

Community Land Trusts: Are We Witnessing the Future of Affordable Housing in Florida?

by John K. Shamsey, Esq., John K. Shamsey, P.A., Consulting Attorney, Charlotte County, Florida

INTRODUCTION

Those involved in local government affairs for the past few years in Florida likely recognize a popular mantra espoused by most community leaders: “Our community needs affordable housing . . .” It doesn’t take a statistician to figure out that the huge appreciation rates of properties over the last few years (in many communities doubling and tripling since 2000), coupled with no similar rise in wages and salaries, means many working Florida residents will be

experiencing increasing difficulties affording a home in the years to come. Even with the apparent “cooling off” of the real estate market in the last 12-18 months, and some corresponding price adjustments, the median home price in many Florida communities still far exceeds that which is affordable to low, lower-middle and even middle income residents of our state. The community land trust system, which has seen a huge surge of popularity in the last 24 months, may be the best tool for many Florida

communities to create and sustain affordable housing for its workforce in the years to come.

BASICS OF COMMUNITY LAND TRUSTS

Community land trusts (CLTs) have been in existence for over 20 years (Burlington, Vermont; Durham, North Carolina), though CLTs are a relatively new affordable housing phenomenon in Florida. The first legal distinction to the practitioner initially encountering a CLT is that

See “Community Land Trusts,” page 10

Case Law Update

by Rebecca O’Hara

The following case law summaries were reported from January 1, 2007, through March 31, 2007.

Section 1. Recent Decisions of the Florida Supreme Court - None reported.

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

Mandamus – Elections – Initiative Petitions – Trial Court Did Not Abuse Its Discretion in Determining that Laches Barred the Mandamus Action Filed by Citizen Ini-

tiative Committee. In 2002, the City of West Palm Beach began a project to relocate city hall and the city’s public library. The city passed a series of resolutions in connection with the project over the course of several years and committed several million dollars in funds for the purchase of real property and other services essential to the development. In May 2006, a citizen committee organized to adopt a citizen initiative ordinance that would have effectively required a referendum before city hall could be relocated. An identical initiative

See “Case Law Update,” page 3

INSIDE:	
City, County and Local Government Law 2006-2007 Annual Meeting Photos	2
Calendar of Events	7
Manatee Bar Recognizes Rice and Delgado	8
CCLG CD/Audiotapes	13
2007-08 Annual Section Budget ..	14
2006-07 Final Section Budget	15

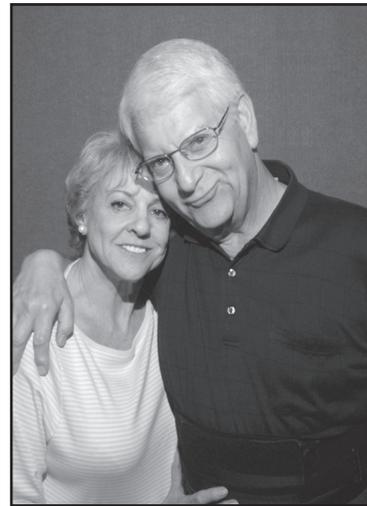
City, County and Local Government Law 2006-2007 Annual Meeting



Elizabeth Hernandez, Chair,
Kaye Collie, Past Chair and
Mary Helen Farris, Immediate
Past Chair



Chip Rice presents the Marsicano award to
Theodore C. Taub



Bobbie and Ted Taub



Kenneth Tinkler with law student recipients



2006-2007 award winners

CASE LAW UPDATE

from page 1

ordinance was filed in relation to the relocation of the city library. The citizens obtained sufficient signatures to place the issue on a ballot for submission to the public. In response, the city began the process of filing suit to obtain declaratory relief regarding the sufficiency of the proposed ballot language used by the citizen committee in its initiative ordinances. Next, the citizen committee sued for an alternative writ of mandamus to require the city to set an election on their two initiatives or submit the ordinances to the electors within the time allowed by the charter. The trial court initially entered an order granting the alternative writ of mandamus. The city filed a motion to quash and the trial court subsequently entered an order quashing the writ of mandamus. When the citizen committee appealed the order, the city raised the defense of laches and the district court affirmed the trial court, essentially basing its holding upon the laches defense and the citizen January - March 2007 committee's failure to act during the three-year time frame that arose between the city's initial actions to relocate city hall and the time when the citizen committee formally initiated the initiative ordinance process. *Carolyn J. Wright, Michael Bornstein, Anita Mitchell, Gladys D. Van Otteren and Patricia M. High v. Louis Frankel*, 32 Fla. L. Weekly D97 (4th DCA December 27, 2006).

Comprehensive Plan Amendment – Hearing – Final Order Dismissing Petition for Hearing to Challenge a Land Use Change Was Proper Where Petitioner Lacked Standing. The petitioner was a land use planner who did not live, own property, or have a business address or business license in the Village of Wellington. However, he sought to challenge a land use decision approved by the village. The order dismissing the petition for a hearing was properly dismissed because he only conducted business activity in Wellington, which is not the same as owning or operating a business

in Wellington. *Denis Potris and Bart Novack v. Dept. of Community Affairs and The Village of Wellington*, 32 Fla. L. Weekly D172 (Fla. 4th DCA January 3, 2007).

