



Records Request

Pay First, Then You Can Have the Documents

by Michael J. Gelfand, Esq.

What happens when an owner requests copies of documents from a Florida community association? Of course, owners are entitled to review most association records and are entitled to make copies of the records. The question is: can the association require an owner to pay for copies of documents before the association provides copies to the owner?

In a decision that by analogy likely will impact Florida communities, a Florida appellate court recently ruled that the City of Riviera Beach could require a person to pay past due fees incurred as a result of a public

records request before the City complied with subsequent records requests. In *Lozman v. City of Riviera Beach*, 33 Fla. L. Weekly D2530 (Fla. 4th DCA, October 29, 2008), Lozman requested copies of transcripts of meetings as well as emails and letters. The City compiled the copies of the records and presented Lozman with a \$233.50 duplication bill.

Lozman refused to pay the bill; thus, the City refused to provide him with copies of the documents. Lozman then requested copies of additional documents from the City. The City told Lozman he had to pay the unpaid bill before the City would provide him with any additional copies.

Instead of paying the bill, Lozman sued the City alleging that the City violated the public records statute by refusing to provide him additional public records until he paid for the first copies. Lozman did not challenge the City's authority to charge for the copies. Lozman only challenged the City's right to require him to pay the past due bill before the City complied with the second request for documents. Lozman argued that the City must formally adopt a policy of requiring advance deposits for copies of documents.

The District Court of Appeal affirmed the trial court's denial of Lozman's petition. Although the court noted that it would be "prudent" to adopt a policy of requiring an advance deposit for public records, the court held that Lozman was not entitled to prevail because the statute in question, §119.07(4), does not require the City to do anything more than it did.

Readers will quickly grasp the similarity of issues when some owners become difficult when requesting records. Although a policy for advance deposits may not be expressly required for Florida community associations, it would nonetheless be a good idea for associations to spell out a policy for owners who make records requests. For help with specific language, contact your association's counsel.

Liability for Injuries Caused by Obvious Storm Drain

One can foresee potential problems that might arise when owning or operating property divided by a street. People can trip and fall over just about anything. Will a Florida community association be liable if someone trips over something in the road? The answer may be yes.

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A Florida appellate court recently addressed whether a landowner was negligent when encouraging guests to cross the street over a storm drain. The appellate court ruled that whether liability exists was a question for trial. In *Etheredge v. Walt Disney World Hospitality & Recreation Corporation*, 33 Fla. L. Weekly D2785 (Fla. 5th DCA, December 5, 2008), a 15-year-old park patron sustained injuries when her ankle got caught in a storm drain while she crossed the street. Testimony indicated that a Disney employee was working as a crossing guard and directing guests to cross the street at the exact location of the storm drain.

The park patron agreed that there was no defect in the design, construction, or

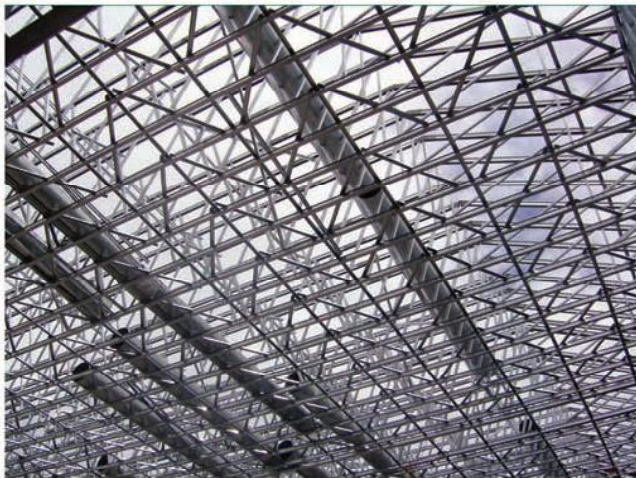
maintenance of the storm drain. The park patron also agreed she could have seen the drain if she had been paying attention to where she was walking. Instead, the park patron sued Disney claiming Disney was negligent in the manner in which Disney encouraged guests to cross the street.

The trial court found no evidence to submit the case to a jury and granted summary judgment to Disney. The District Court of Appeal reversed the judgment and remanded the case for a new trial.

“The negligent mode of operation theory relied upon by Plaintiffs is based upon active negligence on the part of a premises owner in the way that owner keeps its premises or conducts its business and how that mode of operation affects its customers,” the appellate court stated. The specific question in the *Etheredge* case was whether the manner in which Disney chose to have guests cross the street resulted in an unsafe condition. Therefore, the appellate court concluded that whether Disney knew or should have known that its mode of operation in directing park guests to step off a curb over a storm drain could cause danger was a question for the jury.

This decision is important for associations because it shows that corrective action must be appropriate under the circumstances. In other words, if an association notices that a sidewalk is broken and it must redirect pedestrians, then make sure that the redirection does not create a dangerous condition.

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