

MEMORANDUM

To: Janet Tutt, District Manager

From: Valerie C. Fuchs, District Counsel

Date: July 6, 2010

Re: Multi-Modal Paths

MULTI-MODAL PATHS ("PATHS"): USES & ENFORCEMENT

I. WHAT FORMS OF TRANSPORTATION ARE ALLOWED ON THE PATHS

Village Community Development Districts No. 1 - 4 ("districts") were developed as mixed-use retirement communities pursuant to County and State approved development orders ("D.O.s"). These development orders require that the districts provide non-automotive, non-vehicular, multi-modal paths for bicycles, pedestrians, skaters and golf carts. The D.O.s provide that the paths of one district shall connect to the existing system of multi-modal trails throughout the districts. Although I have not personally reviewed the development orders in connection with the districts South of 466, I have been advised that the same provisions regarding the construction of multi-modal paths and the requirement that the paths provide a continuous connection with the paths North of 466 are contained therein. It is clear that the intent of the development orders is to provide a uniform system of multi-modal paths throughout the districts as alternative transportation routes for pedestrians and golfers to access The Villages' numerous golf courses and amenities. It is also clear that the paths shall be open for use by pedestrians, skaters, bicycles and golf carts.

The question has been asked whether other means of conveyances such as electric personal assistive mobility devices ("Segways"), mopeds, motorcycles, street legal golf carts and low speed vehicles ("LSV") can use the multi-modal paths. Unfortunately, the D.O.s do not provide a definition for "multi-modal path", "non-automotive", "non-vehicular" or "golf cart". I was unable to find a definition for "multi-modal path" in any resource. Multi-modal transportation refers to utilizing various modes of transportation and the D.O.s. at hand provide that the districts' paths shall be open for use by non-automotive, non-vehicular means of transportation including but not limited to bicycles, pedestrians, skaters and golf carts. The applicable county codes and regulations provide some definitions regarding golf carts but they specifically pertain to golf cart use on county roads and are not on direct point with the issue at hand. The best resource for definitions is Florida Statutes and although the definitions are regarding the regulation of the state's uniform traffic control on public streets and license requirements they

can be used as guidance in answering this question. However, it should be noted that the ultimate deciding authority in regards to what types of conveyances would constitute a violation of the D.O.s is the applicable governmental body that granted the development order.

“Vehicle” is statutorily defined as every device by which any person may be transported upon a highway. See, §316.003 (75) Florida Statutes (“F.S.”)

In regards to Segways, Florida Statutes expressly provides that they are not “vehicles” or “motor vehicles” for purposes of the State Uniform Traffic Control regulations and are allowed to be operated on sidewalks and marked bicycle paths. See, §§316.003(21),(83) & §316.2068, F.S. Hence, Segways are non-vehicular, non-automotive and fit within the uses the districts are required by the development orders to allow on the paths and to prohibit the same would be a violation thereof. I have spoken to Lt. Wolfe, Sumter County Sheriff’s Office and he advised that his office treats Segways as bicycles.

Motorcycles and mopeds are defined as vehicular. See, §§316.003 (22), (75) & (77), F.S.; §§ 320.01(27) & (28) F.S & §316.208, F.S. Thus, motorcycles and mopeds do not fit within the uses authorized by the D.O.s to be operated on the paths. It should be noted that the statutes allow mopeds to utilize pedestrian sidewalks so long as they are being propelled solely by human power. See, §316.208(3) & (4), F.S. The same allowance would logically apply to the districts’ paths.

A golf cart is statutorily defined as a “motor vehicle” designed and manufactured for operation on a golf course for sporting or recreational purposes and not a “vehicle” for transporting people on the highways unless a golf cart is made “street legal” by complying with certain statutory operational and safety requirements . See, §316.003(68), F.S.; §320.01 (22), F.S.; §320.02, F.S. & §326.212, F.S. Although, a golf cart can be made “street legal” upon meeting certain statutory operational and safety requirements allowing it be operated upon certain public roads it is my opinion that a street legal golf cart is still a “golf cart” for purposes of the D.O.s and is authorized by the D.O.s to utilize the paths. The D.O.s expressly allow golf carts on the districts’ paths and do not make a distinction between street legal and non-street legal.

Florida Statutes treat golf carts and LSV’s independent of each other by providing each its own statutory definition and separate operation and safety requirements, See, §316.212, F.S.; §316.2122 & §320.01(42), F.S. However, as previously noted, those statutory provisions apply to the State’s uniform traffic control requirements for public streets and are not dispositive as to determining the permitted uses of the multi-modal paths. The intent of the multi-modal paths appears to be to provide alternative multi-modal transportation routes for pedestrians and golfers to access The Villages’ numerous golf courses and amenities, without having to access the public highways. While LSV’s were not in existence at the time the D.O.s were approved, “golf carts” are identified as a motor vehicle that is a permitted use under the D.O.s. Both traditional golf carts and LSV’s are used for golf-related purposes. It should be noted that The Villages’ golf courses allow LSV’s meeting certain standards to utilize the golf courses. Furthermore, golf-related vehicles, including LSV’s (since they came into existence) have been allowed to use the

multi-modal paths. In view of the forgoing, a strong argument and fair interpretation of the intent of the D.O.s is that LSV's are a type of vehicle that fit within the definition of "golf cart" for purposes of establishing the permitted uses of the multi-modal paths.

