

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

HIGHLAND RIDGE HOMEOWNERS'
ASSOCIATION, INC.,

Petitioner,

Case No. 22-1558

vs.

DEPARTMENT OF ECONOMIC
OPPORTUNITY,

Respondent.

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (DOAH), conducted the final hearing in this case on July 22, 2022, in Tallahassee, Florida, by Zoom video conference.

APPEARANCES

For Petitioner: Michelle. Reiss, Esquire
Appleton Reiss, PLLC
215 North Howard Avenue, Suite 200
Tampa, Florida 33606

For Respondent: Ashanti Danielle Breeden, Esquire
Valerie Frederique Josi Cantave, Esquire
Department of Economic Opportunity
107 East Madison Street
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Did Petitioner, Highland Ridge Homeowners' Association, Inc. (Association), a homeowners' association, properly revive its extinguished restrictive covenants in accordance with sections 720.403-720.407, Florida Statutes (2021)?¹

PRELIMINARY STATEMENT

Respondent, Department of Economic Opportunity (Department), determined that the Proposed Revived Declaration and other governing documents for the Association did not comply with the requirements of chapter 720, Part III. Specifically, the Department concluded that the Association had not complied with the requirement of section 720.405(1) that a proposal to revive a declaration of covenants 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 [and that 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." The Association filed a "Petition for Reversal of Denial of Revitalization of the Governing Documents of Highland Ridge." On May 25, 2022, the Department referred the dispute to DOAH to conduct an evidentiary hearing. The undersigned scheduled the hearing for July 22, 2022, and conducted it as scheduled.

At 1:43 p.m. on July 21, 2022, the Association filed a Supplemental Witness and Exhibit List. At the outset of the hearing, the Department's Motion to Strike the Supplemental Witness and Exhibit List was granted.

Joint Exhibits 1A through 1H, and a separate Joint Exhibit 1, were admitted. Joint Exhibits 2 and Exhibit 3 were admitted. The Association presented the

¹ All references to Florida Statutes are to the 2021 compilation unless otherwise noted.

testimony of Olivia Polk and Rozell McKay. Petitioner's Exhibit 1 was admitted into evidence. The Department did not offer testimony or exhibits, other than the joint exhibits and testimony elicited from Ms. Polk and Mr. Rozell.

The Transcript of the hearing was filed August 11, 2022. The parties timely filed Proposed Recommended Orders. They were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The parties stipulated to the facts in findings 1 through 31, which quote the pre-hearing stipulation.

1. The Department is the state agency responsible for reviewing (and approving or denying) submissions from communities seeking to revive declarations of covenants that have ceased to govern in the community.

2. The Department's role with respect to homeowners' associations is limited to deciding whether a revitalization submission complies with the requirements of the Revitalization Act.

3. The Association is a Florida Not-For-Profit Corporation that serves as the governing body for the Highland Ridge community, which is located in Brandon, Florida.

4. Sections 720.403-407 of the Florida Statutes provide the mechanism by which a homeowners' association, such as Petitioner, may revitalize its restrictive covenants once extinguished as to at least one parcel by operation of the Marketable Record Title Act ("MRTA").

5. The Association is a homeowners' association and is eligible to seek revitalization.

6. The Association's restrictive covenants are set forth in the Declaration of Easements, Covenants, Conditions and Restrictions for Highland Ridge ("Declaration"), which was originally recorded March 4, 1987, at Official Records Book 5056, Page 548 in the public records of Hillsborough County, Florida, and

thereafter amended by amendments recorded in the public records of Hillsborough County, Florida.

7. The First Amendment to Declaration of Easements, Covenants, Conditions, and Restrictions for Highland Ridge ("First Amendment") was recorded on May 8, 1987, at Official Records Book 5115, Page 1965 in the public records of Hillsborough County, Florida.

8. The Second Amendment to Declaration of Easements, Covenants, Conditions, and Restrictions for Highland Ridge ("Second Amendment") was recorded on September 15, 1988, at Official Records Book 5502, Page 1234, in the public records of Hillsborough County, Florida (collectively, the First Amendment and Second Amendment are referred to as "Amendments").

9. The Articles of Incorporation ("Articles") and Bylaws ("Bylaws") of the Association were recorded on June 18, 2021, at Official Records Instrument #2021307307 in the public records of Hillsborough County, Florida. The Declaration, Articles, and Bylaws are referred to herein as the "Proposed Revived Documents."