Involuntary Annexation – Certiorari – County Failed to Demonstrate Miscarriage of Justice Sufficient to Warrant Exercise of District Court's Certiorari Jurisdiction. The City of Cocoa annexed 757 acres of property. Nearly all of the affected parcels consented to the annexation. The surrounding county sought a writ of certiorari to review the annexation. The city had been the recognized utility provider for the annexation area for nearly 50 years. Additionally, the entire annexation area was slated for urban development under the county's land use plan and was surrounded by property already developed for urban purposes. Although §171.043, Florida Statutes, provides that for involuntary annexations, the area to be annexed must include an area already developed for urban purposes. Cocoa's annexation apparently did not include such area. Nevertheless, the district court denied the petition for writ of certiorari, citing the second-tier review standard which requires there be a violation of a clearly established principle of law resulting in a miscarriage of justice. The district court's decision included a finding that the county failed to demonstrate a miscarriage of justice sufficient to warrant the exercise of the court's discretionary certiorari jurisdiction. *Board of County Commissioners v. City of Cocoa, Florida*, 32 Fla. L. Weekly D294 (Fla. 5th DCA January 5, 2007).

Counties – Attorney's Fee Reimbursement – Summary Judgment in Favor of County Affirmed Not on Basis of Sovereign Immunity as Argued, but Because Alleged Sexual Misconduct Did Not Arise Out of and in the Course of Commissioner's Employment with Board. Several ethics complaints were filed against a county commissioner. The charges culminated in an administrative hearing from which the commissioner emerged victorious. The commissioner sought reimbursement from the county under theories including reimbursement under the county attorney's fee policy; reim-

bursement under the common law; and a declaratory judgment as to his right to fee reimbursement by the public. The trial court denied the second and third theory on the basis of sovereign immunity. The trial court denied summary judgment on the first theory because the alleged sexual misconduct did not serve a public purpose. On appeal, the district court rejected the trial court conclusion that sovereign immunity applies to bar an official's recovery of attorney's fees, explaining that Supreme Court precedent recognizing the common law right to fee recovery must be presumed to have considered and rejected the application of sovereign immunity limitations on recovery. However, the court upheld the lower court's denial of fee recovery on the basis of whether the conduct at issue satisfied the public purpose test. The court explained that the specifically alleged conduct does not dictate the outcome; rather, the analysis must look to the context of the ethics charges and whether the context out of which the alleged conduct arose serves a public purpose. Here, although the commissioner was cleared of the alleged sexual misconduct underlying the reimbursement request, the context surrounding such conduct could not be deemed to serve the public interest. *Rudy Maloy v. Board of County Commissioners of Leon County*, 32 Fla. L. Weekly D308 (Fla. 1st DCA January 26, 2007).

Civil Rights – Property Interest in Deceased Remains – Trial Court Erred in Not Granting City's Motion for Directed Verdict Where No Constitutionally Protected Property Interest Existed to Support Plaintiff's §1983 Claim. The plaintiff sued the City of Key West for a burial mix up which involved her husband's remains. The urn containing her husband's cremated remains was interred in an above-ground vault at the Key West Cemetery. Six months later, the casket containing the plaintiff's cousin-in-law was placed in the same vault with the urn. This mix up lasted for approximately two months, after which time the plaintiff filed suit alleging she was deprived of a property interest in her husband's buried remains without due process in violation of 42 U.S.C. §1983. At trial, upon the close of the

continued. . .

CASE LAW UPDATE

from page 3

plaintiff's evidence, the city moved for a directed verdict. The trial court denied the motion. A jury awarded the plaintiff \$15,000 in §1983 damages. On appeal, the district court reversed the judgment. The court explained that under Florida law, relatives of a decedent have limited rights to the decedent's remains. Those rights are for burial or other lawful disposition but no other statutory purposes. Accordingly, any claims for events occurring after burial must be pursued under traditional common law causes of action. In this case, the plaintiff's only claim was a post-burial deprivation of property interest in the remains. Given that Florida law does not grant any substantive property interest in those interred remains, the court could find no constitutionally protected property interest that would support the §1983 claim. *City of Key West v. Lorrain Knowles*, 32 Fla. L. Weekly D204 (Fla. 3d DCA January 10, 2007).

Liens – Foreclosures – Counties – Trial Court Abused Its Discretion in Ordering County to Enter an Agreement Effectively Subordinating Its Properly Filed Lien to a Subsequent Mortgage and in Declaring County Liens Satisfied. Broward County brought suit to foreclose \$423,750 in liens it had recorded against a property for code enforcement violations. The property owners sought to refinance the property during the pendency of the litigation but asked the court to discharge the county's liens to facilitate the refinancing. Believing there would be sufficient equity to refinance the property and still extinguish the county's liens, the court entered an order directing the county to enter a subordination agreement by a given deadline, subordinating its lien position to that of the refinance mortgagor. The county did not execute the agreement as a necessary building official was away for an emergency and did not return until after the deadline expired. After the county finally assented to the agreement, the trial court entered an order stating the county liens were satisfied

and are of no further force or effect. On appeal, the district court of appeal reversed the order and held the trial court abused its discretion in ordering the county to enter the subordination agreement and unilaterally declaring duly recorded liens satisfied. The trial court had no discretion to enter an order that circumvented the statutory order of lien recording and its order could not be substantiated as a form of sanction for the county's failure to execute the agreement as no findings of willfulness or deliberate disregard were contained in the record. *Broward County v. Andrew Recupero*, 32 Fla. L. Weekly D397 (Fla. 4th DCA February 7, 2007).

