

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ERICH NIKOROWICZ,

Petitioner,

vs.

Case No. 15-7236

ANTIQUERS AERODROME, INC.,

Respondent.

_____/

STEPHEN J. BYERS,

Petitioner,

vs.

Case No. 15-7237

ANTIQUERS AERODROME, INC.,

Respondent.

_____/

RECOMMENDED ORDER

These cases initially came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings for final hearing on July 15, 2016, in West Palm Beach, Florida. The final hearing concluded on December 1, 2016, by video teleconference with sites in West Palm Beach and Tallahassee, Florida.

APPEARANCES

For Petitioner Erich Nikorowicz:

Donald Joseph Thomas, Esquire
Lewis and Thomas
Suite 200
165 East Palmetto Park Road
Boca Raton, Florida 33432-4818

For Petitioner: Stephen J. Byers, pro se
7396 Skyline Drive
Delray Beach, Florida 33446

For Respondent: Keith F. Backer, Esquire
Ryan D. Poliakoff, Esquire
Backer, Aboud, Poliakoff, and Foelster, LLP
Suite 420
400 South Dixie Highway
Boca Raton, Florida 33432

STATEMENT OF THE ISSUE

Whether Respondent, Antiquers Aerodrome, Inc. ("Respondent"), properly revived its expired restrictive covenants and other governing documents in accordance with sections 720.403-407, Florida Statutes (2015).

PRELIMINARY STATEMENT

On November 5, 2015, the Department of Economic Opportunity ("DEO") approved the proposed revitalization of Respondent's restrictive covenants "and other governing documents." On December 8, 2015, Petitioner Erich Nikorowicz ("Nikorowicz") filed with DEO, a Petition for Administrative Proceedings, challenging DEO's approval of the proposed revitalization.^{1/} On December 14, 2015, Petitioner Stephen J. Byers ("Byers") filed

with DEO a Petition for Administrative Proceedings, challenging DEO's approval of the proposed revitalization.

On December 18, 2015, DEO forwarded both petitions to the Division of Administrative Hearings ("DOAH") to assign an Administrative Law Judge to conduct the final hearing. The petition filed by Nikorowicz was assigned DOAH Case No. 15-7236. The petition filed by Byers was assigned DOAH Case No. 15-7237. On December 29, 2016, the undersigned entered an Order consolidating Case Nos. 15-7236 and 15-7237.

On December 31, 2015, the undersigned entered an Order setting this matter for final hearing on March 4, 2016. On February 11, 2016, Byers filed an unopposed motion to continue the final hearing. On February 12, 2016, the undersigned entered an Order granting the motion and reset the final hearing for April 27, 2016. On April 15, 2016, Nikorowicz filed an unopposed motion to continue the final hearing. On April 26, 2016, the undersigned entered an Order granting the motion and reset the final hearing for July 15, 2016.

On July 8, 2016, Nikorowicz and Respondent filed a joint pre-hearing stipulation. On July 8, 2016, Byers filed a pre-hearing statement. On July 12, 2016, Respondent filed a supplemental pre-hearing stipulation.

The hearing commenced as scheduled on July 15, 2016, and concluded on December 1, 2016. Nikorowicz did not appear at the

final hearing, but he was represented at the final hearing by his counsel, David J. Thomas. Byers testified on his own behalf and presented the additional testimony of Michael Chinnici. Byers' Exhibits 1 through 41 were received in evidence based on the stipulation of the parties. Respondent did not appear at the final hearing, but it was represented at the final hearing by its counsel, Keith F. Backer and Ryan D. Poliakoff. Respondent presented the testimony of Robert Bakeris. Respondent's Exhibits A through O were received in evidence based on the stipulation of the parties.

The two-volume final hearing Transcript was filed at DOAH on December 18, 2016. The parties timely filed proposed recommended orders, which were considered in the preparation of this Recommended Order.

The parties' pre-hearing stipulations have been incorporated herein, to the extent indicated below. Unless otherwise indicated, references to the Florida Statutes are to the 2015 version.

FINDINGS OF FACT

1. Respondent is a Florida for-profit corporation that serves as the governing homeowners' association for the single-family residential, "fly-in/fly-out" community, known as Antiquers Aerodrome. The community consists of 37 individual parcels and a common airplane runway, located near Atlantic

Avenue, east of the Florida Turnpike, in Palm Beach County, Florida.

