

## KeyOpinion

# Tallahassee Follies

**Richard L. Hershatter**  
Contributing Columnist

**When a politician sits at his computer,  
Deciding that he'll write some brand new laws,  
Does he ever feel the need to hire a tutor,  
Or do his actions ever give him pause?**

**It has been said that legislative meetings  
Are hazardous to liberty and health;  
The public bears the brunt of frequent beatings,  
As bureaucrats lay waste to private wealth.**

It was way back in 1866 that New York Judge Gideon Tucker made the never-to-be-forgotten observation that "no man's life, liberty or property are safe while the legislature is in session."

As prescient as that observation may have been, the good judge could not possibly have foreseen the wild and reckless actions of a typical session of the Florida State Legislature in Tallahassee.

As all taxpaying Florida residents know, a constitutional amendment, known as the "Save Our Homes" amendment, promulgated in 1992, afforded all residential property owners the protection of a cap on runaway revaluations. Quite simply, it required that no local taxing authority could increase the appraised value on a taxpayer's homestead in any one year by more than the increase in the cost of living, or three per cent, whichever was less.

Although the rule has resulted in charges of unfairness from snowbirds who bought second homes in the state, but elected to remain citizens of the northern climes from which they came, those inhabitants who choose to invest their futures in Florida are assured of not falling victim to the observation postulated by United States Supreme Court Chief Justice John Marshall that "the power to tax is the power to destroy."

Unfortunately, as these words are being written, the State Legislature is in session in Tallahassee, and word has come that several representatives are tinkering with

the clause in question, to what end nobody knows. (One can only surmise that their motivation stems from the same impulse that drove Eve to mess with that damned apple, forever denying her and her progeny of the benefits of Paradise.)

What else can explain the actions of a Republican representative from the Town of Apopka by the name of Fred Brummer, who happens to be Chairman of the House Finance & Tax Committee?

This gentleman has publicly concluded that the Save Our Homes Amendment "favors the super-wealthy over the not-so-wealthy," and he has introduced bills that would limit the Save Our Homes Amendment to \$100,000, after which the subject property would no longer be protected by the Amendment.

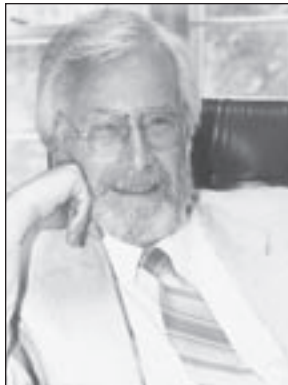
As a sop to protesters, he proposes that persons desiring to sell their property and buy another domicile would be entitled to transfer \$100,000 of the benefit with them and, if they lived long enough, would have their exemption increased by \$25,000 slowly, over a ten year period, to a maximum of \$50,000.

The question naturally occurs: *Where* is this character coming from, and *whom* does he represent?

Does he lie awake at night dreaming up ways to turn the Garden of Eden into a taxpayer's nightmare, or has he simply been bitten by the same snake that started it all in biblical times?

More importantly, why have his constituents not noticed that Mr. Brummer is a loose cannon and voted him out of office?

Unfortunately, one of his colleagues, a Republican representative from Miami by the name of Carlos Lopez-Cantera, has introduced a similar bill, and the two pro-



posals were merged and voted out of Committee by a five to three margin.

So now there are five suspects on whom the electorate should keep track, because the bill now goes to another House committee, where, if ultimately approved by that body and the full legislature by a three-fifths vote, it will then appear on the ballot for approval at the statewide election on Nov. 7.

There is one more adage applicable to this situation, and that is the observation that "eternal vigilance is the price of liberty."

These characters can only be in their positions of power, where they can do incalculable harm, because someone has not been paying attention.

Also on the ballot on Nov. 7 will be the names of Representatives Brummer and Lopez-Cantera, and if the voters have any sense, they will rise up in justified outrage and send Brummer back to Apopka and his colleague back to Miami.

And it behooves the rest of us to keep track of the voting records of legislators from our own districts. It may well be that Florida needs to adopt a statewide slogan of "Throw the Rascals Out."

