TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: John C. Rayson, Esq.

PREPARED BY: John C. Rayson, Esq.

SUBJECT: Mobile Home Moratorium

AFFECTED DISTRICT: All

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: Mobile Home Moratorium

REPORT IN BRIEF: Ordinance 2007-4, was adopted on February 21, 2007 providing for a moratorium on the acceptance of development applications for the redevelopment of mobile home parks within the corporate limits of the town; providing for exemptions; providing for vested rights; providing for appeals; providing for exhaustion of administrative remedies; for a term of one year.

PREVIOUS ACTIONS: Ordinance 2007-4 adopted on February 21, 2007.

CONCURRENCES: Legal Opinion on file

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

If yes, expected cost: $

Account Name:

If no, amount needed: $

What account will funds be appropriated from:

Additional Comments:

RECOMMENDATION(S):

Attachment(s): Memorandum and excerpts from Westlaw.

OFFICE OF THE TOWN ATTORNEY
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Memorandum

To: Members of the Davie Town Council

From: John C. Rayson, Town Attorney

Date: January 9, 2008

RE: Legal aspects of the recommendations of the Mobile Home Task Force

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1. To provide viable financing opportunities for the economic viability of mobile home communities.

   In my opinion, this may be accomplished through legislative advocacy. We are not prohibited from seeking support of the FHFC or the BCHFA, for long term financing, credit enhancements, state or county finance programs. These should be a priority of the state and county. We support County bonds for affordable housing.
   We are not prohibited from forming partnerships with banks or community development financial institutions. We should identify funding sources. Goal one is completely able to be accomplished, Town bond issuance remains a policy issue for Town Council.

2. To provide further affordable housing opportunities in the Town of Davie.

   We can create a Davie ordinance at the direction of Town Council which could include an Affordable Housing Trust Fund, Density Bonuses, and Fee Waivers under certain circumstances, as well as Inclusionary Zoning. We are not in a position currently to impose any linkage fees as part of an ordinance. Linkage fees are controversial, and if resorted to must be implemented only after an in depth study has been paid for by the Town. The cost of such a necessary needs assessment may be in excess of $100, 000.00. I have requested an opinion letter from Community Redevelopment Agency attorney Susan Delegal as to whether Tax Increment Funding may be used to provide affordable housing. Pending her report, it is my opinion, that TIF may only be

used for property including Affordable Housing within the Community Redevelopment Area, Land Banking is a legal strategy to promote affordable housing. Davie may wish to expand its ordinance regarding accessory units (granny flats, etc) for affordable housing adaptations.

3. To promote and encourage asset buildings among mobile home owners, particularly those that rent the property.

   The Town of Davie may wish to promote the creation of HOA's and cooperatives. The Town may promote partnerships with a Local Community Land Trust to develop projects and screen buyers. The Town could purchase MHC's; such strategies are legal but remain policy issues for Town Council.

4. To provide for housing alternatives for residents displaced by the closure of a MHC

   Of course F.S. 723 must be followed. Exit plans ordinances of municipalities are increasing. While there can be no preemption of state law, reasonable exit plans ordinances are legal. I find putting the burden on park owners/ developers to "make residents whole", to be vague, onerous, and problematic. What is a 30 year old mobile home worth? What does it mean to make an owner whole? Are we talking about the same thing? Of course the Town Council could add positions to the Housing and Community Development Department. This is a policy issue for Town Council and Administration and would require an appropriation of funds not budgeted.

5. To provide for incentives and preserve viable MHC's

   The Town should address existing code violations in MHC's in an aggressive manner. Capital improvements are laudatory goal which should be supported. Compelling capital improvements is a problem. Bonding is a policy issue for Town Council. Grant financing is from HUD a great option, if available. CDBG funding is another excellent source of revenue but such is restricted and the availability of such is dependent upon the continuing cooperation of Washington and Tallahassee. It is not a guaranteed finding source. A loan program from the Town funded by Trust Funds could be a part of an affordable housing ordinance. I recommend putting density incentives into any ordinance that would be created. This could include parking and/or set backs relief as directed by Town Council policy. The Town could of course, discuss options with the Broward County Property Appraiser.