Ad Valorem Taxation Exemption – Telecommunications – Trial Court Erred in Holding City's Fiber Optic Equipment and Internet Network Equipment Exempt from Ad Valorem Taxation and Properly Held Leasing of Communications Tower Space to Private Cellular Providers Was Not Exempt. The City of Gainesville appealed a portion of a final declaratory judgment wherein the trial court in part held in favor of the city with regard to its fiber optic network and Internet equipment being exempt from ad valorem taxation, but otherwise held that nine of the city's communication towers were not exempt from ad valorem taxation. The city also appealed the court's holding that vacant property held by the city as a buffer between its power generating facilities and residential development was not exempt from ad valorem taxation. The district court of appeal reversed the trial court's holding that exempted the fiber optic network and Internet equipment from ad valorem taxation as a matter of law. The district court cited Florida Supreme Court precedent that distinguished between a city's provision of telecom services as something traditionally provided by the private sector and accordingly subject to ad valorem taxation, versus the city's provision of other utilities like electricity and water as traditionally provided by the city and solidly representing a municipal or public purpose. The issue was remanded for a determination of whether, under the Supreme Court precedent, it could be said the provision of telecom services satisfied the municipal or

public purpose test. The district court affirmed the trial court's holding that the telecommunications could not satisfy the municipal or public purpose test. The court reasoned that to the extent the city did not use the towers to provide services directly to the public, but rather leased space on the towers to private providers who in turn sold telecom services to customers, such leasing of space on the towers to private providers does not satisfy the municipal or public purpose test for tax exemption which allows government-to-government leasing activity but not government-to-private or proprietary leasing activity. The district court also affirmed the trial court ruling on the vacant property owned by the city. The court explained that while the property was held in fee simple by the city for future expansion of electrical facilities and for a residential development buffer, tax exemption could not be recognized where a timber company both retained rights to harvest timber on the property and further leased hunting rights to another party. *City of Gainesville v. Ed Crapo, Von Fraser, Jim Zingale*, 32 Fla. L. Weekly D442 (Fla. 1st DCA Feb. 12, 2007).

Torts – Sovereign Immunity – Issues of Fact Precluded Issuance of Final Summary Judgment in Favor of City Where Police Officer Struck Pedestrian While Driving to Work in a "Take Home" Vehicle Issued by City. A police officer employed by the City of Hollywood, Fla., was off duty but driving a city-issued vehicle to work early one morning and struck and injured a child. The child sued the officer and the city, arguing the city was liable on a theory of respondeat superior. The trial court issued final summary judgment in favor of the city and the accident victim appealed. The city argued it was not liable for the officer's off-duty actions to the extent prior case law established the conduct at issue must be the type the officer was hired to perform; the conduct must occur within the time and space limits authorized or required by the work to be performed; and the conduct must at least be activated by a purpose to serve the employer. In reversing the summary judgment, the district court of appeal considered that the officer was on his way to the police station,

driving in a marked police vehicle one hour before his shift began and he was going to work early to study for the police lieutenant's exam. Such activity could reasonably satisfy the three elements required by existing case law to bring the officer's conduct within the scope of his employment, notwithstanding his off-duty status. Accordingly, the court reversed the trial court order and remanded the matter for further proceedings consistent with its conclusions. *Garcia v. City of Hollywood, Florida*, 32 Fla. L. Weekly D507 (Fla. 4th DCA February 21, 2007).

Contracts – Trial Court Erred in Excluding Evidence that a Developer Failed to Timely Provide a Required Financing Commitment Letter Requirement for a Project with the City. The City of Hollywood appealed a one-million dollar judgment entered against it in a lawsuit by a developer for breach of an August 29, 1997, lease contract with a developer involving a lease of beach property for the construction of a hotel and other commercial enterprises. The suit alleged the city breached the contract by failing to provide the developer with notice of a default event and a chance to cure. The city contended it wasn't required to submit the notice of default, as the incident driving the city's decision to pull out of the deal was not specifically provided for in the "Event of Default" provisions of the agreement. The facts at trial revealed the developer waited until the last day of the one-year window allowed to provide evidence of a financial commitment to complete the project. However, the commitment letter contained language that clearly showed the lender still had sole discretion as to whether it would terminate the processing of the commitment. The city construed this as something less than an actual financial commitment. On appeal, the city argued the trial court erred in excluding evidence that the purported commitment letter was untimely, if not fraudulent. That evidence showed that the developer represented payment of a \$100,000 commitment fee to the lender on August 28, 1998. However, the check had not been delivered to the lender until September 14, 1998. Additionally, the developer did not disclose that that lender with-

drew the commitment on October 22, 1998, and returned the \$100,000 check uncashed. Only during discovery for the lawsuit did the city become aware of that evidence and the court felt it was relevant to the issue of whether the developer met the one-year deadline for the commitment. Accordingly, the court reversed the judgment. *City of Hollywood v. Diamond Parking, Inc.*, 32 Fla. L. Weekly D511 (Fla. 4th DCA February 21, 2007). ***Voluntary Annexation – Circuit Court Properly Quashed an Ordinance Annexing a Parcel which Created a 100-Acre "Pocket" of Unincorporated Territory.*** The City of Center Hill annexed 1,235 acres of land in unincorporated Sumter County. The owners of a nearby parcel petitioned the circuit court for certiorari review of the ordinance, arguing the annexed property was not reasonably compact as required by statute, as it created a 100-acre "pocket" of unincorporated territory surrounded by hundreds of acres of municipal property. The circuit court granted certiorari and quashed the annexation ordinance, finding that the annexation resulted in the creation of an impermissible pocket of unincorporated property. On petition for second tier certiorari, the district court, citing section 171.013, set forth the standard for proper annexation, one element of which is that the annexed area be compact. Section 171.013(12) defines compactness as the "concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets or finger areas in serpentine patters." The court acknowledged "pockets" is not defined in the statute but relied upon an earlier court's conclusion that a pocket is "a small isolated area or group." The city argued that since the area annexed in this case totaled 100 acres, it was not "small" as referenced in the court's definition of pocket. The court admitted that the 100-acre area was not insignificant relative to the 1,235-acre annexation. Nonetheless, the annexation resulted in the creation of an area of unincorporated property "left in a sea of incorporated property," an area described at one point as "looking like a balloon on a string." Because a pocket-like area resulted, the court denied certiorari. *City of Center Hill, Florida v. Clyde McBryde, William Sander, et al.*, 32