**When our solons all forget why they're selected,  
And their goals begin to lead them each astray,  
Then the time has come to get them un-elected  
At the ballot box on next Election Day.**

**Let your voice be heard in righteous opposition  
To the politicians that last time were hired;  
Use the franchise that grants each the old tradition,**

**Collectively of stating: "Hey, you're fired."**

*Richard L. Hershatter is a retired lawyer and novelist who writes a syndicated column of interest to Floridians. He can be reached at Banyan502@aol.com.*

# Setting the P&Z Record Straight

**George Symanski**  
Guest Columnist

Although I am an appointed member of the Longboat Key Planning and Zoning Board (P&Z) and an elected member of the Board of the Public Interest Committee (PIC), I am writing this as an individual who has been wrongfully maligned in print by local columnists Richard L. Hershatter and Al Green of *Longboat News*, and Jim Brown of the *Sarasota Herald-Tribune*. They have spoken in ignorance and, apparently, without bothering to check with the Town Attorney before issuing their misinformed "legal opinions." We all know that a little knowledge can be a dangerous thing and, unfortunately, their "kernels" of land use law knowledge were extrapolated way beyond legitimate application in outright attacks on very legitimate and legal free speech.

By way of background, I spent over 26 years as a local government land use attorney, most of that as Deputy County Attorney in charge of the Land Use Section in booming Fairfax County, Virginia, just south of Washington, D.C. I became an expert in planning and zoning law in Virginia. That does not make me an expert in Florida (although many laws and principles are in common), but my expertise does help me know what to ask and when.

Below are some of the misstatements that I would like to address:

## Hershatter

March 10, 2006: "From the outset, part of Mr. Moore's problem has been the improper public opposition of several members of the Planning & Zoning Board-improper because they are supposed to wait until the matter is actually before them and evidence presented before they take a stand."

Oct. 28, 2005: "Planning and Zoning members, like jurors in a civil case, are not supposed to deliberate or make up their minds until after hearing all the evidence and viewing the exhibits."

March 24, 2006: "The attitude displayed by this quartet, both publicly and privately, mandates that each of

them recuse himself from consideration when, and if, a petition for zone change of Moore's property comes before their Board. A failure so to do will mean a certain Court slapdown and reversal, with the extra legal costs involved to the taxpaying public."

## Jim Brown

March 20, 2006: "Now Alan Moore... must go before Gilbert and the zoning board to argue his case. You can't help wondering if the deck already is stacked against him."

A question for Town Attorney David Persson: Should Gilbert and the others recuse themselves from the Moore case when it comes before the zoning board?"

## Al Green

March 31, 2006: "No lawyer doing his or her job would allow either Sandy Gilbert or George (sic) Szymanski to sit in judgment and possibly would even have a case against Jim Brown 'the younger' and Walter Hackett. All of the aforementioned are on the current PIC Board that took a strong position in opposition to the Moore request for a change in zoning."

## No Reason to Rezone

All of these charges are categorically wrong.

Let me briefly set the legal stage:

Adopted Town Law/Policy in the form of the Comprehensive Plan says Moore's should be zoned commercial (which it currently is).

That means that before Moore's can be rezoned to residential it must successfully achieve an amendment to the Comprehensive Plan by the Town Commission changing the commercial designation to residential. Without such a change the Commission cannot rezone to residential. There is nothing in law that declares this to be a "fair fight" before "civil jurors" without knowledge of the facts, expertise or experience in land use, or support for the existing planning. In fact, Moore's has a huge burden of persuasion that adopted Town Law is wrong. Our Town Law is presumed to be correct and in furtherance of

the public health, safety and general welfare. In technical terms, this is a legislative process, not quasi-judicial, and the P&Z would be acting in a legislative capacity in considering Comprehensive Plan changes. As such, we may speak freely ahead of time and enter into the plan amendment process with opinions, for example, that the adopted Town Plan is already correct.

Should a Plan Amendment come before the P&Z, proponents will receive due process in a public hearing in which they have the opportunity to persuade that their charge is in the public interest.

A very loose analogy for acting in a "legislative capacity" is that of a state representative candidate who campaigns on a platform that he/she desires to implement if elected and then follows through with votes in the state legislature after being elected. It is very loose because we are not politicians, are not elected and usually only make recommendations on, not enact laws. However, like elected legislators, we may have opinions, use our experience and expertise, and speak freely at this point in the process. The Town Attorney clearly stated that on the public record many weeks ago. The Supreme Court of Florida so held in *Martin County v. Yusem*, 690 So. 2nd 1288 (Fl 1997). Since we may speak and have opinions on a proposed plan amendment, it should be obvious that we may do so now, even before any amendment proposal exists.

So the critics have neither the law, common sense, nor your best interest behind their charges.

The actual law also makes eminent sense. If the Town allowed you to vote on whether to greatly increase densities all over the Island, would you only want to hear from the developers and their sympathizers? I, for one, surely appreciate that the law allows free speech when it does, and I am very wary of those who try to stifle it, especially when the speech just happens to be contrary to the "stiflers" point of view.

Stifled speech would leave a situation ripe for unintentional error or intentional exploitation. In either case, the public interest is not well served.

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