2. Petitioners Nikorowicz and Byers are parcel owners in the community.

3. Byers purchased his 2.2 acre parcel in October 2014. At that time, there was a 5,000-square-foot single-family home, 2,000-square-foot airplane hanger, and a 2,000-square-foot garage on the property. Since then, Byers has had some chickens and a honeybee colony operation on his property.

4. Respondent's restrictive covenants were recorded in the public records of Palm Beach County at OR Book 1651, Page 151, on April 21, 1968. The restrictive covenants have been amended and restated from time to time. By operation of the Marketable Record Title Act ("MRTA"), chapter 712, Florida Statutes, the restrictive covenants expired April 21, 1998.

5. Sections 720.403-407 provide the mechanism by which a homeowners' association, such as Respondent, may revitalize its restrictive covenants because they expired by operation of MRTA.

6. In an effort to revitalize the expired restrictive covenants pursuant to the requirements of sections 720.403-407, Respondent prepared a Notice of Special Members' Meeting, an Agenda, a Limited Proxy, and Instructions for Completing the Limited Proxy ("revitalization package"). The revitalization package was sent to each parcel owner on July 24, 2015.

7. The revitalization package sent to the parcel owners failed to include Respondent's most recent bylaws--the November 7, 2010, amended bylaws. Instead, Respondent included in the revitalization package its February 12, 1998, bylaws.

8. By failing to include the November 7, 2010, amended bylaws in the revitalization package sent to the parcel owners, Respondent failed to comply with section 720.405(3).

9. The notice of the meeting, included within the revitalization package, contained the name, address, and telephone number of each of the three members of the revitalization organizing committee. The notice advised each parcel owner of an upcoming special membership meeting on August 15, 2015, at which time each owner would vote on the revitalization of the expired restricted covenants, either in person at the meeting or by proxy.

10. On July 30, 2015, Peggy Preiser, as a member of the organizing committee and secretary of the Board of Directors of Respondent, sent a follow-up e-mail to the parcel owners, reminding them of the upcoming meeting on August 15, 2015. This e-mail reiterated the purpose of the upcoming special meeting-- "for the purpose of voting to revitalize (restore) the Association's Restrictive Covenants and Reservations as provided by Sections 720.403 through 720.407, Florida Statutes." The e-mail also reiterated that the revitalization package had been

distributed to all parcel owners in preparation for the August 15, 2015, special meeting and vote. The e-mail did not contain the name, address, and telephone number of each member of the revitalization organizing committee.

11. Ms. Preiser, as a member of the organizing committee and secretary of the Board of Directors of Respondent, also posted on July 30, 2015, another notice of the special meeting at the front gate community bulletin board. This notice contained the same information as the e-mail Ms. Preiser sent to the parcel owners on July 30, 2015. As with the e-mail, the posting at the front gate did not contain the name, address, and telephone number of each member of the revitalization organizing committee.

12. The e-mail sent by Ms. Preiser and the posting at the front gate were notices and documents provided by the committee to parcel owners to be affected by the proposed revived declarations. By failing to provide the name, address, and telephone number of each revitalization committee member in the e-mail and front gate notices, Respondent failed to comply with section 720.405(1).^{2/}

13. The special meeting was held on August 15, 2015. A quorum was present with 26 of the total 37 lots represented in person or by proxy. Byers did not attend the August 15, 2015, meeting nor did he vote by proxy. Nikorowicz did not attend the

meeting, but he voted by proxy against revitalization of the restrictive covenants.

14. A majority of 19 votes were required for the revitalization of the restrictive covenants to be approved. At the meeting, the vote was taken on whether the expired restrictive covenants should be revitalized. The votes were tallied with 22 votes for revitalization and 4 votes against revitalization. Thus, a majority of the parcel owners were in favor of revitalization of the restrictive covenants. The voting results were certified by counsel for Respondent, revitalization of the restrictive covenants was approved, and the meeting was adjourned.

15. Petitioners contend that the following proxies counted at the August 15, 2015, meeting in favor of revitalization of the restrictive covenants were invalid because the signers were not authorized to vote on behalf of the parcel owners. Petitioners' position is without merit.

16. John Lumley and Carol Lumley signed a proxy. Pursuant to a quit claim deed, they are trustees of the Carl J. Lumley Revocable Trust dated May 31, 2005, which owns the parcel. As trustees of the trust, John Lumley and Carol Lumley were authorized to sign the proxy.

17. Mayda Balboa signed a proxy. Pursuant to a warranty deed, she is the trustee of the Daoud Family Irrevocable Trust,

dated May 19, 2014, which owns the parcel. As trustee of the trust, Mayda Balboa was authorized to sign the proxy.