6. To evaluate implementation of recommendations and review status of ongoing MHC issues.

   To reiterate, adding positions to the Town's Housing and Community Development Department is a policy decision for the Town Council and

Administration. This is an appropriate department to administer the AHTF if one is created by ordinance. Use of the Davie Website and Newsletter to provide information and advertising is an excellent and cost effective idea.

7. To advocate for County and State policy and program improvements.

   We should lobby the state to reauthorize the Sadowski Housing Trust Fund through our legislative advocates. We should give or lobbying team marching orders to reauthorize the funds while "scrapping the cap" seeks an amendment to the use of Slip Funding, so that MHC's are included and seek more owner protection through amendments to FS 723. This is not a burden or expense which should be imposed on the unit owners, the developers or the Town. The Town should extend its moratorium for 3 months regardless of what the County might do.

8. To provide for the reuse of existing mobile home parks to meet the needs of Chapter 163 Florida Statutes.
   There should be language in the ordinance which refers to and addresses the affordable housing need in the Town of Davie. Secretary Pelham's e mail statement is not a legal opinion and it should not be elevated to such. A case from the 4th DCA dated January 2, 2008 is attached for your edification. Town Counsel urges caution on this issue as the law continues to emerge and evolve. Some exit plan requirements may be legally imposed, others may not be.

Respectfully submitted,

John C. Rayson
Town Attorney

JCR/ap

--- So.2d ----, 2008 WL 36618 (Fla.App. 4 Dist.)

District Court of Appeal of Florida,
Fourth District.
Myrna GALLO, Appellant,
v.
CELEBRATION POINTE TOWNHOMES, INC., d/b/a Rancho Margate Mobile Home Park and United Homes International, Inc., Appellees.
No. 4D07-496.
Jan. 2, 2008.

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Barry E. Goldstein, Judge; L.T. Case No. 06-7044 CACE11.
Janet R. Riley, Plantation, for appellant.

Carl R. Peterson, Jr. of Jolly & Peterson, P.A., Tallahassee, and Clark Cochran of Billing, Cochran, Heath, Lyles, Mauro & Anderson, Fort Lauderdale, for appellees.

WARNER, J.
*1 Appellant, a mobile home owner, appeals the dismissal of her declaratory judgment action against the mobile home park owner who sent notice of eviction to all of the park residents to pursue a change in use of the property. The owner sought rezoning of the property to construct townhomes, but the rezoning was not commenced prior to the notices of eviction. Appellant claims that the owner did not act in good faith in accordance with section 723.021, Florida Statutes (2005), because the eviction notice required her to abandon her mobile home prior to rezoning and a finding by the governmental body that other suitable facilities exist for the mobile home owners, as required by section 723.083, Florida Statutes. We affirm the dismissal of her complaint, concluding that section 723.083 does not create any good faith obligation on the part of the park owner to forestall eviction until rezoning is accomplished.

Appellant, Myrna Gallo, resided in Ranch Margate Mobile Home Park in Margate, Florida, in a mobile home she purchased in 2001. In February 2006 the park owner, Celebration Point Townhomes, Inc. ("Celebration"), sent a Notice of Park Closing to all park residents, pursuant to section 723.061(1)(d). This statute provides:

(1) A mobile home park owner may evict a mobile home owner, a mobile home tenant, a mobile home occupant, or a mobile home only on one or more of the grounds provided in this section.

....

(d) Change in use of the land comprising the mobile home park, or the portion thereof from which mobile homes are to be evicted, from mobile home lot rentals to some other use, provided all tenants affected are given at least 6 months' notice of the projected change of use and of their need to secure other accommodations. The park owner may not give a notice of increase in lot rental amount within 90 days before giving notice of a change in use.

§ 723.061(1)(d), Fla. Stat. (2005).

The letter informed Gallo that she must vacate the lot and find an alternative location for her mobile home by September 30, 2006. Celebration intended to assist the mobile home park tenants by purchasing their mobile homes based upon a set formula. The tenants could also elect to seek funding assistance from the statutorily created Florida Mobile Home Relocation Trust Fund.

