

On Appeal

By Lawrence E. Sellers, Jr.

Note: Status of cases is as of November 6, 2008. Readers are encouraged to advise the authors of pending appeals that should be included.

FLORIDA SUPREME COURT

Florida Department of Environmental Protection, et al. v. Stop The Beach Renourishment, Inc., et al, Case No. SC06-1447 and 1449. Petition to review decision of First DCA relating to DEP's final order allowing the renourishment of 6.9 miles of beaches and dunes within the City of Destin and Walton County. 31 Fla. L. Weekly D1173. The First DCA certified as a question of great public importance whether the Beach and Shore Preservation Act (Part I of Chapter 161) has 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 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. Status: On September 29, 2008 the Court rephrased the certified question and concluded that, on its face, the Beach and Shore Preservation Act does not unconstitutionally deprive upland owners of littoral rights without just compensation. 33 Fla L. Weekly S761a. Motion for rehearing filed October 14, 2008.

Advisory Opinion to the Attorney General re: Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, Case No. SC06-521. The Attorney General has asked the Court for an advisory opinion as to whether the financial impact statement prepared by the Financial Impact Estimating Conference (FIEC) on the constitutional amendment, proposed by initiative petition and entitled "Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans," is in accordance with Section 100.371, F.S. Status: On September 25, 2008 the Court included that the revised statement prepared by

the FIEC is misleading and therefore does not comply with s.100.3701(5), F.S.; accordingly the Court remanded the statement to the FIEC to be redrafted. Redrafted statement filed October 14, 2008.

Department of Environmental Protection v. Contractpoint Florida Parks, LLC, Case No. SC07-1131. Petition for review of First DCA decision finding that, absent legislative intent to do so, Section 11.066, F.S., did not "overturn twenty-two years of case law subjecting the state to breach of contract actions." Section 11.066 provides that the state or its agencies shall not be required to pay monetary damages except pursuant to an appropriation made by law. The court certified the following question to be one of great public importance: "Does Section 11.066, Fla. Stat., apply where judgments have been entered against the state or one of its agencies in a contract action?" 32 Fla. L. Weekly D1416b. Status: Affirmed July 10, 2008, 33 Fla L. Weekly S493a.

Phantom of Brevard, Inc. v. Brevard County, Florida, Case No. SC07-2200. Petition for review of Fifth DCA decision affirming in part, reversing in part and remanding a summary judgment upholding a county ordinance relating to fireworks. *Phantom of Brevard, Inc v Brevard County*, 32 Fla. L. Weekly D2084b (Fla. 5th DCA Aug. 31, 2007). Status: Oral argument set November 3, 2008.

Fla. Assn of Professional Lobbyists v Division of Legislative Information Services, Case No. SC08-791. Certified questions from the Eleventh Circuit: whether the Act establishing executive and legislative lobbyist compensation reporting requirements violates Florida's separation of powers doctrine, was properly enacted under Florida law, or infringes upon the Florida Supreme Court's jurisdiction. Status: All briefs have been filed.

Advisory Opinion to the Attorney General re Florida Growth Management Initiative Giving Citizens the Right to Decide Local Growth Management Plan Changes, Case No. SC08-318. The Attorney General has asked

the Court for an advisory opinion as to whether the so-called “Smarter Growth” amendment encompasses a single subject, and whether the ballot title and summary comply with the pertinent legal requirements. Status: Request filed February 26, 2008; oral argument held September 11, 2008.

FIRST DCA

Florida Homebuilders Association, Inc., et al v. City of Tallahassee, Case No. 1D07-6413. Appeal from summary judgment for the City in connection with challenge to City’s Inclusionary Housing Ordinance. Among other things, the plaintiffs allege that the ordinance constitutes a taking and an illegal tax. Status: All briefs have been filed.

International Paper Company v. Florida Department of Environmental etc., et al. Case No. 1D07-4198. Appeal from a DEP final order denying International Paper’s application for a wastewater discharge permit at its Pensacola Mill. Status: Motion for Stay granted and Oral argument set for September 17, 2008 was cancelled.

