

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SAMUEL ARNOLD, TAMMY ARNOLD,
STEVEN CROWLEY, SHERRY CROWLEY,
BONNIE COWEN, AND TIMOTHY COWEN,

Petitioners,

vs.

Case No. 21-1241

SWEETWATER POINTE HOMEOWNERS
ASSOCIATION, INC.,

Respondent.

RECOMMENDED ORDER

On October 27, 2021, Administrative Law Judge Robert J. Telfer III, of the Florida Division of Administrative Hearings (DOAH), conducted an evidentiary hearing pursuant to section 120.57(1), Florida Statutes (2020), in Tallahassee, Florida, via Zoom web-conference.

APPEARANCES

For Petitioners: Brandon J. Stewart, Esquire
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For Respondent: Frank A. Ruggieri, Esquire
The Ruggieri Law Firm, P.A.
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STATEMENT OF THE ISSUE

Whether Respondent, Sweetwater Pointe Homeowners Association, Inc. (Association), properly revived its expired Declaration of Covenants and

Restrictions in accordance with sections 720.403 through 720.407, Florida Statutes (2020).

PRELIMINARY STATEMENT

On October 20, 2020, the Department of Economic Opportunity (Department) issued Determination Number 20163, which approved the revitalization of the Association’s “Declaration of Covenants and Restrictions” and “other governing documents” for the Sweetwater Pointe residential subdivision.

On February 15, 2021, Petitioners filed a Petition for Administrative Hearing, and thereafter, on March 23, 2021, filed an Amended Petition to Dispute Determination No. 21263, and Request for Hearing Pursuant to § 120.569 and 120.573 (Amended Petition). On April 7, 2021, the Department forwarded the Amended Petition to DOAH, which assigned it to the undersigned Administrative Law Judge to conduct the final hearing.

On April 29, 2021, the undersigned noticed the final hearing for May 27, 2021. The undersigned thereafter issued an Amended Notice of Hearing for July 30, 2021. On July 20, 2021, Petitioners filed a Motion to Continue Hearing Set for July 30, 2021, and Respondent, that same date, filed an Objection to Motion to Continue Hearing and Motion for Protective Order. Then, on July 23, 2021, Respondent filed a Motion for Summary Final Order. On July 23, 2021, the undersigned entered an Order Denying Motion for Summary Final Order. On July 26, 2021, the undersigned conducted a telephonic status conference, and on July 30, 2021, entered an Order Cancelling Hearing. Thereafter, on August 3, 2021, the undersigned noticed the Final Hearing for September 23, 2021.

On August 13, 2021, Respondent filed a Motion for Protective Order, which the undersigned denied on August 23, 2021. On August 31, 2021, Respondent filed an Amended Motion for Protective Order. The undersigned conducted a telephonic status conference on September 14, 2021, and on that same date, entered an Order Granting, in Part, and Denying, in Part, Respondent's Motion for Protective Order, and Ordering Petitioner to Exchange Exhibits.

On September 23, 2021, the undersigned attempted to commence the final hearing, but because a court reporter was not in attendance, continued the final hearing. The undersigned thereafter noticed the final hearing for October 27, 2021.

The undersigned conducted the final hearing on October 27, 2021, by Zoom web-conference. Petitioners presented the testimony of Tamika Spires-Hanssen, William "Bill" Stephenson, and Samuel Arnold. The undersigned admitted Petitioners' Exhibits P4, P13, and P14. Respondent presented the testimony of Timothy Bruce Cowen and Steven Crowley. The undersigned admitted Respondent's Exhibits R1 through R14 and R17, into evidence.

The two-volume Transcript of the final hearing was filed with DOAH on December 6, 2021. The parties timely submitted Proposed Recommended Orders on December 16, 2021, which the undersigned has considered in the preparation of this Recommended Order.

All statutory references are to the 2020 codification of the Florida Statutes, unless otherwise indicated.