Within ninety days of the notice, Gallo filed a complaint for declaratory judgment. She alleged the foregoing facts, as well as the fact that while Celebration had applied for a rezoning of the mobile home park, the City of Margate had not granted the rezoning so that no change in use was authorized at the time of the notice. She claimed that she would be forced to vacate the mobile home prior to the change in use and thus abandon the protection afforded by section 723.083, Florida Statutes (2005), which provided:

No agency of municipal, local, county, or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.

*2 Gallo's complaint contended that by notifying the tenants of their eviction prior to approval of the zoning change, Celebration violated its obligation of good faith and fair dealing required in section 723.021, which provides that "[e]very rental agreement or duty within this chapter imposes an obligation of good faith and fair dealings in its performance or enforcement." § 723.021, Fla. Stat. (2005).

In its pleading opposing the complaint, Celebration contended that section 723.083 did not apply to it and instead only applied to state action. It also pointed to section 723.061(3) which provides, "The provisions of s. 723.083 shall not be applicable to any park where the provisions of this subsection apply." § 723.061(3), Fla. Stat. (2005) (footnote omitted).

The matter was referred to a magistrate who issued a report and recommendation to dismiss the complaint, as section 723.061(3) exempts the park owner from the application of section 723.083. In other words, defendants' only statutory responsibility, when evicting tenants for a change in use, is to comply with the notice requirements found in section 723.061. Because the defendants had complied with the statute, Gallo had no claim against Celebration. The circuit court adopted the general magistrate's report in all respects and dismissed the claim with prejudice. Although the court technically dismissed Gallo's complaint, it actually declared her rights with respect to the statutes involved, upon which she sought a declaration, concluding that they were inapplicable to Gallo. Gallo appeals.

Mobile home park owners and tenants have experienced a difficult relationship in Florida law. As noted in Harris v. Martin Regency, Ltd., 576 So.2d 1294, 1297 (Fla.1991):

Where mobile homes are concerned, substantial constitutional property rights are implicated on both sides of the debate. See art. I, § 2, Fla. Const. It is clear that a mobile home park owner has a constitutional property right to use the land for any lawful purpose. It is just as clear that mobile home owners are not mere tenants-they are home owners, and, as we recognized in Stewart, "[h]ome ownership is an important aspect of family life." [Stewart v. Green, 300 So.2d 889, 892 (Fla.1974)]. Hence, we observed that "a hybrid type of property relationship exists between the mobile home owner and the park owner and ... the relationship is not simply one of landowner and tenant. Each has basic property rights which must reciprocally accommodate and harmonize." Id.

To accommodate those diverging interests, the legislature enacted various statutes to protect both interests. It permitted the park owner to evict its tenants because of a change in use of the land comprising the mobile home park, but required at least six months' notice of eviction. See § 83.759(1)(d), Fla. Stat. (1983). The statute did not require the owner to specify the nature of the projected changes. Harris, 576 So.2d at 1296.

*3 In 1984, the legislature substantially rewrote and renumbered the mobile home statute. It continued, however, to permit a park owner to evict its tenants where a change in use was contemplated. In that rewrite, it also added section 723.083, regarding the duty of governments considering a rezoning petition to determine that "adequate mobile home parks or other suitable facilities existed for the relocation of the mobile home owners." § 723.083, Fla. Stat. (1984).

Due to "substantial problems within the mobile home industry," Fla. H.R. Comm. on Judiciary, HB 766 (1986) Staff Analysis 1 (April 21, 1986), the legislature again modified its statutes, particularly with respect to the eviction of mobile home tenants for a change in use. It retained the right of the park owner to evict for change in use but increased the notice period to one year of any projected change. § 723.061(1)(d), Fla. Stat. (1986). It adopted section 723.061(2) which required homeowners objecting to a change in use to file a petition for administrative or judicial remedies within ninety days from the date of their notice of eviction or be barred from relief. A homeowner was not prevented by this provision from objecting to a zoning change. § 723.061(2), Fla. Stat. The legislature also included a requirement that the park owner elect to either buy the mobile home owner's home, relocate it to another park, or pay the homeowner to relocate. § 723.061(2)(a), Fla. Stat. Where this purchase/relocation provision applied, "The provisions of s. 723.083 shall not be applicable ...." § 723.061(2)(d), Fla. Stat.