18. Shireen Bower and William Bower signed a proxy. Pursuant to a quit claim deed, they are trustees of the William and Shireen Bower Trust, dated 2/22/2002, which owns the parcel. As trustees of the trust, William and Shireen Bower were authorized to sign the proxy.

19. Mike Blake signed two proxies. Pursuant to a warranty deed, he is the trustee of the Mike Blake Revocable Trust under Agreement dated December 22, 1997, which owns the parcels. As trustee of the trust, Mike Blake was authorized to sign the proxies.

20. Cecilia A. Walsh signed a proxy. She is a managing member of 6814 Skyline, LLC, which owns the parcel. As a managing member, Cecilia A. Walsh was authorized to sign the proxy.

21. Daniel L. Trunk signed a proxy. Pursuant to a warranty deed, he is the trustee of the Daniel J. Trunk Trust Under Agreement dated July 26, 2013, which owns the parcel. As the trustee of the trust, Daniel L. Trunk was authorized to sign the proxy.

22. Luis Claudia Maia Ferreira and Elaine Lignelli signed a proxy. Pursuant to a warranty deed, Luiz Claudia Maia Ferreira is the trustee of the Elaine Lignelli Irrevocable Trust dated

September 28, 2012, which owns the parcel. As a trustee of the trust, Luiz Claudia Maia Ferreira had authority to sign the proxy.

23. After achieving a majority vote in favor of revitalization of the restrictive covenants, Respondent submitted a package to DEO on September 28, 2015, seeking approval of the revitalization of the restrictive covenants ("DEO package").

24. The DEO package contained an affidavit executed by Ms. Preiser, as an organizing committee member and secretary of Respondent. The affidavit purported to comply with the requirements of sections 720.406(1)(a) through (f).

25. The DEO package contained the full text of the proposed revived restrictive covenants, including any amendments thereto.

26. The DEO package contained the Certificate of Incorporation of Respondent, together with any amendments thereto.

27. The DEO package contained a graphic depiction of the affected properties in the community, and a legal description of each parcel and the affected properties within the community.

28. The DEO package contained verification of: a) the written consents of the requisite number of the affected parcel owners approving the revived declaration; b) a Notice of Special Members' meeting; and c) attendance and voting results.

29. The DEO package contained the February 12, 1998, bylaws.

30. The DEO package did not contain the November 7, 2010, amended bylaws.

31. The November 7, 2010, amended bylaws were the current and relevant bylaws of Respondent and governed Respondent in 2015, before and after the submittal of the revitalization package and DEO package.^{3/}

32. By failing to include the November 7, 2010, amended bylaws in the DEO package, Respondent failed to comply with section 720.406(1)(b).

33. In sum, the revitalization and DEO packages were deficient because they failed to contain all of the required documents, namely, the November 7, 2010, amended bylaws. The e-mail and front gate notices prepared by Ms. Preiser were also deficient because they failed to contain the name, address, and telephone number of each organization committee member.^{4/}

34. On November 5, 2015, DEO approved the revitalization of the restrictive covenants "and other governing documents."

35. The revitalized restrictive covenants were recorded in the public records of Palm Beach County, Florida, at OR Book 27945, Page 1431, on November 23, 2015.

CONCLUSIONS OF LAW

36. DOAH has jurisdiction over the parties to and subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

37. Petitioners have the burden of proving their claims by a preponderance of the evidence. Fla. Dep't of Transp. v. J.W.C., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

38. The Florida Legislature enacted MRTA over 50 years ago in order to simplify and facilitate land transactions. Matissek v. Waller, 51 So. 3d 625, 628 (Fla. 5th DCA 2011). Notably, section 712.10, Florida Statutes, expressly provides that MRTA:

shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record title as described in s. 712.02 subject only to such limitations as appear in s. 712.03.

39. Section 712.02 provides, in pertinent part:

Any person having the legal capacity to own land in this state, who, alone or together with her or his predecessors in title, has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in s. 712.03.

40. In essence, restrictive covenants cease to be effective as to lots governed by the restrictive covenants 30 years after said restrictive covenants have been referenced in a deed that

burdens each lot. Bylaws, which are not interests in real property and do not run with the land, are not extinguished by MRTA. Cirelli v. Ent., 885 So. 2d 423, 432 (Fla. 5th DCA 2004) (recognizing that "MRTA only extinguishes interests in real property.").

