

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VILLAS SOCIAL CLUB, INC.,

Petitioner,

vs.

Case No. 17-5576

DEPARTMENT OF ECONOMIC
OPPORTUNITY,

Respondent.

_____ /

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings for final hearing on February 14, 2018, by video teleconference with sites in Fort Lauderdale and Tallahassee, Florida.

APPEARANCES

For Petitioner: Thomas Tighe, Esquire
Tucker & Tighe, P.A.
800 East Broward Boulevard, Suite 710
Fort Lauderdale, Florida 33301

For Respondent: Jon F. Morris, Esquire
Ross Marshman, Esquire
Department of Economic Opportunity
Caldwell Building, MSC 110
107 East Madison Street
Tallahassee, Florida 32399-4128

STATEMENT OF THE ISSUE

Whether Petitioner, Villas Social Club, Inc. ("Villas"), properly revived its expired restrictive covenants and other

governing documents in accordance with sections 720.403-720.407, Florida Statutes (2017).

PRELIMINARY STATEMENT

On September 5, 2017, Respondent, Department of Economic Opportunity ("DEO"), denied the proposed revitalization of Villas' restrictive covenants "and other governing documents." On September 29, 2017, Villas filed with DEO a Petition for Administrative Proceedings, challenging DEO's denial of the proposed revitalization. On October 11, 2017, DEO forwarded the petition to the Division of Administrative Hearings ("DOAH") to assign an Administrative Law Judge to conduct the final hearing.

On October 18, 2017, the undersigned entered an Order setting this matter for final hearing on December 18, 2017. On November 14, 2017, DEO filed an unopposed motion to continue the final hearing. On November 27, 2017, the undersigned entered an Order granting the motion and reset the final hearing for January 22, 2018. On January 12, 2018, the parties filed their Pre-hearing Stipulation. On January 18, 2018, a status conference was held with counsel for the parties during which counsel for DEO moved ore tenus for an order continuing the hearing. The motion was unopposed. On January 18, 2018, the undersigned entered an Order granting the motion and reset the final hearing for February 14, 2018.

The hearing occurred on February 14, 2018, with both parties present. Villas presented the testimony of Judy Pritchard, James Stansbury, and Rozell McKay. Villas' Exhibits 1 through 6 were received in evidence upon stipulation of the parties. DEO also presented the testimony of Mr. Stansbury and Ms. McKay. DEO's Exhibits 1 through 4 were received in evidence upon stipulation of the parties.

The one-volume final hearing Transcript was filed at DOAH on March 7, 2018. The parties timely filed proposed recommended orders, which were considered in the preparation of this Recommended Order.

The parties' Pre-hearing Stipulation has been incorporated herein, to the extent indicated below. Unless otherwise indicated, references to the Florida Statutes are to the 2017 version.

FINDINGS OF FACT

1. Villas is a homeowners' association established pursuant to restrictive covenants recorded in 1967, 1968, and 1969. Originally created as a retirement community, Villas elected to become a "55 and over" community pursuant to the 1995 federal Housing for Older Persons Act. The community consists of 309 parcels upon which single family homes are located.

2. By operation of the Marketable Record Title Act ("MRTA"), chapter 712, Florida Statutes, the restrictive

covenants of Villas expired during the period of 1997 to 1999. However, Villas has continued to operate since then as a functioning "55 and over" homeowners' association without challenge from anyone.

3. Sections 720.403-720.407 provide the mechanism by which a homeowners' association, such as Villas, may revitalize its restrictive covenants because they expired by operation of MRTA.

4. DEO is a state agency statutorily obligated to review and determine whether an association has satisfied the requirements of sections 720.403-720.407 in order to revitalize expired restrictive covenants.

5. In an effort to revitalize the expired restrictive covenants pursuant to the requirements of sections 720.403-720.407, Villas submitted a revitalization package to DEO on March 9, 2016.

6. On May 10, 2016, DEO denied the proposed revitalization for the following three reasons. First, Villas failed to timely submit the revitalization package to DEO pursuant to section 720.406(1)—the package was submitted to DEO more than 60 days after the last verified vote approving the revived covenants was signed. Second, Villas failed to provide DEO with the original bylaws pursuant to section 720.406(1)(b), which states that "a verified copy of the previous declaration of covenants and other previous governing documents for the community . . ." must be

included in the submission to DEO. Third, the 2002 and 2004 bylaws submitted to DEO were more restrictive on the parcel owners in violation of section 720.405(4)(d).

