



MEMORANDUM

Office of the City Attorney

Registrar No. 060941

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

TO: Mayor and City Commissioners
FROM: City Attorney
SUBJECT: Report on Buck Bay Mobile Home Park

DATE: February 9, 2007
12:15 p.m.

Recommendation

(1) Hear the report of the City Attorney; and (2) Authorize the Mayor to execute the Letter Agreement on behalf of the City.

Introduction

At the City Commission meeting on December 11, 2006, you asked this Office to provide you with a detailed report on the facts leading up to the adoption of the ordinance that amended the Buck Bay Planned Unit Development. This report includes the timelines as to what the petitioner/property owner knew, how the property came to be for sale, the transfer of ownership, and the notice of eviction by the new property owner.

In late December and early January, staff from the City Attorney's office met with Tom Spain, Susan Spain and John Kish (the former owners), Edwin Dix (the principal owner of Edix Investments, Inc. and current owner of Buck Bay) and Planning staff. Our factual findings are based on these meetings and a review of correspondence, minutes and meeting recordings. Copies of relevant documents and correspondence are attached as Exhibits as noted below.

Facts

Buck Bay consists of approximately 31.13 acres located on the East side of State Road 121, one mile north of its intersection with US 441 (the "Property")(Composite Exhibit "A"). In 1982, by Resolution #Z-82-43, the Alachua County Commission changed the land use from Agriculture to Medium Density - Mobile Homes (up to 8 dwelling units per acre) and rezoned the property from Agriculture to Planned Use Development (PUD) (Composite Exhibit "B"). The County Resolution does not expressly state the permitted or prohibited land uses; however, the Resolution incorporates by reference the zoning application and the application lists the land use for 17.68 acres as "Mobile Home Lots". The Property was platted in 1982 and replatted in 1983 as a Planned Unit Subdivision consisting of 144 lots ranging in size from 4,551 square feet to 11,846 square feet, with an average lot size of 5,075 square feet (Composite Exhibit "C").

From 1983 to the present, the Buck Bay Planned Unit Development has been operated as a residential mobile home park. The Property is owned by one entity (formerly Buck Bay Ltd., a Florida limited partnership and now by Edix Investments, Inc., a Florida corporation) and the landowner leases individual lots to persons who own a mobile home that is placed on the lot pursuant to the terms of the prospectus, lease agreement and park rules and regulations. The prospectus for Buck Bay states that the landowner reserves the right to sell any or all of the lots within Buck Bay, at any time, provided the landowner first notifies the mobile home owner of the proposed sale and gives the mobile home owner a 12 month period in which to buy the lot for a price 10% below the anticipated retail lot price (Page 14 of Exhibit "D"). The rights of the landowner and mobile home owner with respect to residential mobile home parks are regulated by the Division of Florida Land Sales, Condominiums and Mobile Homes of the Department of Business and Professional Regulation under Chapter 723, Florida Statutes and regulations promulgated by the Department (Excerpts from Chapter 723 are attached as Composite Exhibit "E"). The statute prohibits local governments from enacting any regulation with respect to this subject matter. The statute requires that a prospectus be given to each mobile home owner who is considering signing a lease to locate his/her home in the mobile home park and is intended to afford protection to homeowners in the mobile home park. The statute further provides a cause of action for damages for loss incurred by mobile home owners who reasonably relied on a prospectus (or other information) that is false or misleading. The statute also provides the landowner a right to lawfully terminate leases and close the mobile home park, due to a change in the use of the land, upon giving 6 months notice to the mobile home owners. There does not appear to be legal precedent establishing how a court would reconcile these rights.

In 1992, the Property was annexed in to the City by Ordinance No. 3768. In 1994, by adoption of Ordinance No. 3939 (Exhibit "F"), the City rezoned the property to the city zoning category of "PD". The PD zoning impliedly adopted the County's PUD zoning regulations.