41. As detailed above, Respondent concedes that the restrictive covenants expired by operation of MRTA and were not timely preserved pursuant to MRTA.

42. If MRTA extinguishes a community's restrictive covenants, Respondent may attempt to utilize the procedures set forth in chapter 720, part III (sections 720.403-407), to revive the expired restrictive covenants.^{5/}

43. To effectuate this legislative purpose, section 720.403 provides:

(1) Consistent with required and optional elements of local comprehensive plans and other applicable provisions of the Community Planning Act, homeowners are encouraged to preserve existing residential communities, promote available and affordable housing, protect structural and aesthetic elements of their residential community, and, as applicable, maintain roads and streets, easements, water and sewer systems, utilities, drainage improvements, conservation and open areas, recreational amenities, and other infrastructure and common areas that serve and support the residential community by the revival of a previous declaration of covenants and other governing documents that may have ceased to govern some or all parcels in the community.

(2) In order to preserve a residential community and the associated infrastructure and common areas for the purposes described in this section, the parcel owners in a community that was previously subject to a declaration of covenants that has ceased to govern one or more parcels in the community may revive the declaration and the homeowners' association for the community upon approval by the parcel owners to be governed thereby as provided in this act, and upon approval of the declaration and the other governing documents for the association by the Department of Economic Opportunity in a manner consistent with this act.

44. Section 720.404 further provides as follows:

720.404 Eligible residential communities; requirements for revival of declaration.-

Parcel owners in a community are eligible to seek approval from the Department of Economic Opportunity to revive a declaration of covenants under this act if all of the following requirements are met:

(1) All parcels to be governed by the revived declaration must have been once governed by a previous declaration that has ceased to govern some or all of the parcels in the community;

(2) The revived declaration must be approved in the manner provided in s. 720.405(6); and

(3) The revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration may:

(a) Have an effective term of longer duration than the term of the previous declaration;

(b) Omit restrictions contained in the previous declaration;

(c) Govern fewer than all of the parcels governed by the previous declaration;

(d) Provide for amendments to the declaration and other governing documents; and

(e) Contain provisions required by this chapter for new declarations that were not contained in the previous declaration.

45. Section 720.405 describes the procedure and documents required to be provided to the parcel owners in order to obtain parcel owner approval with respect to the revival of expired restrictive covenants. Section 720.405 provides as follows:

720.405 Organizing committee; parcel owner approval.-

(1) The proposal to revive a declaration of covenants and a homeowners' association for a community under the terms of this act shall be initiated by an organizing committee consisting of not less than three parcel owners located in the community that is proposed to be governed by the revived declaration. The name, address, and telephone number of each member of the organizing committee must be included in any notice or other document provided by the committee to parcel owners to be affected by the proposed revived declaration.

(2) The organizing committee shall prepare or cause to be prepared the complete text of the proposed revised declaration of covenants to be submitted to the parcel owners for approval. The proposed revived documents must identify each parcel that is to be subject to the governing documents by its legal description, and by the name of the parcel owner or the person in whose name the parcel is assessed on the last completed tax assessment roll of the county at the time

when the proposed revived declaration is submitted for approval by the parcel owners.

(3) The organizing committee shall prepare the full text of the proposed articles of incorporation and bylaws of the revived homeowners' association to be submitted to the parcel owners for approval, unless the association is then an existing corporation, in which case the organizing committee shall prepare the existing articles of incorporation and bylaws to be submitted to the parcel owners.

(4) The proposed revived declaration and other governing documents for the community shall:

(a) Provide that the voting interest of each parcel owner shall be the same as the voting interest of the parcel owner under the previous governing documents;

(b) Provide that the proportional-assessment obligations of each parcel owner shall be the same as proportional-assessment obligations of the parcel owner under the previous governing documents;

(c) Contain the same respective amendment provisions as the previous governing documents or, if there were no amendment provisions in the previous governing document, amendment provisions that require approval of not less than two-thirds of the affected parcel owners;

(d) Contain no covenants that are more restrictive on the affected parcel owners than the covenants contained in the previous governing documents, except as permitted under s. 720.404(3); and

(e) Comply with the other requirements for a declaration of covenants and other governing documents as specified in this chapter.

(5) A copy of the complete text of the proposed revived declaration of covenants, the proposed new or existing articles of incorporation and bylaws of the homeowners' association, and a graphic depiction of the property to be governed by the revived declaration shall be presented to all of the affected parcel owners by mail or hand delivery not less than 14 days before the time that the consent of the affected parcel owners to the proposed governing documents is sought by the organizing committee.

