

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

JONATHAN YOUNG AND LORETTA
SHIRLEY,

Petitioners,

v.

DOAH Case No. 18-5291
DEO Case No. 18-069

SPRINGLAKE-NORTHWOOD
HOMEOWNERS ASSOCIATION, INC.,
AND ITS BOARD OF DIRECTORS
AND DEPARTMENT OF ECONOMIC
OPPORTUNITY,

Respondents,

DIVISION OF
ADMINISTRATIVE HEARINGS

2019 APR -8 PM 1:58

FILED

FINAL ORDER

This matter was considered by the Florida 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 a proposed revived declaration of covenants and other governing documents for the Springlake-Northwood Homeowners Association, Inc. ("Association") were properly approved by parcel owners and complied with all statutory requirements. On August 31, 2018, the Department entered Determination Number 18156 ("Determination"), approving the documents pursuant to Chapter 720, Part III, Florida Statutes (2018). Substantially affected parcel owners filed a Petition for Administrative Hearing ("Petition") on September 25, 2018, challenging the Determination. The Department referred the

Petition to DOAH on October 3, 2018. A final hearing was held on December 7, 2018, and the ALJ entered his Recommended Order on January 4, 2019.

Role of the Department

The Department reviewed the Association's revitalization submission and entered a non-final agency determination approving the governing documents pursuant to section 720.406(2), Florida Statutes. The Petitioners timely filed their Petition, which was timely referred to DOAH by the Department. After an administrative hearing, the ALJ entered a Recommended Order recommending that the Department enter a final order disapproving revitalization, because the materials provided to the Department did not include a verified copy of the written consents of the requisite number of affected parcel owners approving the proposed revived governing documents, as required by 720.406(1)(d). The Department must now determine whether or not to approve the revitalization, and enter a final order to that effect.

Standard of Review of a Recommended Order

Pursuant to Florida's Administrative Procedure Act, 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 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 the 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, 1281-83 (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.* at 1281.

The Administrative Procedure Act also specifies the manner in which the agency is to address conclusions of law in a recommended order. In its final order, the agency may only 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 reasonable as or more reasonable than that which was rejected or modified. § 120.57(1)(1), Fla. Stat.; *see also DeWitt v. Sch. Bd. of Sarasota Cnty.*, 799 So. 2d 322, 324-25 (Fla. 2d DCA 2001).

The label assigned to a statement is not dispositive as to whether it is a finding of fact or a conclusion of law. *Stokes v. State, Bd. of Prof'l Engineers*, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007) (citing *Kinney v. Dep't of State, Div. of Licensing*, 501 So. 2d 129, 132 (Fla. 5th DCA 1987)). A conclusion of law or finding of fact should be considered as such based upon the statement itself and not the label assigned. *See, e.g., Goin v. Comm 'n on Ethics*, 658 So. 2d 1131, 1137-38 (Fla. 1st DCA 1995).

Department's Review of the Recommended Order

The Department has been provided copies of the Recommended Order and the documentary evidence introduced at the final hearing. Respondent Association filed two exceptions to the Recommended Order on January 22, 2019. The exceptions are now considered as follows:

A – Exception 1: Conclusion of Law in ¶ 16

Respondent takes exception to a conclusion of law in paragraph 16, contending that the ALJ erroneously concluded that the burden of satisfying the requirements for revitalization is on the Association. The Association's conclusion is not as reasonable as or more reasonable than the conclusion set forth in paragraph 16 of the Recommended Order. Under a statutory framework which places a burden on a party, that party must carry the burden in both a non-final agency determination and at any administrative hearing on such action. *Fla. Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 786–89 (Fla. 1st DCA 1981) (distinguishing between the burden of proof before an administrative tribunal and the burden of ultimate persuasion). Consequently, Respondent's exception is DENIED.

B – Exception 2: Conclusion of Law in ¶¶ 30-32 and recommended disposition

Respondent Association's second exception contests the ALJ's conclusion of law that the copies of the written consents of the requisite number of affected parcel owners approving the revived declaration and other governing documents, as submitted to the Department, were not properly verified as required by section 92.525, Florida Statutes, and section 720.406(1)(d), and that such an inadequacy requires the disapproval of the proposed revitalization. Respondent argues that the absence of a definition of "verified" in section 720.406, or any other language addressing

a verification on information or belief, compels a permissive reading of the requirement, especially in light of the public policy concerns identified in section 720.403.

