

**IN THE COURT OF APPEALS OF IOWA**

No. 6-543 / 05-1406  
Filed November 16, 2006

**DEERFIELD APARTMENTS, L.L.P.,  
DELL L. ARNESON and  
CHARLES L. FLACH,**  
Plaintiff-Appellants,

**vs.**

**MARILYN DRAKE, as Pottawattamie  
County Auditor and STEVE PALM, as  
Pottawattamie County Assessor,**  
Defendant-Appellees.

---

Appeal from the Iowa District Court for Pottawattamie County, J.C. Irvin,  
Judge.

Deerfield Apartments, L.L.P., Dell L. Arneson, and Charles L. Flach  
appeal the dismissal of their petition requesting a writ of mandamus compelling  
the Pottawattamie County Auditor and Assessor to recognize and assess  
Deerfield Apartments as a condominium. **REVERSED AND REMANDED.**

Kyle S. Irvin and Jeffrey Poulson of Corbett, Anderson, Corbett, Poulson &  
Vellinga, L.L.P., Sioux City, for appellant.

Lyle W. Ditmars of Peters Law Firm, P.C., Council Bluffs, for appellee.

Matthew D. Wilber, Pottawattamie County Attorney, and Margaret Popp  
Reyes, Assistant Pottawattamie County Attorney, Council Bluffs, for appellee.

Heard by Huitink, P.J., Vogel, J., and Beeghly, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

**PER CURIAM**

Deerfield Apartments, L.L.P., Dell L. Arneson, and Charles L. Flach (hereinafter “Deerfield Apartments”) appeal the dismissal of their petition seeking a writ of mandamus compelling the Pottawattamie County Auditor and Assessor to recognize and assess Deerfield Apartments as a condominium. We reverse and remand for further proceedings.

***I. Background Facts & Proceedings.***

Deerfield Apartments consists of seventy-two apartments and thirty-six garages. On October 30, 2003, Deerfield Apartments sent notice to the Council Bluffs City Building Inspection Office (hereinafter “city”) of its intention to convert the apartment structure into condominiums. On December 30, 2003, Deerfield Apartments recorded its “Declaration for Establishment of a Horizontal Property” (Condominium). On February 9, 2004, 102 days after filing the notice with the city, Deerfield Apartments received a notice from the city that the property did not meet the city’s building codes and therefore it could not be designated as a condominium. Thereafter the Pottawattamie County Auditor declined to recognize Deerfield Apartments as condominiums, and the Pottawattamie County Assessor refused to assess Deerfield Apartments as condominiums.

On May 19, 2005, Deerfield Apartments filed a petition in district court seeking a writ of mandamus for the auditor and the assessor to recognize its declarations and assess the property accordingly. On June 9, 2005 and June 17, 2005, the assessor and the auditor each filed separate motions to dismiss arguing they lacked the statutory authority to recognize and assess Deerfield Apartments as condominiums, citing the city’s determination the property did not

meet applicable building code requirements. On August 4, 2005, the district court granted the motions to dismiss. The court concluded the auditor and assessor did not have the authority to recognize and assess Deerfield's property as a condominium because the city determined the property did not meet applicable building code requirements for a condominium.

On appeal, Deerfield Apartments argues:

- I. The district court erred in sustaining the county assessor's and auditor's separate motions to dismiss.

## **II. Standard of Review.**

We review a ruling on a motion to dismiss for errors of law. *Barnes v. State*, 611 N.W.2d 290, 292 (Iowa 2000).

## **III. Merits.**

A dismissal will be affirmed if a petition shows no right of recovery under any state of facts. *Id.* "A motion to dismiss admits the well-pleaded facts in the petition and waives any ambiguity or uncertainty." *Tate v. Deerfield*, 510 N.W.2d 885, 887 (Iowa 1994). "Allegations in the petition are viewed in a light most favorable to the plaintiff and facts not alleged cannot be relied on to aid a motion to dismiss nor may evidence be taken to support it." *Ritz v. Wapello County Bd. of Sup'rs*, 595 N.W.2d 786, 789 (Iowa 1999). "We do not recommend filing or sustaining a motion to dismiss if the viability of a claim is at all debatable." *Renander v. Inc., Ltd.*, 500 N.W.2d 39, 41 (Iowa 1993) (citing *Cutler v. Klass, Whicher & Mishne*, 473 N.W.2d 178, 181 (Iowa 1991)).

Contrary to the county's arguments, we conclude it is too early at the pleading stage to resolve the issues raised in the motion to dismiss. The scope

of the county's duties or other theory of relief may require discovery to be established. If no viable theory is revealed through discovery, Deerfield's claim for relief can and should be resolved by a motion for summary judgment.

**REVERSED AND REMANDED.**