Beginning in 2003, upon information provided by the former owners, the cumulative effect of park management difficulties, declining profitability, damage from Hurricane Andrew and the partners nearing retirement age, caused the former owners (Shirlee Gerber, Tom and Susan Spain and John and Kathy Kish) to discuss the future of the mobile home park operation. By mid 2005, after weighing several alternatives, the owners became interested in placing modular homes (basically a home that is constructed in a factory to Florida Building Code standards, certified by the Florida Department of Community Affairs, transported and set up on the home site and generally permitted and insured as a "site-built" home) on vacant lots within Buck Bay. In a letter dated August 26, 2005 addressed to Tom Saunders (Exhibit "G"), Mr. Spain briefly explained the owners' conceptual plan and requested review and comment on same. Planning staff scheduled a pre-application development conference, in which City Planning staff and Mr. Spain reviewed the County Resolution for Buck Bay Planned Unit Development. Planning staff determined that an amendment would be necessary to clarify that modular or site-built homes could be constructed on the lots. In addition, City staff required that updated stormwater runoff/drainage calculations be provided to address staff concern over the performance of the stormwater system in the event the impervious area was increased as modular/site-built homes are constructed. An application for a text change amendment to the PD was filed on January 10, 2006 (Exhibit "H").

On March 9, 2006, Mr. Spain held a neighborhood workshop to discuss the proposed amendment. The former owners, in a letter dated October 31, 2006 to the Buck Bay residents (Exhibit "I"), note that only about ten people showed up to the workshop and public hearings.

The letter further states “we assured those in attendance that even though the state statutes only require six months notice, we would make no changes which would affect current residents without one full year’s notice, and no such changes would take place prior to September, 2008 under any circumstances.”

On March 16, 2006, the City Plan Board heard the petition requesting a text change amendment to the Buck Bay PD Resolution to allow “site-built” homes to be constructed (Exhibit “J”). The amendment also required that the homeowner association documents limit the impervious area on any lot to not exceed 2,100 square feet. Manufactured homes would continue to be allowed as a use by right on the Property. Mr. Spain stated at the meeting that it was not their intent to sell the Property, but rather to improve the park by installing modular homes as lots become vacant. However, he noted that the partners may sell the Property if they received a good offer. He also stated that even though Florida Statutes only require the landowner to provide residents with six months notice prior to eviction, they would honor the leases being renewed for the September 1, 2006 - August 31, 2007 period. Finally, he represented that residents would not be forced to leave earlier than September of 2008 and that it was written in the prospectus that current lot lease holders would be given first right of refusal should the individual lots be sold, and could purchase the lots at a 10 percent discount should they choose to do so. The citizen comment focused on concern over residents being forced out and whether residents would get the first chance to buy the lots if they are sold. The Plan Board approved the petition 6-0.

The Petition was heard by the City Commission on May 8, 2006 (Exhibit “K”). The City Commissioners expressed concern that the owners of the park would use the amendment to the PUD as an opportunity to evict the park residents. The City Commissioners requested a memorandum from the City Attorney’s office to clarify whether the tenants of the Buck Bay Mobile Home Community were the “owners” of the mobile home in which they reside or whether they were lessees. Mayor Hanrahan also asked whether the proposed Planned Development Amendment could be phased in such a way as to ease the impact on residents. With the understanding that these issues could be further discussed and resolved at the first reading of the Ordinance, the City Commission approved the petition by a vote of 7-0 and directed the City Attorney to draft the Ordinance amending the Planned Development.

The City Attorney responded to the Commission’s request in a Memorandum to the City Commission and City Manager dated May 23, 2006 (Exhibit “L”). In the memo, the City Attorney confirms that phasing construction of conventional “site-built” housing is permissible under the City’s Land Development Code; however, the City has no authority over the relationship between landlords and tenants in mobile home parks because this area is preempted by the State. With respect to the status of “tenants” and “owners” of the individual mobile home owners, the City Attorney indicated that this would vary depending on the purchase and sale agreements but noted that correspondence from Mr. Spain stated that mobile home owners in Buck Bay were not permitted to rent their homes to a third party.

On June 10, 2006, Buck Bay, Ltd. and Edix Investments, Inc. entered into an Agreement of Purchase and Sale for the Property (the “Contract”) (Exhibit “M”). The Contract provided a 45 day due diligence period, and for closing to occur on or before October 2, 2006. The Contract did not make any express reference to the pending amendment to the Buck Bay PD. On July 25, 2006, at the end of the due diligence period, an Amendment to the Purchase Agreement was executed (Exhibit “N”). Under the terms of this amendment the contingencies were waived, the

\$50,000 deposit was deemed non-refundable, and the closing date was extended to on or before November 2, 2006.