FINDINGS OF FACT

1. Petitioners are parcel owners within the Sweetwater Pointe residential subdivision in Inverness, Citrus County, Florida.

2. Respondent, the Association, is a Florida not-for-profit corporation formed under chapter 617, Florida Statutes, and governed by chapter 720.

3. The Department is the state agency responsible for reviewing and approving submissions from associations seeking to revive declarations of covenants that have expired or otherwise have lapsed. Chapter 720, part III, contains the requirements for revitalization and also contains the specific responsibilities of the Department.

Restrictive Covenants and Other Governing Documents

4. In January 1987, Little Prince Communications, Inc., recorded a “Declaration of Covenants, Conditions and Restrictions of Sweetwater Pointe” in the public records of Citrus County, Florida, governing 62 lots in the Sweetwater Pointe residential subdivision (Restrictive Covenants).

5. The Articles of Incorporation for the Association were recorded on April 7, 1987.

6. Authority for the enforcement of the Restrictive Covenants was subsequently transferred to the Association. The Restrictive Covenants were amended in June 2002.

7. By operation of the Marketable Record Title Act (MRTA), chapter 712, Florida Statutes, the Restrictive Covenants expired 30 years from their initial recording, in January 2017.

8. According to the testimony of Ms. Spires-Hanssen, a copy of the bylaws of the Association was discovered when the Association’s prior management company—Village Services—provided the Association with boxes of various Association documents. A document that she identified as the Association’s bylaws had, in numerous places, handwritten strike-throughs of certain portions, and handwritten notes, edits, or additions throughout.

9. Ms. Spires-Hanssen testified that “there was a lot of controversy whether the bylaws existed or didn’t exist.” The Association received an opinion from its attorneys that the document identified in paragraph 8 above was a valid copy of the bylaws. She further testified that at some point in the past, the Association attempted to amend its bylaws, which led her to believe that the marked-up document referenced in paragraph 8 was the original bylaws of the Association.

10. Mr. Stephenson, a former board member of the Association from 2000 to 2003, and again in 2019, testified that during his service as board member, he did not believe that there were bylaws. He stated that he had searched for “valid” bylaws previously, but was unsuccessful. He testified that the Association decided to not record a copy of what he believed were draft bylaws when the Association amended the Restrictive Covenants in June 2002 “[b]ecause as far as the board knew, we had no bylaws.”

11. The undersigned notes that there do not appear to be any recorded bylaws of the Association. However, neither chapter 617 nor the statutory procedures for revitalization require that the Association bylaws be recorded.

Revitalization Process

12. In 2020, in an effort to revitalize the expired Restrictive Covenants, the Association formed an Organizing Committee, which was comprised of the three serving board members: Ms. Spires-Hanssen; Tricia Berry; and Nolan Toth.

13. At some point in 2020, the Organizing Committee prepared a packet of documents that contained the following documents (Owners Packet):

- a. Cover letter with instructions to homeowners from the members of the Organizing Committee;
- b. Second cover letter from Ms. Spires-Hanssen;
- c. “Revived Declaration of Covenants, Conditions and Restrictions of Sweetwater Pointe”;

d. “Revived Articles of Incorporation of Sweetwater Pointe Homeowners Association, Inc., a Corporation Not for Profit”;

e. “Revitalized By-Laws of Sweetwater Pointe Homeowners Association, Inc”;

f. A list of all parcels in the Sweetwater Pointe residential subdivision, including parcel owner(s), property address, legal description, and parcel I.D. number;

g. Various legal and graphical descriptions of the Sweetwater Pointe residential subdivision; and

h. A “Written Joinder and Consent to the Revived Declaration of Covenants and Governing Documents of Sweetwater Pointe Homeowners Association, Inc.” (consent joinder), which provided an owner to manifest agreement with revitalization through its execution.

14. The cover letter with instructions to homeowners, contained in the Owners Packet, contained the names, addresses, and phone numbers of all three of the Organizing Committee members.