10. The Association determined MRTA may have extinguished its restrictive covenants as to at least one parcel in the community and, as a result, sought to revitalize its previous governing documents.

11. The Association formed an organizing committee which initiated the proposal to revive the governing documents.

12. The organizing committee consisted of the members of the Board of Directors in office at the time the organizing committee was formed.^[2]

13. The proposal to revive the governing documents was initiated by the organizing committee by written notice to owners on September 28, 2021 ("November Meeting Notice").

14. In accordance with section 720.405(5), Florida Statutes, the November Meeting Notice included:

² There is no evidence or claim that the membership of the board changed during the relevant time period.

- a. notice of a special membership meeting to be held on November 2, 2021;
- b. the names, addresses, and phone numbers of the organizing committee members;
- c. a copy of the complete text of the Proposed Revived Documents;
- d. a list of the lots in the community; and
- e. a graphic depiction of the property.

15. The November Meeting Notice complied with sections 720.405(1), 720.405(5), 720.405(6), and 720.306(5), Florida Statutes.

16. The special membership meeting to approve revitalization convened on November 2, 2021, and was continued to January 20, 2022 ("Continued Meeting").

17. Notice of the Continued Meeting was announced on the record at the November 2, 2021, meeting.

18. The Association also noticed the Continued Meeting by providing the Continued Meeting Notice (which also included notice of the Association's annual membership meeting) to the parcel owners.

19. The notices of the Continued Meeting complied with section 720.306, Florida Statutes.

20. The Continued Meeting convened on January 20, 2022, and was further continued to January 29, 2022 (the "Second Continued Meeting"). The date for the Second Continued Meeting was announced on the record at the first Continued Meeting.

21. The notice of the Second Continued Meeting complied with section 720.306, Florida Statutes.

22. The Association obtained majority approval of the Proposed Revived Documents by vote held at the Second Continued Meeting on January 29, 2022, in accordance with section 720.405(6), Florida Statutes.

23. The Department received Petitioner's timely Revitalization Submission on February 25, 2022.

24. Petitioner's Revitalization Submission included the Continued Meeting Notice and an affidavit of Notice and Voting Results ("Notice Affidavit"), signed and dated by Olivia Polk on February 24, 2022.

25. The Notice Affidavit asserts that the Continued Meeting Notice was mailed to all of the owners and that a true and correct copy of the Continued Meeting Notice was attached with the Notice Affidavit.

26. The Continued Meeting Notice did not include the name, address, and telephone number of each member of the organizing committee.

27. Petitioner's Revitalization Submission to the Department did not include the Amendments.

28. The Department did not request copies of the Amendments prior to issuing the Determination.

29. Petitioner sent certified copies of the Amendments to the Department via email on July 12, 2022.

30. The Proposed Revived Documents complied with section 720.404(3), Florida Statutes, and section 720.405(4), Florida Statutes. The Department did not have the opportunity to review the Amendments to determine if the Amendments complied with section 720.404(3), Florida Statutes, and section 720.405(4), Florida Statutes.

31. The agency action subject to review is the Department's Determination, denying the Association's Revitalization Submission by letter dated April 22, 2022.

32. The September 28, 2021, notice of the November 2, 2021, meeting was the only notice or document given to the Association's owners related to the proposed revitalization documents that provided the name, address, and telephone number of each member of the organizing committee. It was also the only notice of any meeting at which the documents were to be considered that provided the name, address, and telephone number of each member of the organizing committee.

33. The Continued Meeting Notice incorporated in the Notice of Annual Meeting, dated November 23, 2021, is the only written notice of the continued meeting given to parcel owners. The only mention of the continued revitalization meeting in the one-page Notice of Annual Meeting reads: "6:30 – 7:00: Continuance of the

Revitalization Meeting." The next statement on the Notice is "7:00 – 8:00: The Annual Meeting of the Highland Ridge Homeowners Association will be held on January 20, 2022."