7. DEO's denial letter provided Villas a clear point of entry to challenge DEO's proposed decision and request a formal administrative hearing by filing a petition with the agency clerk of DEO within 21 days of receipt of the denial letter. However, Villas did not file a petition to challenge the proposed decision and request a hearing. Instead, Villas re-submitted another revitalization package to the parcel owners and DEO in 2017 in an effort to revitalize the expired restrictive covenants. The agency action subject to review in this proceeding is DEO's letter dated September 5, 2017, denying approval of Villas' request for revitalization.

8. The revitalization package sent to the parcel owners in 2017 failed to include the address and telephone number of each member of the revitalization organizing committee.

9. Nyoka Stewart, one of the members of the organizing committee for the revitalization, has owned her home at Villas located at 5140 Northwest 43rd Court, Lauderdale Lakes, Florida 33319, at all pertinent times. The "5410" Northwest 43rd Court, Lauderdale Lakes, Florida 33319, address listed for her in the revitalization package was a typographical error.

10. Eslyn Williams, one of the members of the organizing committee for the revitalization, has owned her home at Villas located at 4051 Northwest 43rd Court, Lauderdale Lakes, Florida 33319, at all pertinent times. The "5041" Northwest 43rd Court, Lauderdale Lakes, Florida 33319, address listed for her in the revitalization package was a typographical error.

11. The revitalization package sent to the parcel owners in 2017 included the telephone number (954-473-4733) of the management company for Villas, Alliance Property Systems. Alliance Property Systems does not own a parcel in the community, and it is not a member of the organization committee.

12. One of the organizing committee members identified in the package, Renee Dichren, was not an owner at Villas on July 5, 2017, when the revitalization package was submitted to the parcel owners and DEO, because she was deceased.

13. By failing to provide the address and telephone number of each revitalization member, Villas failed to comply with section 720.405(1).

14. The revitalization package sent to DEO in 2017 included the full text of the proposed revived declaration of covenants and articles of incorporation and bylaws of Villas. However, Villas failed to include the original bylaws. The original bylaws of Villas have been lost. The most recent version of

Villas' bylaws from 1990 were included in the revitalization package sent to DEO.

15. By failing to include the original bylaws in the revitalization package sent to DEO, Villas failed to comply with section 720.406(1)(b).

16. A majority of the parcel owners did not vote to approve the proposed revived declaration and other governing documents submitted by Villas in 2017. Not all of the 162 votes were to approve the proposed revived declaration and other governing documents submitted by Villas in 2017. In fact, there was only one vote from a parcel owner on the proposed revised governing documents. All of the other votes were dated 2015 and 2016, prior to Villas' submission of its initial revitalization package to DEO in 2016.

17. By failing to obtain a majority vote of the parcel owners to approve the proposed revived declaration and other governing documents submitted in 2017, Villas failed to comply with section 720.405(6).

CONCLUSIONS OF LAW

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

19. Villas has the burden of proving its 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).

20. 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.

21. 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.

22. 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.

23. Villas concedes that its restrictive covenants expired by operation of MRTA and were not timely preserved pursuant to MRTA.

24. If MRTA extinguishes a community's restrictive covenants, Villas may attempt to utilize the procedures set forth in chapter 720, part III (sections 720.403-720.407), to revive the expired restrictive covenants.

25. 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.

26. 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.

27. 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.

28. 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.

29. The relevant statutory provisions are clear and unambiguous. 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." 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.

30. Section 720.405(6) expressly requires that "[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."

31. As detailed above, Villas failed to comply with section 720.405(1) by failing to provide the address and telephone number of each revitalization committee member. In addition, Villas failed to comply with section 720.406(1)(b) by not including the original bylaws in the revitalization package sent to DEO. Villas also failed to comply with section 720.405(6) by not obtaining a majority vote of the parcel owners to approve the proposed revived declaration and other governing documents submitted by Villas.

32. 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 Villas' 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 required information, would amount to an administrative waiver of the statutory requirements.

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 Villas' expired restrictive covenants and other governing documents.

DONE AND ENTERED this 23rd day of March, 2018, 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 23rd day of March, 2018.

COPIES FURNISHED:

Stephanie Chatham, Agency Clerk
Department of Economic Opportunity
Caldwell Building, MSC 110
107 East Madison Street
Tallahassee, Florida 32399-4128
(eServed)

Thomas Tighe, Esquire
Tucker & Tighe, P.A.
800 East Broward Boulevard, Suite 710
Fort Lauderdale, Florida 33301
(eServed)

Jon F. Morris, Esquire
Ross Marshman, Esquire
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)

Peter Penrod, General Counsel
Department of Economic Opportunity
Caldwell Building, MSC 110
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.