15. The Association introduced into evidence copies of documents entitled “Property Owner Information Sheet,” in which property owners within the Sweetwater Pointe residential subdivision provided, *inter alia*, contact information, and authorization to receive communications and documents electronically, via email. Petitioners Samuel Arnold, Tammy Arnold, Steven Crowley, and Sherry Crowley completed a Property Owner Information Sheet and consented to receiving communications and documents electronically, and provided an email address for such communications and documents.

16. The Association introduced additional evidence that the Organizing Committee distributed the Owners Packet by hand delivery or regular mail to all of the record owners in the Sweetwater Pointe residential subdivision. Ms. Spires-Hanssen testified that the Organizing Committee mailed the Owners Packet to the parcel owners who had not received the documents by hand delivery, including all of the Petitioners. The evidence introduced

indicated that Owners Packets were mailed on May 27, 2020, with an expected delivery date of May 30, 2020.

17. Ms. Spires-Hanssen testified that the Organizing Committee received 44 consent joinders from parcel owners who agreed with the proposed revitalization; however, the Organizing Committee rejected two of the consent joinders for various issues. Ultimately, she testified that the Organizing Committee received 42 properly-executed consent joinders. Therefore, a majority of the 62 parcel owners elected to proceed with the revitalization process.

18. On September 11, 2020, the Association's attorney, Brian S. Hess of the law firm Clayton & McCulloh, mailed to the Department a packet of documents that sought approval of the revitalization of the Restrictive Covenants (Department Packet). The Department Packet contained:

- a. "Revived Declaration of Covenants, Conditions and Restrictions of Sweetwater Pointe";
- b. "Revived Articles of Incorporation of Sweetwater Pointe Homeowners Association, Inc., a Corporation Not For Profit";
- c. "Revitalized By-Laws of Sweetwater Pointe Homeowners Association, Inc.";
- d. Verification of copies of previous "Declaration of Covenants and Other Previous Governing Documents for the Community";
- e. Legal descriptions of each parcel subject to the "Revitalized Declaration and other Governing Documents";
- f. Graphical description(s) of affected properties;
- g. Affidavit of Compliance;
- h. Verification of Written Consents;
- i. "Written Joinders and Consents to the Revitalized Declaration of Covenants and Governing Documents of Sweetwater Pointe Homeowners Association, Inc.";
- j. Affidavit of President; and

k. Letter to parcel owners explaining and enclosing covenant revitalization documents.

19. In a letter dated October 20, 2020, the Department approved the proposed revitalization of the Restrictive Covenants.

20. On November 3, 2020, the Organizing Committee recorded the Revitalized Declaration of Covenants, Conditions and Restrictions of Sweetwater Pointe; the Revived Articles of Incorporation; and Revitalized By-Laws with the Citrus County Clerk.

21. On November 21, 2020, the Organizing Committee mailed to the parcel owners who had not consented to receive notice electronically, the recorded documents, as well as the Department's October 20, 2020, letter. On that same date, the Organizing Committee emailed electronic copies of these documents to the parcel owners who previously consented to receiving notice electronically.

Issues Raised by Petitioners

22. Petitioners raised various issues concerning the documents included in the Owners Packet.

23. Petitioners contend that the cover letter from the members of the Organizing Committee made numerous false or misleading statements that failed to alert parcel owners that the Restrictive Covenants had expired. For example, the cover letter's statements that there was a "risk" that the Restrictive Covenants could be extinguished by MRTA, and that an extinguishment could be "disastrous" for the Sweetwater Pointe community, were, according to Petitioners, misleading.

24. The undersigned finds that the Owners Packet contained the documents required under section 720.405, and when considered as an entirety, the Owners Packet was not false or misleading.

25. Next, Petitioners contend that there were never governing bylaws of the Association, so inclusion of the bylaws in the Owners Packet was improper.

