State Code of Ethics
C. Christopher "Chris" Anderson, III, Chief Asst. General Counsel, Commission on Ethics, Tallahassee

12:00 noon – 1:30 p.m.

Luncheon (included in registration fee)

Nominations:

Chair-elect: James L. Bennett, Clearwater
Secretary-Treasurer: Vivien J. Monaco, Orlando

1:30 p.m. – 2:30 p.m.

Civil Rights Claims Against the Government: From Strip Clubs to Personal Liability Against Office Holders

Thomas P. Scarritt, Jr., Tampa
John Dingfelder, Tampa

2:30 p.m. – 3:15 p.m.

Labor & Employment Law
Thomas M. Gonzalez, Tampa

3:15 p.m. – 3:30 p.m.

Break

3:30 p.m. – 4:15 p.m.

Securities Liability in Public Finance Transactions
Mitchell Herr, Miami

4:15 p.m. – 5:00 p.m.

Revenue Alternative for Local Governments other than Ad Valorem Taxes
Michael Davis, Tampa

6:00 p.m. – 7:30 p.m.

Section Reception
(All section members, seminar attendees and guests welcome)

Saturday, May 10, 2008

8:15 a.m. – 9:00 a.m.

Continental Breakfast

9:00 a.m. – 9:45 a.m.

Homeland Security: What the Local Government Attorney Needs to Know
Robert Pritt, Naples

9:45 a.m. – 10:30 a.m.

Special Districts
Terry Lewis, West Palm Beach

10:30 a.m. – 10:45 a.m.

Break

10:45 a.m. – 11:15 a.m.

Why did Orange County Pull the Plug on SBA?
Martha O. Haynie, Orange County Comptroller, Orlando

11:15 a.m. – 12:00 noon

Legislative Update
Kraig Conn, Florida League of Cities, Tallahassee
Rebecca O'Hara, Legislative Director, Florida League of Cities, Tallahassee

Registration

Register me for the "31st Annual Local Government Law in Florida" Seminar

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