34. The remainder of the Notice of Annual Meeting goes on to provide the location of the annual meeting, the purpose of the annual meeting, the agenda for the annual meeting, an announcement of the amount of the 2022 assessment, and information about proxy voting and the conduct of the annual meeting. There is no indication that any documents were provided with the Notice of Annual Meeting. The Association's board of directors (Board) caused the Notice to be issued. The members of the Board are also members of the organizing Committee. In addition, the reasonable and rational inference from the record is that the organizing committee must have authorized the Board to provide notice of the continued meetings.

35. The Notice of Annual Meeting was the only document distributed to Association owners that mentioned the continuation of the November revitalization meeting. It did not provide the name, address, and telephone number of each member of the organizing committee.

CONCLUSIONS OF LAW

36. Sections 120.569 and 120.57(1), Florida Statutes, grant DOAH jurisdiction of the parties and subject matter of this proceeding.

37. This is a *de novo* proceeding to be determined upon the stipulations and the evidence admitted in the final hearing. § 120.57(1)(k), Fla. Stat.

38. The Association bears the burden of proving its claims by a preponderance of the evidence. *See Fla. Dep't of Transp. v. J.W.C. Co., Inc.*, 396 So. 2d 778 (Fla. 1st DCA 1981).

39. Chapter 720, Part III, establishes a process for revitalizing covenants of a homeowners' association. The Department is the state agency responsible for reviewing applications for covenant revitalization submitted by a homeowners' association.

40. If a homeowners' association determines MRTA has extinguished one or more of its restrictive covenants as to at least one parcel, the association may utilize the procedures set forth in Part III to revive the extinguished covenants.

41. MRTA defines a "property owners' association" to mean a homeowners' association as defined in section 720.301, a corporation or other entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners which is authorized to enforce a community covenant or restriction that is imposed on the parcels.

42. Section 720.405(1) requires that an organizing committee of at least three parcel owners initiate any proposal to revive a declaration of covenant. It also 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 organizing committee to parcel owners to be affected by the proposed revised declaration."

43. The language of the statute is plain. It requires an organizing committee to provide specific information about its membership with "any notice or other document provided" to parcel owners affected by the proposed revised declaration. The plain language should be applied as written. *McCloud v. State*, 260 So. 3d 911 (Fla. 2018).

44. The written notice of the continued meeting of January 20, 2022, and the verbal notice of the continued meeting held January 29, 2022,³ did not include the required information. These notices were notices provided by the organizing committee since the membership of the organizing committee and the Board was the same and because

³ The verbal notice also went only to the members attending the annual meeting.

the organizing committee authorized the Board to provide notice of continued meetings.

45. The Association argues that the notices of the first and second continued meetings were from the board of directors, not the organizing committee, and therefore did not have to satisfy the requirements of section 720.405(1).

46. The Association's interpretation of the statute would mean that the organizing committee would never have to provide the committee member information so long as another body issued the notice of the meeting. This interpretation violates the principle that statutes should be interpreted to give all provisions effect. *Palm Beach Cnty. Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1285 (Fla. 2000). It also violates the principle that common sense should be applied to statutory interpretation. *Sch. Bd. v. Survivors Charter Schs., Inc.*, 3 So. 3d 1220, 1235 (Fla. 2009).

47. The Association did not satisfy the requirements of section 720.405(1). Consequently, the Department properly denied its revitalization proposal. *Kravitz, Jr. v. Venetian Isles Homeowners Assoc., Inc. and Fla. Dept. of Econ. Opportunity*, Case No. 20-1703 (Fla. DOAH August 17, 2020; Fla. DEO November 16, 2020).

48. In this proceeding the Department asserts for the first time that the revitalization proposal should be denied because the Association did not provide a verified copy of the previous declaration of covenants and other previous governing documents for the community, including any amendments, as required by section 720.406(1)(b). This failing was not the basis of the Department's decision to deny approval of the revitalization proposal.

49. Addressing this issue is not necessary in light of the inadequate notices of the continued meetings requiring disapproval of the revitalization of the covenants.

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 the covenants of the Highland Ridge Homeowners Association, Inc.

DONE AND ENTERED this 1st day of September, 2022, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of September, 2022.

COPIES FURNISHED:

Jaiden Foss, Agency Clerk
(eServed)

Michelle Reiss, Esquire
(eServed)

Ashanti Danielle Breeden, Esquire
(eServed)

Valerie Frederique Josi Cantave, Esquire
(eServed)

Dane Eagle, Executive Director
(eServed)

Karen Gates, General Counsel
(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.