Brenda D. Dickinson and Vicki A. Woolridge v. Division of Legislative Information of the Offices of Legislative Services, et al, Case No. 1D07-3827. Appeal from final judgment rejecting a constitutional challenge to executive and legislative lobbyist compensation reporting requirements. Status: Oral argument set for June 24, 2008. *Note*: See *Fla. Assn of Professional Lobbyists v Division of Legislative Information Services*, Case No. SC08-791, above, where some of same questions certified from Eleventh Circuit to Florida Supreme Court.

SECOND DCA

Peace River/Manasota Regional Water Supply v. State, Department of Environmental Protection, Case No. 2D06-3891 and 2D07-3116 (consolidated cases). Appeals from final order granting environmental resource permit to Mosaic for Ona Mine. Status: Oral argument set for October 8, 2008.

Marine Industries Association of Collier County v. Florida Fish & Wildlife Conservation Commission, Case No. 2D07-1777. Appeal from a final order approving the Fish and Wildlife Commission’s permit granted to the City for the placement of water-

way markers. The final order rejected much of the Administrative Law Judge’s recommended order finding that 1) the parties had standing to challenge the permit and the necessity of the ordinance underlying the waterway marker permit application and 2) the Fish and Wildlife Commission was obligated to independently determine whether the local ordinance was needed. Status: Reversed and remanded September 12, 2008, 33 Fla. L. Weekly D2181b; motions for rehearing filed.

THIRD DCA

Jimmy T. Bauknight, et al. v. Monroe County Board of County Commissioners, et al., Case No. 3D07-915. Appeal from trial court’s order granting County’s motion for summary final judgment declaring that appellant property owners failed to exhaust administrative remedies prior to seeking compensation for temporary taking of their properties. Status: Affirmed September 17, 2008, 33 Fla. L. Weekly D2212b.

CNL Resort Hotel, L.P. v. City of Doral, Florida, et al., Case No. 3D07-1528. Petition for review of non-final administrative order dismissing or striking challenge to plan amendments based on allegation that the amendments are inconsistent to the extent they impair CNL’s property rights. Status: Remanded September 24, 2008, 33 Fla. L. Weekly D2265a.

Collins v. Monroe County, Case No. 3D07-1603. Appeal from an amended order granting state’s motion for summary judgment on ripeness grounds. Status: Oral argument held for June 30, 2008.

Luis Stabinski and Bell Stabinski, et al v. Miami-Dade Co., Department of Planning and Zoning, et al, Case No. 3D08-1226. Appeal from order dismissing complaint because Plaintiffs’ taking claims are not ripe. Status: Oral argument held October 29, 2008.

Shands, et al, v. City of Marathon, Case No. 3D07-3288. Appeal from order to dismiss property owners’ complaint because the property owners’ claims were time barred and unripe. Status: Oral argument held June 30, 2008.

FIFTH DCA

Seminole Electric Cooperative, Inc. v. Department of Environmental

Protection Case No.: 5D07-3005. Appeal from DEP final order denying Seminole's application to construct and operate third generating station in Putnam County. Status: Reversed on June 13, 2008; request for rehearing denied July 16, 2008.

A. Duda and Sons v. SJRWMD, Case No. 5D08-1700. Appeal from final order denying Duda's petition to determine invalidity of agency rule and statement generally relating to the so-called agricultural exemption. DOAH Case No. 07-3545 (final order entered April 24, 2008). Status: Notice of appeal filed May 27, 2008.

Aileen C. Alexander and James Pearsall, etc. v. City of New Smyrna Beach, Case No.: 5D08-1719. Appeal from a DCA final order adopting a recommended order granting a motion to dismiss, as untimely, a petition challenging a small scale amendment. The petition was filed by fax and was received shortly after 5pm on the 30th day. Status: Dismissed for lack of jurisdiction June 25, 2008.

Lawrence E. Sellers, Jr., Larry. sellers@hklaw.com, *received his J.D. from the University of Florida College of Law in 1979. He practices in the Tallahassee office of Holland + Knight LLP.*