

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

JULY TERM 2004

**M. ROSS SHULMISTER,**

Appellant,

v.

**CITY OF POMPANO BEACH,** a Florida  
municipality, and **POMPANO BEACH  
REDEVELOPMENT AGENCY,**

Appellees.

\_\_\_\_\_  
CASE NO. 4D03-2919  
\_\_\_\_\_

Opinion filed August 18, 2004

Appeal from the Circuit Court for the  
Seventeenth Judicial Circuit, Broward County;  
Charles M. Greene, Judge; L.T. Case No.02-  
14279 CACE (12).

M. Ross Shulmister, Pompano Beach, pro se, for  
appellant.

Susan F. Delegal of Holland & Knight LLP, Fort  
Lauderdale, for appellees.

KLEIN, J.

This appeal involves whether the City of  
Pompano Beach, under its charter, can convey  
property designated as a recreation facility without  
a referendum. We conclude that a referendum is  
necessary and reverse the summary judgment in  
favor of the City.

In 1976, the City adopted a charter which  
provided that within a short period the City would  
certify an inventory of all property owned by the  
City and assign a designation to each parcel. The  
charter generally authorized the City to sell or  
dispose of city property by resolution adopted by

the city commission. Certain property, however,  
including recreational facilities, could be  
transferred only after approval in a referendum  
election. The property in this case, a parking lot  
near the ocean, was designated "recreational  
facility" in 1977.

In this case, instead of holding a referendum, the  
City simply redesignated a recreational facility  
(parking lot near ocean) to a different  
classification which did not require a referendum.  
At the same meeting the City passed a resolution  
authorizing the transfer of the property to the City  
of Pompano Beach Community Redevelopment  
Agency. Appellant contended in this suit that the  
transfer without a referendum violated the charter.

The relevant provisions are in section 253 of the  
charter, which provides in part:

(a) Power to sell. The City of Pompano  
Beach is empowered to sell or dispose of any  
lands, improvements, public buildings,  
recreational parks or other lands now owned or  
hereafter acquired by said city, except as  
otherwise provided herein.

(b) Resolution declaring surplus. Before any  
lands, the title to which is vested in the City of  
Pompano Beach, shall be sold, the City  
Commission shall adopt a resolution at a regular  
or special meeting of the City Commission  
particularly describing the land by legal  
description, reference to a recorded plat or  
government survey, its location by street  
number, if there be any, a description of all  
improvements located upon the land, and shall  
declare how said land has been used since same  
has belonged to the city, why it is no longer  
needed for public purposes, and that the city  
does declare same surplus and desires to sell the  
same.

\* \* \*

(f) Notwithstanding any power to sell as  
herein described, the City Commission shall not

have the authority to dispose of property, or of airspace over property, that is designated as follows:

- (1) Airport or airpark;
- (2) Park;
- (3) Golf course;
- (4) Recreational facility.

Any property designated airport, park, golf course, or recreational facilities shall be disposed of only after said disposal shall be approved by the majority of voters in an election called for the purpose of approving the disposition of said parcel or parcels.

Within one hundred twenty (120) days after the effective date of this subsection, the City Commission shall meet at public hearing after fourteen (14) days notice in a newspaper of general circulation in the city, and certify an inventory of all property owned by the City of Pompano Beach that is for purposes other than right-of-way, and shall assign a designation to said properties. Said designations shall be done by ordinance and the City Commission shall use the above designations plus any other designations deemed proper by the City Commission.

Any subsequent changes to the original designations shall only be made by the same process.

The trial court held that, because the last sentence set forth above authorizes changes to the original designations of property by ordinance, the City could, by resolution, change the designation of “recreational facility,” and then transfer the property by resolution.

We are unable to reconcile the City’s position, which is that it can avoid the charter requirement of a referendum, by merely redesignating and then transferring, with several statutory construction principles. First, the court should consider the

legislative intent. *St. Mary’s Hosp. v. Phillipe*, 769 So. 2d 961 (Fla. 2000). The obvious intent of section 253(f) is to require a referendum for the transfer of this property.

Second, courts should avoid interpretations which render parts of a statute meaningless. *Unruh v. State*, 669 So. 2d 242 (Fla. 1996). In this case the City’s interpretation makes section 253(f) meaningless.

Third, courts are obliged to harmonize conflicting provisions if it is possible to do so. *M.W. v. Davis*, 756 So. 2d 90 (Fla. 2000). The two provisions can be harmonized, and both given effect, by holding that property described in section 253(f) cannot have its designation changed by resolution in order to transfer the property without a referendum. That would give meaning to the provision requiring a referendum for section 253(f) property, but would not make the provision allowing change in designation by resolution meaningless. *See Kiesel v. Graham*, 388 So. 2d 594 (Fla. 1st DCA 1980).

We therefore conclude that the charter does not authorize the city to avoid the referendum process for property described in section 253(f) by merely redesignating the property for the purpose of transferring it. The summary judgment is accordingly reversed.

WARNER and TAYLOR, JJ., concur.

***NOT FINAL UNTIL DISPOSITION OF ANY TIMELY FILED MOTION FOR REHEARING.***