Fla. L. Weekly D787 (Fla. 5th DCA March 23, 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

Civil Rights – Excessive Force – District Court Erred in Granting Summary Judgment to City where District Court Took Erroneous View of the Law and Ruled Plaintiff Could Not Prove a Critical Element of His Excessive Force Claim. Juan Velazquez sued the City of Hialeah, alleging the use of excessive force by its police officers. The law of the Eleventh Circuit is that an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held liable for his nonfeasance. Velazquez's suit alleged that two officers were present while Velazquez was subjected to a beating, while handcuffed. The two officers admitted to being present during the incident, but Velazquez could not identify which officer beat him. Based on this inability to identify who beat him, the district court granted summary judgment, concluding Velazquez could not prove which officer beat him. On appeal, the circuit court of appeals retorted that the failure of the victim to identify the aggressor is not the law and if it were, "all that police officers would have to do to use excessive force on an arrestee without fear of consequences would be to put a bag over the arrestee's head and administer the beating in silence." The court concluded that given the allegation that the two officers were present and the officers' admission to being present, such information taken in a light most favorable to the non-moving party in a summary judgment proceeding demonstrates that triable issues of fact exist as to whether one or both of the officers used excessive force on him, and whether one or the other failed to intervene to stop the use of such force. Accordingly, the court reversed the order granting the city's motion for summary judgment. *Juan Velazquez v. City of Hialeah*, 20 Fla. L. Weekly Fed. (11th Cir. March 14, 2007).

continued . . .

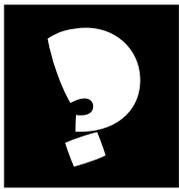
Section 5. Recent Decisions of the United States District Courts for Florida

Civil Rights–Speech–City’s Motion for Summary Judgment Failed Against City Firefighter Who Published an Opinion Column that Criticized the Quality of Services Provided by Fire and Paramedic Service because Firefighter’s Speech Was Protected Speech. City of Marathon firefighter, paramedic and local union official, Robert Abad, published an opinion column that criticized the city fire service’s quality based on an insufficient number of emergency workers and below-average annual wages. The day the article was published, Abad was suspended without pay pending an investigation of the matter and whether the actions violated the city’s standard operating procedures relevant to media relations. Abad was disciplined with three shifts without pay. Thereafter, Abad filed suit alleging various claims under 42 USC §1983. The city moved for summary judgment on the claims, asserting the speech at issue was not public employee protected speech. The district court denied summary judgment and concluded while Abad stood to gain personally from the pay

raise he advocated in the column, the issues raised by the column regarding the quality of service provided by the local firefighter/paramedics were of concern to the general public, as demonstrated by the content of the column and the newspaper’s decision to print the article. Additionally, Abad’s speech interest was found to outweigh the city’s interest in maintaining public confidence in the Fire Department’s ability to protect the public, given its design to raise public consciousness about a potential danger to the community. Finally, the court concluded that the city manager who disciplined Abad was entitled to qualified immunity. Qualified immunity protects a government official for actions taken in an official capacity which do not violate a clearly established statutory or constitutional right of which a reasonable person would have known. The district court concluded that since the column advocated for a raise and other workplace enhancements from which Abad would have personally benefited, it was not clearly established that a court would inevitably hold the column at issue to be protected speech. *Robert Abad v. City of Marathon, Florida, 20 Fla. L. Weekly Fed D436 (S.D. Fla. February 8, 2007).*

Civil Rights – Commerce Clause – Ordinance that Imposed Size Limits on Properties Operated by Formula Retail Drugstore Estab-

lishment and Effectively Precluded Store Owners from Selling Real Estate to National Drug Store Chain Was Unconstitutional Under Dormant Commerce Clause. The plaintiffs owned a retail store in the Village of Islamorada. They sought injunctive relief contending the village’s interpretation of its Formula Retail Regulations denied them a constitutionally protected right to sell their property. The ordinance, limiting formula retail establishments to 50 feet of frontage and 2,000 total square feet, was held to violate the Dormant Commerce Clause. The ordinance had the practical effect of discriminating against national retail chains in favor of local non-formula stores, which could be of any size, and consequently, the ordinance was subject to elevated scrutiny. The regulations were found to be unconstitutional under the elevated scrutiny test applicable to regulations involving interstate commerce that are discriminatory. The ordinance failed the elevated scrutiny test because the alleged purpose of preserving small-town community was not a legitimate purpose in this instance, since the village could not demonstrate that it was uniquely relaxed or natural, nor was there a predominance of natural conditions and characteristics over human intrusions. Accordingly, the ordinance could not be found to serve the alleged interests of preserving small-town character. The ordinance also failed the more permissive Pike v. Bruce Church, burdens versus benefits balancing test, applicable to regulations that are not discriminatory. In this case, the evidence showed commerce had been greatly curtailed in that plaintiffs were unable to sell their property except at reduced prices, willing purchasers were unable to expand their businesses into the area and residents of the village lost the advantages of having unhampered national competition for their business. By comparison, the purported benefit was an attempt to establish a small-town character but that was not encouraged by the ordinance to the extent it allowed new, non-conforming chain stores to be established. *Island Silver & Spice, Inc. v. Islamorada, Village of Islands, 20 Fla. L. Weekly Fed D577 (S.D. Fla. February 28, 2007).*