26. With respect to the inclusion of a copy of the bylaws in the packet, Ms. Spires-Hanssen testified credibly that the bylaws found in the trove of documents provided by the previous management company were the bylaws the Organizing Committee decided to include in the Owners Packet, upon advice of counsel. Although she could not attest that the various handwritten strike-throughs and notations were in the original draft of the bylaws, she testified that she provided this document to the Association's attorney. She further testified that the previous management company, and the Association's attorney, retyped the bylaws included in the Owner's Packet, so that this newly-typed document did not reflect the strike-throughs and notations that were in the original document.¹

Issue Raised by Respondent

27. The Association elicited testimony and introduced evidence of the actions of individual Petitioners during the revitalization process that it contends establishes that Petitioners brought the instant action for an improper purpose. For example, one of the Petitioners filed a complaint with the Association's insurance company. As another example, one of the Petitioners filed a complaint against Ms. Spires-Hanssen, a Florida-licensed real estate broker, with the Department of Business and Professional Regulation, which involved allegations concerning the proposed revitalization. The undersigned does not find that these activities were

¹ Petitioners also introduced evidence that the Written Joinder and Consent document included in the Owners Packet failed to include specific reference to the revived or revitalized bylaws, although a copy of the "Revitalized By-Laws of Sweetwater Pointe Homeowners Association, Inc.," was included in the Owners Packet. Petitioners failed to raise this issue in their Amended Petition or their unilaterally-filed Pre-hearing Statement, and did not address it any further in their Proposed Recommended Order.

primarily to harass or cause unnecessary delay for the underlying revitalization matter, or were for a frivolous purpose or to needlessly increase the cost of the instant matter.

CONCLUSIONS OF LAW

28. DOAH has jurisdiction over the subject matter and the parties to this proceeding in accordance with sections 120.569 and 120.57(1).

29. 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).

30. The Florida Legislature enacted MRTA in 1963 to simplify and facilitate land transactions. *Blanton v. City of Pinellas Park*, 887 So. 2d 1224, 1227 (Fla. 2004). Under MRTA, restrictive covenants cease to be effective as to land parcels governed by the restrictive covenants 30 years after the restrictive covenants have been referenced in a deed that burdens each lot. § 712.02, Fla. Stat.

31. The Association concedes that its Restrictive Covenants expired by operation of MRTA.

32. When MRTA extinguishes a community's restrictive covenants, an association can utilize the procedures set forth in chapter 720, part III (sections 720.403-.407), to revive the expired restrictive covenants.

33. 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 owners approval.—

(1) The proposal to revive a declaration of covenants and an 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 revised 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 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 revised 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 revised declaration of covenants, the proposed new or existing articles of incorporation and bylaws of the 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 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 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 the state.

34. Section 720.406 describes the procedure and documents required to be submitted to the Department in order to revive expired 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 proposed revived declaration and other governing documents are approved by the 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.

35. Petitioners contend that the Association did not comply with the requirements of the revitalization procedure set forth in sections 720.403 through 720.406. The undersigned addresses each alleged violation below.

36. Petitioners first contend that the Association improperly formed an organizing committee, in derogation of a homeowners association's powers and duties prescribed in section 702.303, when it retained a management company and attorneys before notifying the Association's members of its plan to revitalize the Restrictive Covenants. Petitioners additionally contend that the Organizing Committee failed to comply with section 702.405, as it was

comprised of the Association's board members, with no notification to the Association's members of their appointment. The undersigned concludes that Petitioners have failed to present any persuasive evidence concerning these allegations, and further concludes that the competent, substantial evidence presented at the final hearing established that the Association properly formed the Organizing Committee in accordance with the governing statutes.

