

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES

IN RE:

PETITION FOR DECLARATORY STATEMENT

LAKE COMO CO-OP, INC.,

Petitioner.

Final Order No. BPR-97-06050 Date 8-1-97

FILED

Dept. of Business and Professional Regulation

AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Brandi Lane

Docket No. DS97170

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes (Division) hereby issues this Declaratory Statement pursuant to sections 718.501 and 120.565, Florida Statutes.

FINDINGS OF FACT

1. On May 20, 1997 the Division received a Petition for Declaratory Statement from the Lake Como Co-op Inc., through William A. Doenges, President, (the Petitioner).

2. The Petitioner is the cooperative association that operates the Lake Como Cooperative. Lake Como is a cooperative created pursuant to chapter 719, Florida Statutes.

3. According to the Petition For Declaratory Statement, the Board of Directors of the Association, referring to section

719.106, Florida Statutes, requests that the Division grant a "waiver of the Rule" permitting the videotaping of board meetings by shareholders on the grounds that Lake Como Co-op is a nudist club. According to the Petition, the videotaping or photographing of other nudists or visitors is prohibited by camp rules and regulations, and the Board of Directors desires to protect the privacy of all attendees to all called board meetings and committee meetings held within the park. The Petition is not seeking a statement as to the applicability of the requirement concerning the audio recording of such meetings.

4. The Petitioner requests a declaratory statement as to: Whether section 719.106(c)(5), (sic) Florida Statutes, authorizing unit owners to videotape association meetings, applies to Lake Como Co-op, a nudist colony whose rules and bylaws forbid the videotaping of other nudists and co-op visitors. The applicable section of the statute is properly cited as section 719.106(1)(c), Florida Statutes.

5. The Division has not promulgated any rules concerning the videotaping of meetings of the board of administration of cooperatives.¹

6. On June 20, 1997, the Division published the Notice of

¹The Division has promulgated a rule pursuant to the Condominium Act, ch. 718, Florida Statutes, Rule 61B-23.002(11), Florida Administrative Code. However the rule applies only to condominiums and would not affect the conclusions reached in this Declaratory Statement.

Receipt of the Petition for Declaratory Statement in the Florida Administrative Weekly and a copy of the Petition was sent to JAPC. To date, the Division has received no response to the Petition.

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 719.501, and 120.565, Florida Statutes.

2. Although the Petition is titled as a petition for declaratory statement, the Petitioner requests a "waiver of the rule permitting the videotaping of board meetings by shareholders." To the extent that this petition is a request for a waiver or variance, the waiver or variance cannot be granted. Section 120.542(1), Florida Statutes, states in part that

... This section does not authorize agencies to grant variances or waivers to statutes...

The provision that Petitioner seeks to waive is not a rule but a statute, section 719.106(1)(c), Florida Statutes. The waiver and variance provisions of chapter 120, Florida Statutes, as cited above, do not apply to state statutes.

3. In so far as the petition seeks a declaratory statement, section 120.565, Florida Statutes, addresses declaratory statement by agencies and states:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action.

4. Rule 28-105.001, Florida Administrative Code, states:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A petition for declaratory statement must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

5. The Petitioner is substantially affected by the statutory provisions cited above and has standing to seek this declaratory statement.

6. The Petition seeks a ruling from the Division as to whether section 719.106(1)(c), Florida Statutes, applies to it in its particular set of circumstances. The particular circumstances stated in the Petition are that "Lake Como Co-op is a nudist club

and the videotaping or photographing of other nudists or visitors to the park is prohibited by camp rules and regulations." Section 719.106, Florida Statutes provides, in part,

719.106 Bylaws; cooperative ownership.-

(1) MANDATORY PROVISIONS.-The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(c) Board of administration meetings.-Meetings of the board of administration at which a quorum of the members is present shall be open to all unit owners. Any unit owner may tape record or videotape meetings of the board of administration. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting....Meetings of a committee to take final action on behalf of the board or to make recommendations to the board regarding the association budget are subject to the provisions of this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this section, unless those meetings are exempted from this section by the bylaws of the association.(emphasis added).

7. A cooperative, like a condominium, is strictly a creature of statute. The provisions of a declaration under which the condominium or cooperative is created must conform to statutory requirements and/or to the documents under which a co-op is created. To the extent that they conflict therewith, the statute must prevail. Winkelman v. Toll, 661 So. 2d 102 (Fla. 4th DCA 1995); Suntide Condominium Ass'n v. Division of Florida Land Sales and Condominiums, 463 So. 2d 314 (Fla. 1st DCA 1984), review denied, 469 So.2d 750 (Fla. 1985). See also: Elbadramany v.

Oceans Seven Condominium Ass'n, Inc., 461 So. 2d 1001, 1003 (Fla. 5th DCA 1984) (although the condominium documents purport to transform a fine into a common expense and thus make the fine enforceable under section 718.116, the condominium documents cannot lawfully provide procedures which are inconsistent with the Condominium Act).

8. Section 719.106, Florida Statutes, is identical to the corresponding provision under the Florida Condominium Act, section 718.112(2)(c), Florida Statutes. The amendment to section 719.106, Florida Statutes, permitting the videotaping of board meetings was added during the 1991-2 legislative session. The intent of the section was to permit greater owner involvement in meetings and in the operation of their association. In authorizing the videotaping of board meetings, the statute sets forth a procedure by which unit owners can exercise their right to attend board meetings. The provisions of 719.106, Florida Statute, specifically apply to all cooperative associations created under the chapter. Lake Como Co-op is a cooperative created pursuant to chapter 719, Florida Statutes. Thus, the provisions of 719.106, Florida Statutes, including the provision authorizing unit owners to videotape board meetings, apply to Lake Como Co-op.

9. There is no authority under this statute for waiver or variance and no division rule exists which would authorize the infringement upon the right of shareholders to have access to board meetings by prohibiting the videotaping of the board meetings.

However, the fact that the association may not prohibit videotaping of association board meetings does not mean that the association could not enact reasonable guidelines for the videotaping of board meetings that would be sensitive to both the unit owners right of access and their privacy concerns.

WHEREFORE, for the foregoing reasons, the Division declares that the provisions of section 719.106, Florida Statutes, apply to this petitioner.

DONE AND ORDERD this 31st day of July,
1997, at Tallahassee, Leon County, Florida.



Robert H. Ellzey, Jr.
ROBERT H. ELLZEY, JR., DIRECTOR
Division of Florida Land Sales,
Condominiums and Mobile Homes
Department of Business and
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Northwood Centre
940 North Monroe Street
Tallahassee, Florida 32399-1030

RIGHT TO APPEAL

**THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND
MAY BE APPEALED BY PETITIONERS PURSUANT TO SECTION 120.68,
FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE
PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE**

REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE
PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL
ACCOMPANIED BY APPROPRIATE FILING FEES, AND WITH SARAH WACHMAN,
AGENCY CLERK FOR THE DEPARTMENT OF BUSINESS AND PROFESSIONAL
REGULATION, WITHIN 30 DAYS OF THE RENDITION OF THIS DECLARATORY
STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the
foregoing Declaratory Statement has been furnished by U.S. Mail
to William A. Doenges, President, Lake Como Co-op, Inc., 20500
Cot Rd., Lutz, Florida, 33549, on this _____ day of
_____, 1997.

Kristie L. Harris
Docket Clerk

Copies furnished to:

Martha F. Barrera,
Senior Attorney

Faye Mayberry, Chief
Bureau of Condominiums

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