**If you’ve got questions,
we’ve got answers.**

L · O · M · A · S

The Law Office Management Assistance Service of The Florida Bar

CALL Toll-Free 866/730-2020
jrphelps@flabar.org

Visit us on the web at www.floridabar.org
(follow the links under “Member Services”)

Keys to a Better Practice Florida Bar CLE!

Florida Bar CLE Courses Offer:

- **Quality Speakers!**
- **Convenient Locations!**
- **Register Online!**
- **Audio/CD's/Videotapes Available!**
- **Courses Online at Legalspan.com!**



THE FLORIDA BAR

www.FloridaBar.org

Visit **www.FloridaBar.org**
and click on “**CLE**,” then
“**Search Calendar**” to view
scheduled courses.

2007 - 2008 Calendar of Events

EXECUTIVE COUNCIL SCHEDULE

September 6, 2007

Tampa Airport Marriott

October 18, 2007

J.W. Marriott Orlando Grande Lakes

January 2008

Teleconference

May 8, 2008

Ritz Carlton Orlando Grande Lakes

May 9, 2008

Section Annual Meeting

Ritz Carlton Orlando Grande Lakes

SEMINAR SCHEDULE

October 18-29, 2007

PERL

J.W. Marriott Orlando Grande Lakes

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

Manatee Bar Recognizes Service to the Community Rice and Delgado Take Honors

At their Annual Meeting on June 27, 2007, the Manatee County Bar Association recognized two members for their record of service to our community. In the ninth annual presentation of the awards, H. Hamilton "Chip" Rice, Jr. received the William C. Grimes Award for Lifetime Achievement in Community Service and Jaime L. Delgado received the Community Service and Jaime L. Delgado received the Community Service Leader Award. The purpose of the awards is to highlight members of the Bar Association who provide service to the community through participation in organizations and activities beyond the scope of the Bar and mandatory pro bono legal services.

A proud graduate of the University of Kentucky in 1964 and a Florida lawyer since 1981, Chip Rice served as County Attorney to Manatee County Government for thirteen years. **He is a member of the Kiwanis Club of Bradenton, past president of Legal Aid of Manasota, a member of the Community Leadership Council of the University of South Florida at Sarasota, a member of the Manatee Chapter of the American Red Cross, a board member of the Manatee County Coalition on Homelessness, a board member on the Manatee County Indi-**



gent Health Care Task Force and serves as an adjunct Professor of Law at Stetson University College of Law. He is a devoted member of Christ Episcopal Church, having served the Vestry as Lay Reader, Usher, Chancellor and Past Senior Warden. Board certified in Civil Trial Law and City, County & Local Government Law, Mr. Rice is a shareholder with the law firm of Lewis, Longman & Walker, P.A. and practices in the areas of Local Government, General Litigation and Administrative Law. For his commitment and support of the citizenry of Manatee County, Rice earned the William C. Grimes Award for Lifetime Achievement in Community Service.

For his passion and desire for

change, Jaime L. Delgado earned the 9th Annual Community Service Leader Award. Admitted to practice law in Florida since 1998, Jim Delgado has served as two-term president of the Gulf Coast Latin Chamber of Commerce, the steering committee for the Sarasota Y.M.C.A. Hispanic Achievers program, and is the current president of the Manatee Educational Television consortium board of directors. He is most proud of his contribution as co-founder of the Mexican Council of Florida, which was created to identify and advocate for issues that range from

immigration to education within the Hispanic Community. Delgado is a partner in the law firm of Kallins, Little & Delgado, P.A. and practices in the areas of Personal Injury, Wrongful Death & Criminal Defense.

Nominations for the awards were submitted by fellow members of the Manatee County Bar Association. To ensure the integrity of the judging, a panel of community representatives was assembled by MCBA committee chairperson Mark Nelson. Members of the judging panel that evaluated the nominations and selected the recipients included circuit Judge Rochelle Curley, Jerry Koontz, President of United Way of Manatee County and Marianne Barnebey, Councilwoman for the City of Bradenton.

Moving?

Need to update your address?

The Florida Bar's website (www.FLORIDABAR.org) offers members the ability to update their address and/or other member information.

The online form can be found on the web site under "Member Profile."



PROVE YOU'RE AN EXPERT BECOME BOARD CERTIFIED

*Board certified lawyers are legal experts
dedicated to professional excellence.
Are you ready for the challenge?*



FloridaBar.org/certification

COMMUNITY LAND TRUSTS

from page 1

it is not technically a “trust” in a legal sense; that is, the word “trust” is used loosely. In effect the CLT is simply a 501(c)(3) non-profit with the objectives and purpose of acquiring, properties for long-term, if not, indefinite, use for affordable housing. It is not technically a trustee nor are there named beneficiaries of the trust. In Florida, the Florida Community Land Trust Institute has been instrumental in dealing with such legal issues, assisting CLTs in their inception and formation stages, by providing guidelines for those wishing to establish CLTs. The Florida Community Land Trust Institute recommends that the CLT be connected and limited to one area and/or community, and that the Board of Directors of the non-profit be a diverse cross-section of the community in which it is based.