This requirement that the park owner purchase the tenant's home or relocate it was declared unconstitutional in Aspen-Tarpon Springs Limited Partnership v. Stuart, 635 So.2d 61 (Fla. 1st DCA 1994). The court found that it constituted a taking of property without just compensation and went "far beyond the legitimate goal of reasonably accommodating conflicting interests...." Id. at 67-68.

The legislature responded in 2001 and again modified the statute, eliminating the purchase/relocate requirement. It reverted to requiring six months' notice of eviction for change in use of the park. § 723.061(1)(d), Fla. Stat. (2001). It eliminated section 723 .061(2), regarding the purchase/relocation obligation of the park owner, except for subsection (2)(d) regarding the application of section 723.083, which it renumbered subsection (3). Thus, that subsection read, "The provisions of s. 723.083 shall not be applicable to any park where the provisions of this subsection apply ." § 723.061(3), Fla. Stat. The statutory revisors included a Note: "The reference to 'this subsection' appears

as it did prior to the amendment by s. 6, ch.2001-227. Prior to the amendment, subsection (3) was paragraph (2)(d).” § 723.061(1)(d), Fla. Stat. (2001).

To replace the purchase/relocation obligation, the legislature created the Florida Mobile Home Relocation Corporation to provide relocation assistance to mobile home tenants required to move pursuant to an eviction for change in use of the park. § 723.0611, Fla. Stat. (2001). The corporation would operate the Florida Mobile Home Relocation Trust Fund. § 723.06115, Fla. Stat. Mobile home park owners seeking to evict its tenants for a change in land use would make payments to the fund for each mobile home owner who applied for relocation assistance. This statute was in existence when Celebration sent its notice of change of use eviction to Gallo.

*4 From this review of the statutes, it is apparent that the obligation of the government to consider the adequacy of parks for relocation, required pursuant to section 723.083, is independent of the park owner's right to evict a tenant for change in use, pursuant to section 723.061. Harris makes this clear, as a park owner does not have to specify what change of use it sought. 576 So.2d at 1296. Section 723.083 does not place any burden on the mobile home park owner; the park owner's only obligation upon filing an application for rezoning is to give notice of the application to the park tenants. § 723.081, Fla. Stat. (2005). It is the government's obligation to determine that adequate space is available for the mobile home owners or “other suitable facilities.” § 723.083, Fla. Stat.

Since 1986, the legislature sought to provide relief to mobile home park tenants where park owners sought eviction to change the use of the park. It provided assistance for relocation first by requiring the park owner to purchase or relocate and then, after that provision was declared unconstitutional, from a special fund it created. Where this relief was provided, the legislature did not require compliance with section 723.083 by the government. See § 723.061(2)(d), Fla. Stat. (1986). This makes sense, because where the tenants' mobile homes are bought or relocated by the park owner or through the assistance of the State Fund, it would affect the zoning authority's calculation of the adequacy of remaining facilities. The legislature continued this exemption from section 723.083 when it amended the statute again in 2001 and set up the trust fund.

When the legislature revised the statute, it eliminated the subsections of the former section 723.061(2), except subsection (d), providing for the inapplicability of section 723.083. It merely renumbered it as subsection (3). The legislature obviously did not intend to eliminate the substance of the provision. It is a cardinal rule of statutory construction that appropriate effect should be given to all the terms of the statute when it can be done without violating legislative intent. See Davis v. Florida Power Co., 60 So. 759, 765 (Fla.1913). Gallo's interpretation would render section 723.061(3) meaningless.

The review of the history of the provisions makes it clear that the legislature did not intend to require compliance with section 723.083 where it had provided for alternative compensation to the mobile home owner for relocation. Because the legislature expressly rendered section 723.083 inapplicable to change of use evictions, we conclude that the trial court correctly determined that the statutory obligation Gallo asserted the park owner violated did not exist. The park owner had no obligation to await the results of the rezoning decision before sending its notice of eviction, which is essentially what Gallo maintains should occur. We therefore affirm.

KLEIN and GROSS, JJ., concur.

Fla.App. 4 Dist.,2008.

Gallo v. Celebration Pointe Townhomes, Inc.
--- So.2d ----, 2008 WL 36618 (Fla.App. 4 Dist.)

Briefs and Other Related Documents (Back to top)

• 4D07-496 (Docket) (Feb. 2, 2007)
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