(6) A majority of the affected parcel owners must agree in writing to the revived declaration of covenants and governing documents of the homeowners' association or approve the revived declaration and governing documents by a vote at a meeting of the affected parcel owners noticed and conducted in the manner prescribed by s. 720.306. Proof of notice of the meeting to all affected owners of the meeting and the minutes of the meeting recording the votes of the property owners shall be certified by a court reporter or an attorney licensed to practice in this state.

46. Section 720.406 describes the procedure and documents required to be submitted to DEO in order to revive expired restrictive covenants. Section 720.406 provides as follows:

720.406 Department of Economic Opportunity; submission; review and determination.-

(1) No later than 60 days after the date the proposed revived declaration and other governing documents are approved by the affected parcel owners, the organizing committee or its designee must submit the proposed revived governing documents and supporting materials to the Department of Economic Opportunity to review and determine whether to approve or disapprove of the proposal to preserve the residential

community. The submission to the department must include:

(a) The full text of the proposed revived declaration of covenants and articles of incorporation and bylaws of the homeowners' association;

(b) A verified copy of the previous declaration of covenants and other previous governing documents for the community, including any amendments thereto;

(c) The legal description of each parcel to be subject to the revived declaration and other governing documents and a plat or other graphic depiction of the affected properties in the community;

(d) A verified copy of the written consents of the requisite number of the affected parcel owners approving the revived declaration and other governing documents or, if approval was obtained by a vote at a meeting of affected parcel owners, verified copies of the notice of the meeting, attendance, and voting results;

(e) An affidavit by a current or former officer of the association or by a member of the organizing committee verifying that the requirements for the revived declaration set forth in s.720.404 have been satisfied; and

(f) Such other documentation that the organizing committee believes is supportive of the policy of preserving the residential community and operating, managing, and maintaining the infrastructure, aesthetic character, and common areas serving the residential community.

(2) No later than 60 days after receiving the submission, the department must determine whether the proposed revived declaration of covenants and other governing documents comply with the requirements of this act.

(a) If the department determines that the proposed revived declaration and other governing documents comply with the act and have been approved by the parcel owners as required by this act, the department shall notify the organizing committee in writing of its approval.

(b) If the department determines that the proposed revived declaration and other governing documents do not comply with this act or have not been approved as required by this act, the department shall notify the organizing committee in writing that it does not approve the governing documents and shall state the reasons for the disapproval.

47. The relevant statutory provisions are clear and unambiguous. Section 720.405(3) expressly requires, in pertinent part, that "the full text of the proposed articles of incorporation and bylaws of the revived homeowners' association . . . be submitted to the parcel owners for approval." Section 720.406(1)(b) expressly requires that the submission to DEO must include a verified copy of the previous declaration of covenants and other previous governing documents for the community, including any amendments thereto. The phrase "governing documents" means:

(a) The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto;

(b) The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto; and

(c) Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

§§ 720.301(8)(a)-(c), Fla. Stat.

48. Section 720.405(1) expressly requires that: ["t]he name, address, and telephone number of each member of the organizing committee must be included in any notice or other document provided by the committee to parcel owners to be affected by the proposed revived declaration."

49. As detailed above, Respondent complied with many of the requirements of 720.403-407. Respondent obtained a majority of votes in favor of revitalization at the August 15, 2015, meeting.^{6/} Respondent provided virtually all of the required documents to the parcel owners and DEO. However, Respondent failed to comply with sections 720.405(3) and 720.406(1)(b) by not including the November 7, 2010, amended bylaws in the revitalization package and DEO package. Respondent also violated section 720.405(1) by failing to provide the name, address, and telephone number of each revitalization committee member in the e-mail and front gate posting.^{7/}

50. It is not the prerogative of the undersigned to construe the unambiguous language of statutes differently from the plain language of the words employed. Nor is the wisdom of the statutes within the ambit of the undersigned's authority.

Wright v. City of Miami Gardens, 200 So. 3d 765, 773-774 (Fla. 2016). An administrative agency simply cannot interpret a statute in a fashion which would result in the provision being voided by administrative fiat. Dep't of Educ. v. Educ. Charter Found. of Fla. Inc., 177 So. 3d 1036, 1039 (Fla. 1st DCA 2015). To excuse Respondent's actions in this case in failing to submit all of the required documents in the revitalization package and DEO package and not including all of the information in the required notices, would amount to an administrative waiver of the statutory requirements.^{8/}

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Economic Opportunity enter a Final Order disapproving the revitalization of Respondent's expired restrictive covenants and other governing documents.