The operating mechanism of a CLT is unique. The CLT buys land, and then retains fee simple title to the land, while selling the structure to the “homebuyer”. A 99-year ground-lease for the land is simultaneously entered into with the homebuyer, leaving the affordable housing homebuyer with full ownership interest in the structure (with the right to convey), and a long-term leasehold interest in the land. The groundlease gives the homeowner nearly full ownership rights to the structure and land, with the main restrictions being on the resale of the structure. The resale of the structure is restricted by limiting the type of buyer (must be a qualifying, low-income buyer) and the amount at which the structure can be sold (based on a formula) thus limiting the profit that the initial homebuyer can make on the property. There are different options available to a CLT in order to provide the most effective affordable housing options for a respective community. As previously described above, one option is to simply purchase already existing single family homes. Other options include: 1) buying vacant lots, building the structure, and then selling the house; 2) purchasing multi-family structures and selling the units individually; and 3) buying multi-family or single-family structures and rent-

ing the units or homes.

Many who have worked in the affordable housing arena have likely realized that, until now, “affordable for perpetuity” has been a lofty, if not unattainable goal. Due to the fundamental characteristics of a CLT (namely that the fee simple ownership of the land is retained by the CLT indefinitely and that there are restrictions on resale), I believe that CLTs will be able to change this shortcoming and create a new era of affordable housing, which will offer quality, affordable housing products for the long term.

NATIONAL EXAMPLES AND DEVELOPMENT

Nationally, CLTs have been in existence for some 30 years now, with the first CLT being New Communities of Albany, Georgia. Robert Swann and Slater King (a cousin of Martin Luther King, Jr.) conceived and created the organization, hoping to find ways to foster affordable home ownership, perpetual affordability, and a way to retain local control of the land and resources. Swann and King ended up following the legal model and documents of the Jewish National Fund—a group which since the turn of the century had begun to collect land in Israel, and which now reportedly owns 95 percent of all Israeli land. After research and even a trip to Israel, Swann and associates eventually purchased a 5,000-acre farm in Georgia, constructed a vision for the land, and set up a lease with local African-American farmers, thus issuing in the fledgling CLT movement in the United States. Swann went on to found the Institute for Community Economics (ICE) in 1973, which is now considered one of the leading CLT organizations in the country, providing guidance and assistance to new and operating CLTs all across the nation.

One of the country’s most well-known, longstanding and successful CLTs is Vermont’s Burlington Community Land Trust (BCLT). The BCLT was created in 1984 out of the hopes of preventing out-of-town speculators, mostly New Yorkers, from further increasing already astronomical Burlington housing prices and eventually totally driving out the local population. The BCLT, created with the assistance of ICE, is a mem-

ber-based non-profit, and was one of the first CLTs to receive local government funding (\$200,000 in seed money from the Burlington City Council) to further its affordable housing mission. The BCLT is one of the largest CLTs in the country, with over 2,500 members, 270 multi-family units, and over 370 shared-appreciation single family homes and condos. The BCLT has been extremely successful in Burlington, now owning almost 4% of Burlington’s total housing stock; BCLT also owns and operates tenant-owned cooperatives, a family shelter, a transitional shelter, and housing for homeless youth, the mentally ill, and people with HIV/AIDS. The BCLT has received continual support from politicians on both sides, as well as support and active participation from a cross-section of the Burlington community. The BCLT claims to owe much of its success to its insistence that CLT homeowner and/or renters, play a vital role in the governance and operations of the BCLT, with many even sitting as members on its Board of Directors.

Florida’s oldest CLTs both hail from the Florida Keys. The Bahama Conch Community Land Trust of Key West, formed in 1995, is a small CLT working to preserve historic African-American properties and culture in Bahama Village, Key West. The Middle Keys Community Land Trust (MKCLT) of Marathon, Florida, was founded in 2000, and has developed into a mid-size CLT with over 15 single family properties owned by the MKCLT. The MKCLT also owns and administers an affordable apartment complex, the Seacrest Apartments in Marathon, which also houses the MKCLT’s administrative offices. In 2004, the Hannibal Square Community Land Trust was created in the Winter Park area of Orlando. Hannibal Square got off the ground with an initial donation of 10 lots from the city and now has all ten of those properties built out and occupied by affordable homeowners. Since 2004, dozens of CLTs have either been in the works, or have recently been created in counties and cities all around Florida.

CHARLOTTE COUNTY – THE PEACE RIVER HOUSING TRUST, A CASE STUDY

Since early 2006, Charlotte County, Florida has been developing its

first CLT, the Peace River Housing Trust (PRHT). The PRHT has been quite successful in its short time of existence due to a variety of factors. First, the PRHT was created with seed money from the Charlotte County Board of County Commissioners (BCC), and was thus in its initial stages a public/private partnership. The \$750,000 grant given by the Charlotte County BCC was to be used for up to a three-year period to get the land trust "up and running", at which time the PRHT would chart its next course of action and pursue alternate and independent funding sources.