On August 14, 2006, the City Commission heard the first reading of the Ordinance amending the Buck Bay PD (Exhibit "O"). Mr. Spain was in attendance, but did not address the Commission. City Planner Jason Simmons referred to a letter from Tom Spain to the City Commission dated May 9, 2006, as addressing many of the questions raised during the May 8th City Commission petition hearing. (Exhibit "P") The Ordinance was adopted on First Reading by a vote of 7-0. On August 28, 2006, the Ordinance was adopted on second and final reading (Composite Exhibit "Q").

On October 31, 2006, the sale of the Property closed. By letter dated November 17, 2006 (Exhibit "R"), the new owner, Edix Investments, Inc., informed the Buck Bay residents that the park had been sold and that it would be closing. The residents were requested to vacate the park in three stages, based on lot number, with the first group to vacate by November 1, 2007, the second group by March 2008, and the third group by August 2008. In this letter, Edix invited the residents to a meeting on December 9th to discuss the vacate dates and incentives he was offering to residents.

On or about December 5, 2006, Edix provided a second letter (Exhibit "S"), regarding the incentives and extended the vacate dates to January 15, 2008, April 15, 2008, and August 1, 2008.

After closing on the sale of the Buck Bay property, Mr. Spain wrote several letters to the City Commission and to Buck Bay residents assuring them that the prior owners' intent was always that no Buck Bay residents would be displaced prior to September 1, 2008 (Composite Exhibit "T").

On December 9, 2006, Mr. Dix held a neighborhood meeting at Buck Bay. After hearing resident concerns, Mr. Dix told the news media that he would further extend the vacate date for all residents to September 2008 (Exhibit "U").

Offer of Current Owner

As a result of meetings with this office and as a further assurance to Buck Bay residents, Mr. Dix in a letter agreement (Exhibit "V") has agreed that on or before February 23, 2007, Edix will:

- (1) submit a petition for a text change amendment to the Buck Bay Planned Development Ordinance to specify that prior to September 1, 2008, site-built single family residences may be constructed only on "Vacant" lots within Buck Bay;
- (2) not terminate any resident's lease, unless they have been legally evicted due to the lessee's default, closing of the park until September 1, 2008;
- (3) contribute \$1,000 per tenant to a "Buck Bay Assistance Fund Account" to be held by the City with funds paid to each eligible lessee upon relocation;

- (4) pay up to \$5,000 in buyer closing costs for each tenant who elects to purchase a new site-built home in Buck Bay; and
- (5) pay the costs of disposing of any mobile home abandoned by a tenant, upon receipt of the unencumbered mobile home title.

This office also requested that Edix honor the covenant in the prospectus, and the representation made by Mr. Spain at the Plan Board Meeting, by offering a 10% discount on the sale of the lot to any current tenant who wishes to buy a lot and site-built home package. However, legal counsel for Edix represents that Edix is not willing to offer any additional discount on the sale of lots because of its offer to pay up to \$5,000 in closing costs for each tenant who buys a lot and site-built home from Edix.

Summary

The mobile home owners are tenants of the current property owner, Edix Investments, Inc. The rights of the tenants are provided in the prospectus (refer to Exhibit "D") and in the individual leases with the landowner. The State preempts all regulation and control relating to the relationship between the landowner and the mobile home owner. Local governments, such as cities, are expressly prohibited from enacting any regulation with respect to such matters. The current statutory provisions provide protection to the mobile home owner, such as by providing a private cause of action for reliance on false or misleading information published by the landowner and providing relocation assistance funds. The statutory provisions also provide protection to the landowner, such as the right to lawfully terminate leases and close the mobile home park upon giving 6 months notice to the mobile home owners (refer to Composite Exhibit "E").

Alachua County in its original planned development zoning ordinance permitted Buck Bay to be constructed and operated as a mobile home park. Upon annexation into the City, the City adopted the County's Planned Use Development requirements and restrictions with respect to Buck Bay. Upon petition of the former owner, the city amended the Planned Development to permit site-built homes to be constructed on the lots, as well as permitting the continued existence of mobile homes as a use by right.

The new owner, Edix Investments, Inc., desires to build site-built homes and to replace the mobile homes with these site-built homes. To alleviate some of the hardship and difficulties of the tenants, Edix has agreed to allow the tenants to remain until September 1, 2008, and to offer additional rights and financial incentives to the tenants as set forth in the Letter Agreement that exceed those provided by state law.

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