

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

VILLAS SOCIAL CLUB, INC.,

Petitioner,

vs.

Final Order No.: DEO-18-042
DOAH CASE NO.: 17-5576

DEPARTMENT OF ECONOMIC
OPPORTUNITY,

Respondent.

_____ /

FINAL ORDER

This matter was considered by the General Counsel for the Department of Economic Opportunity (“Department”), following receipt of a Recommended Order issued by an Administrative Law Judge (“ALJ”) of the Division of Administrative Hearings (“DOAH”).

Background

This is a proceeding to determine whether Villas Social Club, Inc., (“Association”) properly revived its declaration of covenants and other governing documents in accordance with sections 720.403-407, Florida Statutes.¹ On September 5, 2017, the Department entered Determination Number 17076 (“Determination”) denying the Association’s proposed revived declaration of covenants and other governing documents (“Proposed Revived Declaration”). The Association filed a Petition for Administrative Proceeding (“Petition”) on September 29, 2017, challenging the Determination. The Department forwarded the Petition to DOAH on October 11, 2017. A final hearing was held on February 14, 2018, and the ALJ entered the Recommended Order on March 23, 2018.

¹ References to the Florida Statutes are to the 2017 version of the statutes unless other noted.

Role of the Department

The Department reviewed the Association's Proposed Revived Declaration and denied the Proposed Revived Declaration, pursuant to section 720.406, Florida Statutes. The Association timely filed its Petition, and the Petition was timely rereferred to DOAH by the Department. The ALJ's Recommended Order recommends that the Department enter a final order disapproving the revitalization of the Association's Proposed Revived Declaration.

Specifically, the Recommended Order states that the Association's Proposed Revived Declaration should not be approved because the Association: (1) failed to comply with section 720.405(1), Florida Statutes, by failing to provide the address and telephone number of each revitalization committee member; (2) failed to provide the original bylaws pursuant to section 720.406(1)(b), Florida Statutes; and (3) failed to comply with section 720.405(6), Florida Statutes, by not obtaining a majority vote of the parcel owners to approve the Proposed Revived Declaration.

Standard of Review of Recommended Order

Pursuant to the Administrative Procedure Act ("APA"), an agency may not reject or modify the findings of fact in a recommended order unless the agency first determines from a review of the entire record, and states with particularity in its final order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. § 120.57(1)(l), Fla. Stat. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. *Id.*

Absent a demonstration that the underlying administrative proceeding departed from essential requirements of law, "[a]n ALJ's findings cannot be rejected unless there is no competent,

substantial evidence from which the findings could reasonably be inferred.” *Prysi v. Dep’t of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002) (citations omitted). In determining whether challenged findings of fact are supported by the record in accord with this standard, the agency may not reweigh the evidence or judge the credibility of witnesses, both tasks being within the sole province of the ALJ as the finder of fact. *See Heifetz v. Dep’t of Bus. Reg.*, 475 So. 2d 1277, 1281-1283 (Fla. 1st DCA 1985). If the evidence presented in an administrative hearing supports two inconsistent findings, it is the ALJ’s role to decide the issue one way or the other. *Id.*

The APA also specifies the manner in which the agency is to address conclusions of law in a recommended order. In its final order, an agency may reject or modify the conclusions of law over which it has substantive jurisdiction. When rejecting or modifying a conclusion of law, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law and must make a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. § 120.57(1)(l), Fla. Stat.; *see also DeWitt v. Sch. Bd. of Sarasota Cnty.*, 799 So. 2d 322 (Fla. 2d DCA 2001).

Department’s Review of the Recommended Order

The Department has been provided copies of the pleadings, the documentary evidence introduced at the final hearing, and a transcript of the proceeding. Neither the Association nor the Department filed exceptions to the Recommended Order.

Recommended Order

The Department concludes that the ALJ’s findings of fact are based on competent substantial evidence in the record and that the proceedings on which the findings are based comply with essential requirements of law, which are the only statutory grounds on which an agency may reject findings of fact. § 120.57(1)(l), Fla. Stat. In the Recommended Order, the ALJ describes

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the competent substantial evidence presented at the hearing that supports the disapproval of the Determination. Accordingly, the Department accepts all of the findings of fact in the Recommended Order.

The Department has reviewed the ALJ's conclusions of law in light of the Department's substantive jurisdiction over covenant revitalization under Chapter 720, Part III, Florida Statutes. The Department has not identified any conclusion of law within its substantive jurisdiction for which a substituted conclusion of law would be as reasonable as, or more reasonable than, the ALJ's conclusions of law. § 120.57(1)(I), Fla. Stat. Therefore, the Department accepts all of the ALJ's conclusions of law.

ORDER

Based on the foregoing, the Department adopts the ALJ's Recommended Order in its entirety (a copy of which is attached as Exhibit A and incorporated herein), as the Department's Final Order and finds that Determination Number 17076 is affirmed, and the Association's request to revitalize its Proposed Revived Declaration is denied.

/s/ Peter Penrod
Peter Penrod
General Counsel
Department of Economic Opportunity

NOTICE OF RIGHT TO APPEAL


THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION UNDER CHAPTER 120, FLORIDA STATUTES. A PARTY WHO IS ADVERSELY AFFECTED BY FINAL AGENCY ACTION IS ENTITLED TO JUDICIAL REVIEW IN ACCORDANCE WITH SECTION 120.68, FLORIDA STATUTES, AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030(B)(1)(C) AND 9.110.

TO INITIATE AN APPEAL ON THIS FINAL AGENCY ACTION, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 107 EAST MADISON STREET, CALDWELL BUILDING, MSC 110, TALLAHASSEE, FLORIDA 32399-4128, WITHIN THIRTY (30) CALENDAR DAYS AFTER THE DATE THIS FINAL AGENCY ACTION IS FILED WITH THE AGENCY CLERK, AS INDICATED BELOW. A DOCUMENT IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK. THE NOTICE OF APPEAL MUST BE SUBSTANTIALLY IN THE FORM PRESCRIBED BY FLORIDA RULE OF APPELLATE PROCEDURE 9.900(A). A COPY OF THE NOTICE OF APPEAL MUST ALSO BE FILED WITH THE DISTRICT COURT OF APPEAL AND MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22(3), FLORIDA STATUTES.

AN ADVERSELY AFFECTED PARTY WAIVES THE RIGHT TO JUDICIAL REVIEW IF THE NOTICE OF APPEAL IS NOT TIMELY FILED WITH BOTH THE DEPARTMENT'S AGENCY CLERK AND THE APPROPRIATE DISTRICT COURT OF APPEAL.

NOTICE OF FILING AND SERVICE

I HEREBY CERTIFY that the above Final Order was filed with the Department's undersigned designated Agency Clerk and that true and correct copies were furnished to the persons listed below in the manner described on the 21ST day of June, 2018.


Shanedra Y. Barnes
Deputy Agency Clerk
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By Certified U.S. Mail

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