Secondly, although seed money was given by the local government, Charlotte County was insistent that from its inception the PRHT be an autonomous, 501(c)(3) non-profit corporation. The PRHT consists of a 10-member Board of Directors which meets monthly to address the needs and courses of action of the land trust. The PRHT Board names and replaces its own Board members, thus the County has no future role in the governance or power structure of the PRHT. The PRHT Board has independently developed the CLTs operating procedures, homeowner selection criteria, groundlease, and resale restrictions on PRHT properties.

Third, from its inception, the PRHT has aligned itself with an already existing housing non-profit, the Housing Corporation of Charlotte County, Inc. (Housing Corp.). The Housing Corp. entered into an agreement with Charlotte County, to help create and administer the PRHT until the CLT was up and running and autonomous, or, until the initial seed money was used up, whichever came first. This partnership with the Housing Corp. has proved invaluable for the PRHT as it has saved considerable time and money by being able to take advantage of the Housing Corp.'s community reputation, knowledge, administrative resources, and already-existing connection to potential affordable homebuyers in the area. This alliance with the Housing Corp. has allowed the PRHT Board to focus its initial energies on setting its policies, creating its vision for the trust, and identifying potential properties and clients from the beginning, instead of having to focus its energies on administrative endeavors (i.e., - hiring an executive

director, finding office space, etc.).

Finally, the PRHT has been successful in a short period of time because it has always kept its immediate goals simple and attainable. With the initial seed money the PRHT hoped to build 10-15 single family residences on lots it would purchase in a 2-3 year period. (This number may increase as the price of vacant lots in Charlotte County has actually dropped considerably since the creation of the CLT.) As of the writing of this article, the PRHT has completed construction of two homes, with the closings and occupancy taking place shortly, and two more houses are under construction and will be completed in summer of 2007. Since the "first round" of houses went so smoothly and is near completion, the PRHT is now looking to acquire additional lots and get more affordable homebuyers in CLT homes as quickly as possible. The PRHT is committed to acquiring as many properties as is feasible to be kept affordable in perpetuity, by using the classic CLT model of retaining fee simple ownership to the lot, while transferring ownership of the structure to the homebuyer under an arrangement that restricts the resale value of the home. While at this point in time the PRHT is focusing on single family

residences, its Board has recognized that as it evolves as an organization other affordable housing property arrangements may be possible as well.

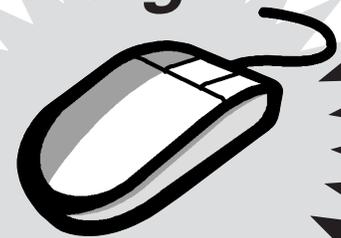
CONCLUSION

With the unique real estate issues Florida faces, especially in recent years, the Community Land Trust has been lauded as a unique, effective way to keep land affordable indefinitely, while instilling pride of homeownership in its occupants. While there is not an extensive CLT history on which to assess and predict its future effectiveness in Florida, the proliferation of CLTs across the state and the recent successes of the Peace River Housing Trust and other new CLTs seem to be a good sign of the emergence of the Community Land Trust as prominent affordable housing tool for upcoming generations of Floridians.

John K. Shamsey is shareholder and President of the real estate law firm of John K. Shamsey, P.A., in Sarasota, Florida, (www.shamseylaw.com) and is also currently a Consulting Attorney with Charlotte County, Florida, assisting with its affordable housing programs. He can be reached via e-mail at jshamsey@shamseylaw.com or John.Shamsey@charlottefl.com

www.FloridaBar.org

***Instant
access to...***



A wide range of useful information, including:

- Legislative News
- List of Board Certified Lawyers
- Bar Calendars

..... ***and much, much more!***

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

Elizabeth Miranda Hernandez, Coral Gables..... Chair
Grant Williams Alley, Ft. Myers Chair-elect
James Bennett, Clearwater Secretary-Treasurer
Mary Helen Farris, Tampa..... Immediate Past Chair
Joseph Jarret, Bartow Editor
Carol J. Kirkland, Tallahassee.....Associate Editor
Ricky Libbert, Tallahassee.....Program Administrator
Colleen Bellia, Tallahassee Layout

Statements or expressions of opinion or comments appearing herein are those of the editor(s) or contributors and not of The Florida Bar or the Section.

**Visit the City, County and Local
Government Law Section
website at *www.locgov.org*.**

City, County & Local Government Law Section CLE Audiotapes Available

The Audio/Video department is not equipped to take orders by phone. Phone inquiries: (850) 561-5629

**PRICE: S=Section Member
N=Non-Section Member**

COURSE NO.	COURSE TITLE	DATE TAPE EXPIRES	AUDIO	VIDEO
0267R	31st Annual Public Employment Labor Relations Forum Audio Cassette Only Gen. Cr. 11.5 Ethics 2.0	4/27/2007	S=\$290.00 N=\$315.00	N/A N/A
0308R	2006 City, County & Local Gov't Law Cert. Review Course Audio Cassette Only Gen. Cr. 8.0 Ethics 1.5	11/11/2007	S=\$185.00 N=\$210.00	N/A N/A
0309R	29th Annual Local Gov't Law in Florida Audio Cassette Only Gen. Cr. 12.5 Ethics 1.0 Professionalism 1.0	11/12/2007	S=\$295.00 N=\$320.00	N/A N/A

To order tapes (course materials included) mail this entire sheet (or a copy) to: The Florida Bar, CLE Programs, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300. Please include TAX if you live in Florida. Out-of-State residents do not pay tax.