II. TRAFFIC CONTROL MEASURES

A. Regulation of Permitted Uses.

If it were not for the lack of enforcement powers vested within the districts, as discussed below, the districts, as owner of the paths and in order to maintain the same, could adopt reasonable rules regarding what types of transportation methods can use the paths so long as the paths continued to provide non-automotive, non-vehicular ways for bicycle, pedestrian, skater and golf cart use. Hence, the districts could adopt a rule prohibiting certain types of conveyances (i.e. motorcycles) except those types required to be allowed per the development orders if there was a means to enforce said rule. However, as discussed below, due to the districts' current lack of enforcement power such a rule would have no real value.

B. Speed Limits

As owner of the paths the districts can adopt reasonable rules regarding the use thereof including the establishment of speed limits for safety purposes and in order to maintain and preserve the amenity. However, such a rule would have no real value due to the districts' lack of enforcement power as discussed below.

C. Speed Bumps

The district has the authority to construct speed bumps, in accordance with accepted engineering practices and state guidelines, in an effort to increase public safety and to reduce damage caused to the paths by increased speeds.

III. ENFORCEMENT

If the districts were to adopt rules for use of the multi-modal paths, such as speed limits, or types of conveyance usage, then the method of enforcement would be an issue.

Community Development Districts do not possess any law enforcement powers. The districts possess only such powers as are expressly granted by statute or necessarily implied therefrom in order to effectuate an expressly granted power. Chapter 190, Florida Statutes, sets forth the districts' powers and duties. My examination of Chapter 190, reveals no provision which grants law enforcement powers to the districts or purports to authorize the districts to enforce speed limits and other restrictions similar to the method of enforcement contained in Chapter 316, F.S., the State Uniform Traffic Control statute. Nor can I conclude that such authority is necessarily implied because it is essential to carry out the expressly granted powers of the districts since Chapter 190 expressly provides that the districts "may not exercise any police power". See, §190.012(2)(d), F.S.

The Sumter County Sheriff's office has advised that its attorney has opined that the districts' paths do not meet the statutory definitions of "street," "highways" or "roads". Thus, it is their attorney's opinion that the County does not have jurisdiction to install traffic control devices on said paths nor does the Sheriff's Office have jurisdiction to enforce any traffic control devices thereon. Based on a close examination of Chapter 316, State Uniform Traffic Control, and Chapter 320, Motor Vehicle Licenses, I am in agreement with this opinion.

Accordingly, since the districts do not possess any law enforcement power and the Sheriff's Office does not have jurisdiction to exercise its law enforcement power over the districts' paths, we are left with meager means of enforcing any adopted rule pertaining to the paths.

The districts could seek an injunction against a person violating the districts' rule whereby the districts would file a lawsuit against the alleged violator requesting the court to forbid the violator from continuing to violate the rule (i.e. speeding or using prohibited conveyance). This could be costly and time consuming.

The districts could also use Florida's trespass statutes as a means of enforcement in regards to a rule prohibiting certain types of conveyances upon its paths. An individual commits the offense of trespass on property when, without being authorized, the person remains on the property after notice against entering or remaining has been given. The districts would need to provide notice to the trespasser and then call local law enforcement to charge the violator with trespass.

In essence, the districts have no viable enforcement powers. A possible solution to this enforcement dilemma is to seek a legislative change to Chapter 316, F.S., to expand the traffic control and enforcement jurisdiction of local law enforcement agencies to extend to multi-modal paths that are open to the public.

IV. GOLF CART REGISTRATION

The question has been raised whether the districts could impose a mandatory registration process whereby any golf cart that utilizes the paths must first register and be inspected for compliance with certain rules. The districts do not possess any law enforcement powers. Thus, they can not mandate or enforce such a registration process. However, there is no apparent obstacle to the districts offering a voluntary inspection and registration program as a service to those persons operating golf carts upon the districts' paths.

V. CONCLUSION:

The districts may adopt a rule regulating the type of conveyances used on their paths so long as the underlying development orders are not violated and speed limits may be established and posted for safety purposes and to maintain the districts' infrastructure. However, until and unless legislatively or judicially determined otherwise, the districts lack sufficient law enforcement powers to enforce such rules.

If the statutes were legislatively amended to provide the necessary enforcement powers to enable the districts to adopt rules regarding their multi-modal paths, I would recommend prior to adopting any such rule that it be submitted to the applicable county attorney for an opinion that the rule would not be in violation of the underlying development order. The counties will most likely look to the districts for guidance on what has been allowed in the past and what types of conveyances are typically allowed on the surrounding golf courses.

It should be noted that the districts are not alone in facing this issue of lack of enforcement over traffic control on multi-modal paths. I have spoken to other county attorneys and they have expressed their frustration over the same jurisdictional issues. The continued growth of golf communities throughout the state of Florida has increased the awareness of the issue, but in regards to multi-modal paths it has yet to be addressed by the legislature. During the past legislative session the legislature did pass House Bill 971, which will become effective September 1, 2010, but it only addresses the use of golf carts and bicycles on sidewalks and bike paths as defined in Chapter 316, Florida Statutes, and not the use thereof on multi-modal paths.

I strongly recommend that the districts hold a joint workshop to discuss the matters covered herein regarding the use of speed bumps, whether to seek legislative changes to expand the enforcement jurisdiction of local law enforcement agencies, speed limits and desired types of conveyances so there is continuity among the districts as required by the development orders.