

Summary

To: Town Commission
From: David Ottinger, Town Attorney
Subject: Biltmore Legal Discussion
Date: 1/29/2014

Summary: Discussion about the towns legal options as it relates to the Belleview Biltmore Hotel

Previous Commission Action: None

Background/Problem Discussion: You will recall at the end of last week's commission meeting, Commissioner Fowler inquired whether the town might have a right to bring legal action against the Belleview Biltmore Hotel owners to obtain and injunctive order either to:

1. Enjoin the sale of the property to a party who has expressed intent to demolish the hotel and redevelop the property; or
2. Compel repairs or maintenance to avoid demolition of the hotel occurring by reason of neglect.

Following that meeting I have conducted research to determine if the Town has sufficient legal basis to bring either action for injunctive relief. Although that research is ongoing I wanted to briefly advise you of the results of my research so far.

First, as to enjoining the sale of the property, I have found no basis for imposing such a restraint on the sale of private property under the circumstances. This issue arose in connection with RPD marina a couple of years ago and I reached the same conclusion that there was no compelling purpose of the town that could justify the town dictating who could own slips in the marina. Attempting to enjoin the sale of the hotel property would be a substantial violation of private property rights which could be actionable against the Town by the property owner; and, therefore, not a proper legal remedy toward preservation of the hotel. There is already adequate protection through the historic preservation ordinance special certificate of appropriateness process which will continue to apply to the hotel property and any subsequent owner if the property is sold again.

Second, there is authority for seeking a court order to compel property owners to repair the property to prevent further deterioration on the basis that there is ongoing "demolition by neglect". However, the cases are few, none have been in Florida, and they have differing results. I need to continue my research and analysis to determine if our circumstances justify the Town commencing such an action, the practicality of bringing such a lawsuit, and if done, the likelihood of success.

Alternatives/Options: N/A

Financial Implications: N/A

Recommendation: N/A

Proposed Motion: N/A