Florida Bar Number: _____ Attorney's Name: _____
 Firm Name: _____ Phone Number: _____
 Street Address: _____ Ste./Apt.: _____
 City: _____ State: _____ Zip: _____

If you are a tax-exempt entity, please include your ID number on the order form or a copy of the tax-exempt certificate. The tapes must be shipped to the tax-exempt organization. Tax Exempt ID#: _____

Payment Type

Check # _____ Check Amount \$ _____ Master Card Visa
 Fax #: 850-561-5816 we are unable to accept American Express at this time

Name of Card Holder: _____ Signature: _____
 Card # _____ Expiration Date: _____-20 _____

PLEASE ALLOW FOUR WEEKS FOR DELIVERY. TAPE ORDERS ARE PROCESSED IN THE ORDER RECEIVED. FLORIDA BAR COURSES ARE AVAILABLE FOR CREDIT ON-LINE 24/7 AT: www.floridabar.org CLICK ON 'CLE'

Course Number: _____	Course Title: _____	Cost _____
_____	_____	_____

6% Sales Tax + your County surtax \$ _____
Total \$ _____

Annual Section Budget

City, County and Local Government Law Section for Fiscal Year 2007-2008

The proposed budget was approved by the Executive Council, January 2007. *The Board of Governors of The Florida Bar approved this budget at their April 2007 meeting.*

Revenues	Budget		
Dues	39,000	CLE Speaker Expense	225
Dues Affiliate	60	Committee Expense	120
Dues Retained by TFB	<27,340>	General Meeting	525
Net Dues	11,720	Board or Council Meeting	1,100
		Bar Annual Meeting	1,000
CLE Courses	31,852	Section Annual Meeting	18,000
Newsletter Sub	66	Midyear Meeting	250
Sponsorship	6,500	Section Service Program	10,000
Member Service Program	10,000	Retreat	1,500
Investment Allocation	4,973	Stetson Reception	500
Miscellaneous	250	Membership Directory	3,800
		Awards	3,100
Other Income	53,641	Scholarships	3,000
		Grant Programs	2,500
Total Revenues	\$65,361	Civility Week Plaque	800
		Law School Liaison	3,000
Expenses		Web Site	6,500
Employee Travel	2,598	Council of Sections	300
Postage	1,750	Symposium	12,000
Printing	1,200	Operating Reserves	8,995
Officer Office Expense	25	Miscellaneous	6,000
Newsletter	5,000	CLER Credit Fee	150
Membership	0		
Supplies	55	Total Expenses	\$94,368
Photocopying	150		
Officers Travel Expense	1,200	Beg. Fund Balance	71,042
Meeting Travel Expense	2,000	Ending Fund Balance	\$36,860

Section Reimbursement Policies:

General: All travel and office expense payments are in accordance with Standing Board Policy 5.61 or more restrictive Section policies identified elsewhere in this budget notice. Travel expenses for other than members of Bar staff may be made if in accordance with SBP 5.61(e)(5)(a)-(h), 5.61(e)(6) which is available from Bar headquarters upon request.

Convention — Chair's Travel: Costs of Chair's suite at convention is paid by the section. Included in this are costs associated with its use as a hospitality suite. All reimbursement of expenses will be in accordance with Standing Board Policy 5.61(e) 1 through 6.

Final Section Budget
City, County and Local Government Law Section
for Fiscal Year 2006-2007

Revenues	Budgeted	Actual
Dues	37,500	39,020
Dues Affiliate	60	0
Dues Retained by TFB	<26,290>	<18,871>
Net Dues	11,270	18,774
Sec Share Online CLE	0	256
CLE Courses	27,655	33,356
Section Differential	0	4,131
Newsletter Sub.	0	22
Member Service Program	10,000	0
Investment Allocation	5,850	8,982
Miscellaneous	250	0
Other Income	43,755	46,747
Total Revenues	\$55,025	\$58,454
Expenses		
Employee Travel	2,966	1,398
Promotional Mailing	250	0
Postage	1,500	769
Printing	600	98
Officer Office Expense	25	0
Newsletter	3,000	3,895
Membership	100	5
Supplies	50	0
Photocopying	150	121
Officers Travel Expense	1,000	0
Meeting Travel Expense	2,000	827
CLE Speaker Expense	200	0
Committee Expense	100	81

General Meeting	500	495
Board or Council Meeting	1,000	1,106
Bar Annual Meeting	900	249
Section Annual Meeting	12,500	19,638
Midyear Meeting	250	0
Section Service Program	10,000	0
Retreat	1,500	0
Stetson Reception	500	0
Membership Directory	3,500	4,037
Awards	3,000	1,498
Scholarships	3,000	2,750
Grant Programs	2,500	0
Civility Week Plaque	800	0
Law School Liaison	3,000	0
Web Site	6,000	5,999
Council of Sections	300	0
Symposium	12,000	9,602
Operating Reserve	8,126	0
Miscellaneous	6,000	5
Course Credit Fee	150	0
Total Operating Expenses	\$87,467	\$52,537
Printing	0	1
Graphics & Art	1,921	1,533
Total TFB Support Srvcs	\$1,921	\$1,534
Total Expenses	\$89,388	\$54,071
Net Operations	<34,363>	4,383
Beg. Fund Balance	83,575	97,714
Ending Fund Balance	\$49,212	\$102,097

The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300

PRSRT-STD
U.S. POSTAGE
PAID
TALLAHASSEE, FL
Permit No. 43