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Department of Business and Professional Regulation

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By:

Sarah Wachman

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

IN RE: PETITION FOR DECLARATORY STATEMENT

DS 99-009

723 HOMEOWNERS ASSOCIATION AT
STRAWBERRY RIDGE INC.,

DOCKET NO. DS1999075

Petitioner.

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes (Division) issues this declaratory statement pursuant to sections 723.006 and 120.565, Florida Statutes, based upon the following:

STATEMENT OF THE ISSUE

Whether pursuant to section 723.075(1), Florida Statutes, one homeowners association can represent two separate mobile home parks.

FINDINGS OF FACT

The following facts were taken from the Petition for Declaratory Statement and a later submission of additional information from the Association. The Division takes no position

concerning the truth or accuracy of these facts, but merely accepts them as presented for the purpose of this Declaratory Statement.

1. The Petition for Declaratory Statement was received on March 31, 1999. On April 22, 1999, a letter was sent to the Petitioner requesting additional information. On May 6, 1999, a letter was sent by Petitioner to the Secretary of the Department of Business and Professional Regulation, however, no additional information was included. A notice of receipt was published in the Florida Administrative Weekly on May 7, 1999.

2. On May 13, 1999, the Division received a Petition to Intervene and a Memorandum of Law from Community Investments, Inc., (Intervenor) the general partner of Strawberry Ridge Ltd., the mobile home park owner.

3. On June 5, 1999, the Petitioner filed a response to the Intervenor's Petitioner to Intervene and Memorandum of Law, and supplied the additional information needed by the Division.

4. Adjacent to Strawberry Ridge Mobile Home Park [Prospectus number PRMZ000691] is Strawberry Ridge South Mobile Home Park [Prospectus number PRMZ003255]. Each park has the same owner, but they are separate mobile home parks as defined by section 723.003(6) and 723.011, Florida Statutes. The parks have the same owner and mailing address.

5. Petitioner, is the association representing the homeowners in Strawberry Ridge Mobile Home Park. No Strawberry Ridge South residents are members of the Petitioner Association, although some have requested that they be allowed to join.

6. Strawberry Ridge and Strawberry Ridge South have two separate tax bills.

7. Petitioner Association has notified the park owner of their incorporation in accordance with section 723.076(1), Florida Statutes.

8. Petitioner Association has filed a notice with the clerk of Hillsborough County in accordance with section 723.076(3), Florida Statutes.

9. The materials provided by the Intervenor have been reviewed and are a part of the official docket file of this Declaratory Statement.

10. The materials provided by the Petitioner in response to the Petition to Intervene have been reviewed and are a part of the official docket file of this Declaratory Statement.

The Petitioner states that they believe they would not have the protection of chapter 723, Florida Statutes, if one homeowner's association has members from both mobile home parks.

Petitioner further states that they believe they would "also

loose under Florida Statute 723.061(2) Land use Change."

CONCLUSIONS OF LAW

1. The Division has jurisdiction over the Petitioner and the subject matter of the Petition for Declaratory Statement pursuant to sections 723.006 and 120.565, Florida Statutes.

2. Section 723.002(1), Florida Statutes states in pertinent part:

(1) The provisions of this chapter apply to any residential tenancy in which a mobile home is placed upon a rented or leased lot in a mobile home park in which 10 or more lots are offered for rent or lease.

3. Section 723.003(6), Florida Statutes states:

(6) The term "mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

4. Section 723.011(1)(a), Florida Statutes, states in pertinent part:

In a mobile home park containing 26 or more lots, the park owner shall file a prospectus with the division. Prior to entering into an enforceable rental agreement for a mobile home lot, the park owner shall deliver to the homeowner a prospectus approved by the division.

5. The provisions of chapter 723, Florida Statutes, apply to all mobile home parks as defined by section 723.003(6), Florida

Statutes, regardless of the particular type of homeowners association that may or may not represent the homeowners.

6. The particular circumstances addressed by the Petitioner relate to the application of section 723.075(1), Florida Statutes that states:

In order to exercise the rights provided in s. 723.071, the mobile home owners shall form an association in compliance with this section and ss. 723.077, 723.078 and 723.079, which shall be a corporation for profit or not for profit and of which not less than two-thirds of all of the mobile home owners within the park shall have consented, in writing, to become members or shareholders. Upon such consent by two-thirds of the mobile home owners, all consenting mobile homeowners in the park and their successors shall become members of the association and shall be bound by the provisions of the articles of incorporation, the bylaws of the association, and such restrictions as may be properly promulgated pursuant thereto. The association shall have no member or shareholder who is not a bona fide owner of a mobile home located in the park. Upon incorporation and service of the notice described in s. 723.076, the association shall become the representative of the mobile home owners in all matters relating to this chapter. [Emphasis added]

7. Section 723.075 (1), Florida Statutes, specifically states the requirements a mobile homeowners association must fulfill to exercise the rights provided in section 723.071, Florida Statutes, primarily, the right of first refusal. Section 723.075(1), Florida

Statutes, does not provide a limitation on mobile homeowners associations with respect to the remainder of chapter 723, Florida Statutes.

8. Section 723.006, Florida Statutes, lists the powers and duties of the Division. The Division does not have authority to require that a mobile home park form a particular type of homeowners association.

9. Pursuant to section 723.075(1), Florida Statutes, in order to exercise the rights provided in section 723.071, Florida Statutes, the association shall have no member or shareholder who is not a bona fide owner of a mobile home located in the park.

10. On July 15, 1992, the Second Judicial Circuit, Leon County, held that section 723.061(2), Florida Statutes, was unconstitutional and enjoined the Division from enforcing this provision of the statute. On January 18, 1994, in Aspen-Tarpon Springs Ltd. Partnership v. Stuart, 635 So.2d 61 (1st DCA 1994), the First District Court of Appeal upheld the circuit court decision, and ruled that section 723.061(2), Florida Statutes, was an unconstitutional taking of property without compensation.

WHEREFORE, the Division DECLARES that for the rights provided in section 723.071, Florida Statutes to be enforceable, the provisions of section 723.075(1), Florida Statutes must be met. A

homeowners association that has members who do not own a mobile home located in that park, does not comply with section 723.075(1), Florida Statutes.

The Division further DECLARES that Petitioner's second question is moot because, as discussed above in paragraph 10, section 723.061(2), Florida Statutes, was ruled unconstitutional.

DONE this 20 day of July, 1999, at Tallahassee, Leon County, Florida.



Robin L. Suarez
ROBIN L. SUAREZ, ACTING DIRECTOR
Division of Florida Land Sales,
Condominiums, and Mobile Homes
Department of Business and
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1940 North Monroe Street
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RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, (1985) 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 THE AGENCY CLERK FOR THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, 1940 NORTH MONROE STREET, TALLAHASSEE, FLORIDA 32399-0792, WITHIN 30 DAYS OF THE RE rendition OF THIS DECLARATORY STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct of the foregoing has been furnished by U.S. mail to James Bieser, as Registered Agent for Strawberry Ridge Homeowners Association, Inc., 513 Choo Choo Lane, Valrico, Florida 33594, Lee Lewis, as Registered Agent for 723 Homeowners Association at Strawberry Ridge, Inc., 207 Tahoe Circle, Valrico, Florida 33594 and David D. Eastman, Esq., Attorney for Intervenor, P.O. Box 1569, Tallahassee, Florida 32302 on this _____ day of _____, 1999.

KRISTIE L. HARRIS, DOCKET CLERK

cc: Jim Norred, Chief
Bureau of Mobile Homes

Denise O'Brien
Assistant General Counsel