37. Next, Petitioners argue that the cover letter authored by the Organizing Committee in the Owners Packet contained numerous misleading statements. According to Petitioners, this cover letter confused the homeowners concerning whether the Restrictive Covenants had actually expired. Section 720.405 is silent, and therefore does not specify the requirements of, a cover letter (other than section 720.405(1)'s requirement that "any notice or other document provided by the [organizing] committee to parcel owners" contain the name, address, and telephone number of each member of the organizing committee). The undersigned finds that the Owners Packet included the documents required under section 720.405, and when considered as an entirety, was not false or misleading.

38. Petitioners also argue that the Owners Packet failed to comply with the requirements of section 720.405, as it included bylaws which it contends are not the original bylaws of the Association.

39. Section 720.405(3) provides that the Organizing Committee "shall prepare the existing articles of incorporation and bylaws to be submitted to the parcel owners." Section 720.405(5) states that "[a] copy of the ... proposed new or existing ... bylaws of the association ... shall be presented to all of the affected parcel owners by mail or hand delivery"

40. The undersigned concludes that the Organizing Committee obtained a copy of what it credibly concluded were the bylaws of the Association, and reproduced a retyped "clean" copy of it (that removed handwritten strike-throughs and edits) as part of the Owners Packet. The undersigned concludes that this reproduction complies with section 720.405's requirement that the

Organizing Committee “prepare” a copy of the existing bylaws of the Association. The undersigned concludes that Petitioners failed to establish, by a preponderance of the evidence, that the copy of the bylaws the Organizing Committee included in the Owners Packet were invalid or otherwise improperly included under section 720.405.

41. Petitioners next argue that the proposed revived Restrictive Covenants are more restrictive than the original Restrictive Covenants, in derogation of section 720.405(4). The undersigned notes that Petitioners failed to raise this issue in their Amended Petition, or in their unilaterally-filed Pre-hearing Statement and, further, presented no evidence on this issue at the final hearing. “Pretrial stipulations prescribing the issues on which a case is to be tried are binding upon the parties and the court, and should be strictly enforced.” *Broche v. Cohn*, 987 So. 2d 124, 127 (Fla. 4th DCA 2008) (citations omitted). *See also Palm Beach Polo Holdings, Inc. v. Broward Marine, Inc.*, 174 So. 3d 1037 (Fla. 4th DCA 2015) (holding that a pre-hearing stipulation constitutes “the final agreed-upon ‘executive summary’ as to what the impending trial is about and the specific issues that remain on the table.”). Because Petitioners failed to raise this issue in either their Amended Petition or their Pre-hearing Statement, the undersigned concludes that they cannot raise it for the first time, in their proposed recommended order, for resolution; regardless, the undersigned concludes that Petitioners did not establish this issue by a preponderance of the evidence.²

42. Petitioners also contend that the documents included in the Owners Packet differed from the documents included in the Department Packet, because the Owners Packet did not include original bylaws (*i.e.*, the one with the handwritten strike-throughs and edits), and that this discrepancy violated the requirements of sections 720.405 and 720.406. As previously

² The undersigned additionally notes that Petitioners raised numerous other issues in its Amended Petition and Pre-hearing Statement, that they either did not pursue at the final hearing or in their Proposed Recommended Order. The undersigned declines to address those issues Petitioners originally raised but abandoned at the final hearing.

found and concluded, the undersigned finds and concludes that the Owners Packet contained a reproduced version of what the Organizing Committee concluded were the original bylaws. The Department Packet contained copies of the revived bylaws, as well as the original bylaws (*i.e.*, the copy with the handwritten strike-throughs and edits), which the undersigned concludes is consistent with the requirements of section 720.406.

43. As detailed above, the undersigned concludes that the Association complied with the requirements of sections 720.403 through 720.406.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby RECOMMENDS that the Department of Economic Opportunity enter a final order approving the revitalization of the Sweetwater Pointe Homeowners Association, Inc.'s, expired Restrictive Covenants and governing documents.

DONE AND ENTERED this 5th day of January, 2022, in Tallahassee, Leon County, Florida.



ROBERT J. TELFER III
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of January, 2022.

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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.