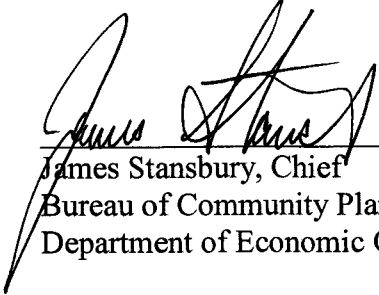
The Respondent's conclusion is not as reasonable as or more reasonable than the conclusion set forth in the Recommended Order; the plain language of sections 92.525 and 720.406, when those sections are taken together, clearly establishes that the verification of copies of consents submitted to the Department pursuant to section 720.406(1)(d) may not be made on information or belief. *See, e.g., Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 439 (Fla. 2013) (holding that where statutory language is clear or unambiguous, the interpretative inquiry ends). Therefore, Respondent's second exception is DENIED.

C – The Remainder of the Order

The Department identifies no 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 in the Recommended Order. Furthermore, the ALJ's findings of fact were based on competent, substantial evidence and there is no indication the proceedings on which the findings were based did not comply with the essential requirements of the law.

Order

Based on the foregoing, the Department adopts the ALJ's Recommended Order in its entirety.¹ The Department's Determination Number 18156 is hereby VACATED and RESCINDED,² and the proposed revitalization at issue in this matter is DISAPPROVED.



James Stansbury, Chief
Bureau of Community Planning and Growth
Department of Economic Opportunity

¹ A copy of which is attached as Exhibit A and incorporated herein.

² A copy of which is attached as Exhibit B and incorporated herein.

Rick Scott
GOVERNOR



Cissy Proctor
EXECUTIVE DIRECTOR

August 31, 2018

Emily E. Gannon, Esq.
Kaye Bender Rembaum, P.L.
1200 Park Central Blvd South
Pompano Beach, Florida 33064

**Re: Springlake- Northwood Homeowners Association, Inc.; Approval;
Determination Number: 18156**

DIVISION OF
ADMINISTRATIVE HEARINGS

2019 APR -8 PM 2: 29

FILED

Dear Attorney Gannon:

The Department of Economic Opportunity (Department) has completed its review of the Proposed Revived Declaration of Covenants and Restrictions (Declaration of Covenants) and other governing documents for the Springlake - Northwood Homeowners Association, Inc. (Association), and has determined that the documents comply with the requirements of Chapter 720, Part III, Florida Statutes. Therefore, the proposed revitalization of the Association's Declaration of Covenants is approved.

The Association is required to comply with the requirements in sections 720.407(1) - (3), Florida Statutes, including recording the documents identified in section 720.407(3), Florida Statutes, in the county's public records. The revitalized declaration and other governing documents will be effective upon recording. Immediately upon recording the documents in the public records, the Association is required to mail or hand deliver a complete copy of all approved recorded documents to the owner of each affected parcel as provided in section 720.407(4), Florida Statutes.

If you have any questions concerning this matter, please contact the Department of Economic Opportunity, Office of the General Counsel, at (850) 245-7150.

Sincerely,

James D. Stansbury, Chief
Bureau of Community Planning and Growth

JDS/ss/rm

Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399
850.245.7105 | www.floridajobs.org
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An equal opportunity employer/program. Auxiliary aids and service are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TTD equipment via the Florida Relay Service at 711.

Exhibit B

NOTICE OF RIGHT TO APPEAL

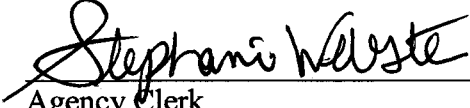
THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION UNDER CHAPTER 120, FLORIDA STATUTES. A PARTY WHO IS ADVERSELY AFFECTED BY FINAL AGENCY ACTION IS ENTITLED TO JUDICIAL REVIEW IN ACCORDANCE WITH SECTION 120.68, FLORIDA STATUTES, AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030(B)(1)(C) AND 9.110.

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(2), 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 foregoing Final Order was filed with the Department's undersigned Agency Clerk and that true and correct copies were furnished to the persons listed below in the manner described on the 4th day of April, 2019.



Agency Clerk
Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail

The Honorable Robert E. Meale
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

By Electronic and U.S. Mail

Jonathan Paul Young
Loretta Shirley
9635 Northwest 83rd Street
Tamarac, Florida 33321
Housemaster2848@att.net

Rebekah Davis, Esquire
Department of Economic Opportunity
Mail Station 110
107 East Madison Street
Tallahassee, Florida 32399
Rebekah.davis@deo.myflorida.com

Lauren T. Schwarzfeld, Esquire
Kaye Bender Rembaum, P.L.
1200 Park Central Boulevard South
Pompano Beach, Florida 33064
lschwarzfeld@kbrlegal.com