DONE AND ENTERED this 24th day of February, 2017, in
Tallahassee, Leon County, Florida.



DARREN A. SCHWARTZ
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of February, 2017.

ENDNOTES

^{1/} The previous style of this case mistakenly identified
Petitioner Nikorowicz as Nikorowiez.

^{2/} Respondent's contention that Ms. Preiser sent the e-mail and
posted the notice at the gate in her capacity as secretary of
Respondent, only, and not as an organizing committee member, is
not credited and is rejected as unpersuasive.

^{3/} The 1998 bylaws were not extinguished by MRTA.

^{4/} Notably, there are only two differences between the
February 12, 1998, bylaws and the November 7, 2010, amended
bylaws. The 1998 bylaws provided that the annual meeting shall
be held on the third Sunday of November. If that date fell on a
legal holiday, then the meeting would be held on the following
Sunday. The 2010 amended bylaws provide that the annual meeting
is changed from the third Sunday of November to the first Sunday
in November.

The 2010 amended bylaws provide that dissolution of
Respondent and/or the airport operations it supports will only
occur with a 91-percent vote of the shareholders of Respondent at

a properly called and noticed meeting for that expressed purpose. The 1998 bylaws did not address this issue.

^{5/} MRTA defines a "homeowners' association" to mean a homeowners' association as defined in section 720.301, or an association of parcel owners which is authorized to enforce use restrictions that are imposed on the parcels. § 712.01(4), Fla. Stat. As detailed above, Respondent is a homeowners' association pursuant to this definition.

^{6/} A trustee is authorized to vote on behalf of a trust which owns real property. §§ 689.073(1) and 736.0816, Fla. Stat. A member of a limited liability company ("LLC") is also authorized to vote on behalf of the LLC. § 605.04073, Fla. Stat.

^{7/} Notably, even if the 1998 bylaws were extinguished by MRTA (which they were not), the unambiguous and plain language of the applicable statutory provisions required that Respondent include the amended 2010 bylaws in the revitalization package and DEO package.

^{8/} Petitioners contended for the first time at hearing, and subsequently in their proposed recommended orders, that because the vote at the meeting and pre-meeting notices did not refer specifically to a proposed revitalization of any documents other than the expired restrictive covenants, that DEO improperly granted Respondent's request to revitalize the revised restrictive covenants "and other governing documents." Although Petitioners are factually correct that the vote and pre-meeting notices did not refer specifically to a proposed revitalization of any documents other than the expired restrictive covenants, Petitioners waived this argument by failing to allege it in their petitions or in their pre-hearing stipulations/statement. Moreover, Petitioners never requested leave to amend their petitions to assert this issue. Holmes v. Mernah, 427 So. 2d 378, 379 (Fla. 4th DCA 1983).

Byers' argument that his property is exempt from revitalization pursuant to the Florida Right to Farm Act is rejected. The Florida Right to Farm Act, section 823.14, Florida Statutes, prohibits local government regulation that conflicts with farming activities. The Florida Right to Farm Act has no application to the instant administrative proceeding. Wilson v. Palm Beach Co., 62 So. 3d 1247 (Fla. 4th DCA 2011).

In any event, because the undersigned has determined that revitalization must fail for the reasons stated above, it is

unnecessary to specifically address all of Petitioners' other arguments against revitalization. However, the undersigned has considered Petitioners' other arguments, and they are all rejected as without merit.

COPIES FURNISHED:

Ryan D. Poliakoff, Esquire
Backer, Aboud, Poliakoff, and Foelster, LLP
Suite 420
400 South Dixie Highway
Boca Raton, Florida 33432
(eServed)

Stephen J. Byers
7396 Skyline Drive
Delray Beach, Florida 33446
(eServed)

Donald Joseph Thomas, Esquire
Lewis and Thomas
Suite 200
165 East Palmetto Park Road
Boca Raton, Florida 33432-4818
(eServed)

Katie Zimmer, Agency Clerk
Department of Economic Opportunity
Caldwell Building
107 East Madison Street
Tallahassee, Florida 32399-4128
(eServed)

James W. Poppell, General Counsel
Department of Economic Opportunity
Caldwell Building, MSC 110
107 East Madison Street
Tallahassee, Florida 32399-4128
(eServed)

Cissy Proctor, Executive Director
Department of Economic Opportunity
Caldwell Building
107 East Madison Street
Tallahassee, Florida 32399-4128
(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.