LEGISTAR NO. 060736
LEGISTAR NO. 060737

# MEMORANDUM

**Office of the City Attorney**

Phone: 334-5011/Fax 334-2229
Box 46

**TO:** Mayor and City Commission
Marion J. Radson
**FROM:** City Attorney

**DATE:** April 9, 2007

**SUBJECT:** Petition Nos. 179 LUC-06 PB and Petition No. 180 ZON-06 PB
(Biltmore Corporation of Gainesville a/k/a Alamar Gardens Mobile Home Park);
Legistar Nos. 060736 & 060737

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Upon the review of the above referenced Petitions that appear on the city commission agenda of April 9, 2007, it is evident that these Petitions, if approved, would result in the removal or relocation of mobile home owners residing in the mobile home park. Upon information and belief, the change of the land use and zoning to MUM (Mixed-Use Medium-Intensity) and MU-2 (Mixed Use Medium Intensity District) respectively, as requested by the Petitioner, would not permit or allow mobile home parks.

Accordingly, the city commission must consider the application of Section 723.083, F.S., which states "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." This means that the city commission must find that adequate mobile home parks or other suitable facilities exist for relocation of the mobile home owners of Alamar Gardens Mobile Home Park prior to approving these Petitions.

In this regard this Office issued two opinions in response to questions raised by the City Plan Board in August and November 2006 regarding another application for a land use and zoning change of a mobile home park. The opinions expressed by the City Attorney's Office in these opinions are equally applicable and informative in regard to the issues that will be before the city commission in the Alamar Gardens Petitions. These opinions are therefore attached. Thank you.

Attachments (2)

cc: Jonathan F. Wershow, Attorney for Petitioner

# MEMORANDUM

**Office of the City Attorney**

Phone: 334-5011/Fax 334-2229
Box 46

**TO:** City Plan Board **DATE:** 11/14/06
**FROM:** Marion J. Radson, City Attorney

**SUBJECT:** Change in Zoning of Mobile Home Park;
Re: Petition Nos. 87LUC-06 PB and 88ZON-06 PB

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This is a follow-up memo in response to further questions related to Petition Nos. 87LUC-06 PB and 88ZON-06 PB and Section 723.083, Florida Statutes, which states "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."

Your current questions are as follows:

1) Must the finding by the Board and Commission, that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners, be limited to a demonstration that adequacy of alternative housing is available or can it also be based on whether sufficient financial (or other) re-location assistance is being provided by the Petitioner?

2) Can the Board or Commission deny the rezoning and land use change petitions based on a finding that assistance, financial or otherwise, is not adequate even though adequate housing is shown to be available?

## SUMMARY

In regard to your first question, having reviewed your request and the backup materials, we answer by stating that Section 723.083, Florida Statutes, does not provide the City with the authority to require the Petitioner to demonstrate that they have provided "sufficient financial (or other) relocation assistance."

In reply to your second question, we refer you to our Memorandum dated August 8, 2006, wherein we noted that the City Commission must ultimately decide whether the rezoning petition should be approved based upon the competent substantial evidence submitted by the owner petitioner. In reaching this decision the City must determine whether the Petitioner has met the burden of demonstrating that "adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners."

## ANALYSIS

In 1994, Section 723.061(2), Florida Statutes, required a mobile home park owner who wanted to change the use of the land comprising the mobile home park to buy the mobile home, relocate the mobile home to another park owned by the park owner, or pay to relocate the mobile home to another mobile home park. That same year, a group of mobile home park owners filed a complaint against the Secretary of the Department of Business Regulation, seeking a declaratory judgment that Section 723.061(2), F.S., was unconstitutional. The park owners claimed that this statutory section required them to hold their property out for rent in perpetuity; that it transferred a possessory interest in their land to the tenants, requiring the owner, in order to change the use of their land, to pay their tenants a "ransom" which included part of the value of the land.

The First District Court of Appeal agreed with the mobile home park owners and struck down Section 723.061(2), Florida Statutes, as an unconstitutional regulatory taking of property without compensation.

In 2001, the law was changed and the Florida Mobile Home Relocation Corporation was created in Section 723.0611, F.S. Under this relatively new law, a mobile home owner who is required to move due to a change in use of the land comprising the mobile home park would be entitled to reimbursement of certain moving expenses from the Corporation. If the mobile home owner moves to a new location within a 50-mile radius of the vacated park, they would be entitled to the amount of actual moving expenses. In the alternative, they could be eligible for up to $3,000 for a single-section mobile home or $6,000 for a multi-section mobile home, whichever is less. Moving expenses would include the cost of taking down, moving, and setting up the mobile home in the new location.

These reimbursement expenses are funded, in part, by the mobile home park owner, who is required to pay to the Florida Mobile Home Relocation Corporation $2,750 for each single-section mobile home and $3,750 for each multisection mobile home for which a mobile home owner has made application for payment of moving expenses. In addition, once a year the mobile home owner pays to the Corporation a surcharge in the amount of $1 for each mobile home lot within a mobile home park which they own.

One section which is relevant to your question regarding the mobile home park owner providing financial or other assistance to the mobile home owner is Section 723.06116, F.S., which states that a mobile home owner would not be entitled for reimbursement if the mobile home park owner moves a mobile home owner to another space in the mobile home park or to another mobile home park at the park owner's expense.

## CONCLUSION

In conclusion, Section 723.083, F.S., requires the City to determine, based on the competent substantial evidence presented, whether the Petitioner has met the burden of demonstrating that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners before the rezoning petition can be approved. It does not, however, provide authority to the City to require the Petitioners to submit proof of providing financial or other assistance to the mobile home owners. Indeed, if the mobile home owner accepts financial assistance for moving expenses from the park owner they would be rendered ineligible for assistance by the Florida Mobile Home Relocation Corporation.

# MEMORANDUM

**Office of the City Attorney**

Phone: 334-5011/Fax 334-2229
Box 46

**TO:** City Plan Board **DATE:** August 8, 2006
**FROM:** Marion J. Radson, City Attorney

**SUBJECT:** Change in Zoning of Mobile Home Park;
Re: Petition Nos. 87LUC-06 PB and 88ZON-06 PB

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You have asked this office to reply to two questions related to Petition Nos. 87LUC-06 PB and 88ZON-06 PB and Section 723.083, Florida Statutes, which states "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."

Your questions were as follows:

1) Is Section 723.083, F.S., relevant to the two petitions before the City Plan Board?

2) If it is relevant, who is responsible for making a determination that "suitable facilities exist for the relocation of the mobile home park owners – the City, the agent, or the owner of the 9.9-acre mobile home park?"

## SUMMARY

In regard to your first question, having reviewed both petitions and the accompanying backup materials, we answer your question in the affirmative.

In reply to your second question, the City Commission must ultimately decide whether the rezoning petition should be approved based upon the competent substantial evidence submitted by the owner petitioner. In reaching this decision the City must determine whether the Petitioner has met the burden of demonstrating that "adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners."

A related issue is what constitutes the existence of "adequate mobile home parks or other suitable facilities for the relocation of the mobile home owners". This opinion will also provide guidance.

## ANALYSIS

A very recent case from another jurisdiction is instructive in this matter. In March 2006, the Circuit Court for the Sixth Judicial Circuit in Pinellas County, Florida found that the City Council was required to determine whether adequate mobile home parks or other suitable facilities existed for the relocation of the mobile home owners before the rezoning application could be approved. The record indicated that the City Council was very concerned about the mobile home residents being able to afford other adequate or suitable housing. The mobile home park's rental rates were $196 and $205, and the Council reviewed a survey submitted by the Petitioner which showed apartment rental rates ranging from $410 to $1,600. The Petitioner had also submitted information regarding other mobile home parks, but the City Council questioned the credibility of the survey because the Petitioner did not distinguish between parks which charge a flat monthly lot rent and those mobile home parks that are co-ops, which might charge $27,000 or more for a share, and then a monthly rent and a maintenance fee. The survey had also failed to provide information on which mobile home parks had limitations, such as not allowing mobile homes more than ten years old.

Additionally, in this case the burden of proof was on the Petitioner, as the rezoning applicant, to demonstrate that suitable and adequate facilities existed for the mobile home residents who would, at some point, be forced to relocate due to development of the property into townhomes. The City Council had based their determination on the evidence in the record, which evidence was reviewed by the Circuit Court. Based on these facts, the Circuit Court declined to substitute its judgment for that of the City Council and denied the Petition. Although this case from a trial court in the Sixth Judicial Circuit is not binding on the courts in Alachua County, this is the only available court decision on this issue and would be persuasive to a reviewing trial court.

The City can also look to Attorney General Opinions on matters of state law. Two informal Attorney General opinions provide guidance to the City on the proper interpretation of this statute. Although Attorney General Opinions do not have the force of law, they can be persuasive to courts in interpreting state law.

In an informal opinion dated January 3, 1986, the Attorney General attempts to establish the legislative intent behind the passage of Section 723.083, F.S., from the plain language of the statute. Factors to be considered in determining the "suitability" of relocation facilities are not expressly set forth in the statute. On the other hand, he notes that nothing in the language prohibits a zoning authority from considering facilities other than mobile home parks.

The Attorney General further notes that prior to the enactment of Chapter 74-160, Laws of Florida, the Governor's Task Force on Mobile Homes had published its findings on the mobile home industry. The Task Force found that although mobile homes could be relocated, that they were not really mobile, but were placed in mobile home parks with an expectation of permanency. The Task Force also acknowledged the low cost of mobile homes, and their availability to those who could not afford conventionally built housing.

The findings of the Task Force were discussed by the legislative committees during hearings held prior to the enactment of this law, and committees were also provided information indicating that in many areas of the state, the populations of many mobile home parks were

composed primarily of senior citizens on fixed incomes. Members of the committees noted that land was becoming more valuable for commercial and residential development, and observed that individuals evicted from mobile home parks due to changes in zoning would be unable to afford other types of housing and would consequently have nowhere to live. Thus, the Attorney General opined that the legislative intent in using the phrase "adequate mobile home parks or other suitable facilities" was to ensure that the relocation facilities be appropriate to the financial and other needs of the specific population of mobile home owners who would be displaced by rezoning.

In a more recent informal opinion dated December 13, 2005, the Attorney General confirms the earlier opinion and notes that the statute has not been amended nor have any appellate judicial decisions been rendered which would affect the earlier opinion.

Unless and until legislatively or judicially determined otherwise, we are of the opinion that the state law places the burden on the property owner/petitioner to show by competent substantial evidence that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home park owners. To meet this burden, the property owner/petitioner could demonstrate the availability of alternative housing which is appropriate to the needs, primarily financial, of the **specific population** of mobile home owners to be displaced. This could be accomplished by submitting information regarding the mobile home park at issue and its rental structure, by submitting information on other mobile home parks and apartments with their associated rental structures and availability, and/or by submitting information regarding all potential costs of relocation.

## CONCLUSION

In conclusion, Section 723.083, F.S., is relevant to the petitions before the Board. The City must determine, based on the competent substantial evidence presented, whether the Petitioner has met the burden of demonstrating that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners before the rezoning petition can be approved.

Prepared by: Natalie McKellips/ACS
Natalie McKellips, Assistant City Attorney

Approved and Submitted by:
Marion J. Radson, City Attorney

cc: Mayor and City Commissioners