

Final Order No. BPR-2003-01241 Date: 5-7-03  
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By: Brandon M. Nichols

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

IN RE: PETITION FOR DECLARATORY STATEMENT,

Sidney H. Firestone, Vice President,  
No. 2 Condominium Association Palm Greens  
at Villa Del Ray, Inc.,

Docket No. 2003053516

Petitioner.

**DS 2003-009**

**DECLARATORY STATEMENT**

Petitioner, Sidney H. Firestone, a unit owner and Vice President of Number 2 Condominium Association Palm Greens at Villa Del Ray, Inc. (Firestone), requests a declaratory statement on whether a tape recording of an association board meeting is an "official record" open to unit owner inspection when the tape is an aid to the association secretary in preparing the official minutes of the board meeting and not retained under section 718.111(12)(c)15, Florida Statutes, and rule 61B-23.002(5)(b)6, Florida Administrative Code; and whether a master association may amend its bylaws to remove a requirement for approval by a majority of the board of directors of the member condominium associations for a material alteration and addition to the master association common areas under section 718.112(1)(a), Florida Statutes. The division finds that the tape is an official record and the association may amend its bylaws in accordance with the amendment provisions in the bylaws if the amendment is properly recorded in the public records.

## STATEMENT OF FACTS

The following facts are based on information submitted by Firestone. The Division relies on the statement of facts set out in the petition without taking any position with regard to the validity of the facts.

1. On March 25, 2003, Firestone, Vice President of Number 2 Condominium Association Palm Greens at Villa Del Ray, Inc., filed a petition for declaratory statement containing four issues, one of which was the same as that posed by Irwin Ross and a second that was the same as that posed by Jerry Cooke. The association was accepted as an intervenor in the two unit owner petitions, so this petition will address the remaining two issues raised by the association.

2. Notice of the Petition was published in the Florida Administrative Weekly on April 18, 2003.

3. Number 2 Condominium Association Palm Greens at Villa Del Ray, Inc. (No. 2 Association) is a condominium "association."

4. The Recreation Association is comprised of two condominium associations, Number 1 and Number 2 of Palm Greens. Art. II, Bylaws of Palm Greens at Villa Del Ray Recreation Condominium Association, Inc. (Recreation Association) (amended Jan. 2, 1996); Art. XIX(D), Declaration of Condominium, No. 2 Association (amended Feb. 7, 1990). All unit owners are members of their condominium association, which is a member of the Recreation Association. Art. XIX(A), Declaration No. 2 Association (amended Feb. 7, 1990); art. III, Bylaws, Recreation Association (amended Jan. 2, 1996).

5. The Recreation Association is responsible for the operation and maintenance of the recreation areas that serve the two condominiums in Palm Greens. Art. II, Art. Incorpor., Recreation Association (amended Mar. 25, 1991); arts. II(A), III, § 1, Bylaws, Recreation Association (amended Jan. 2, 1996); art. XIX(F), Declaration No. 2 Association (amended Feb. 7, 1990). The Recreation Association has the powers set forth in its articles of incorporation and bylaws and the declarations of condominium for its sub-association members. Art. III, s 3.2, Art. Incorpor., Recreation Association (amended Mar. 25, 1991). The Recreation Association exercises its powers “in accordance with the provisions of the separate Declaration of Condominiums and the By-Laws of the Association.” *Id.* at § 3.4. This includes the power to “further improve the property, real and personal, and to purchase realty and items of furniture, furnishings, fixtures and equipment, and to acquire and enter into agreements to accept and hold title to real property and maintain same.” Art. V, §7(F), Bylaws, Recreation (amended Jan. 2, 1996). Under the declarations of condominium, the Recreation Association has “all of the powers and duties granted to or imposed upon it by the By-Laws of the Master Association including, but not limited to, the power to assess the subassociations for expenses for its operation.” Art. XIX, § B (amended Feb. 7, 1990).

6. The Recreation Association is a “condominium association.”

A. Tape Recording.

7. The board of directors of the Association routinely tape record their meetings as an aid to the secretary in preparing a written record of the meetings. The written minutes become the official record of the Association’s meeting. The board does not view the tape recording as an independent official record of the Association.

8. A unit owner has requested an opportunity to listen to the tape recording of the Association's March 4, 2003 board of directors meeting.

9. The Association has denied the unit owner's request on the grounds that the tape recording is not an official record of the meeting, but merely an aid to the secretary in preparing the minutes. It is not stated, but is assumed for purposes of this statement, that the tape recording is not kept once the written minutes have been approved as the official record of the board meeting. If the tape recordings were kept after the board approved the minutes, then the tape would become an official record.

B. Bylaw Amendment.

10. Both No. 1 and No. 2 condominium associations participate in the Recreation Association as the representative of the unit owners within their associations. Art. XIX(D), Declaration, No. 2 Association (amended Feb. 7, 1990); art. II, Bylaws, Recreation Association (amended Jan. 2, 1996). The Recreation Association board has 6 representative members, each of whom is a director. Art. III, § 2, Bylaws, Recreation Association (amended Jan. 2, 1996).

11. The Association elects three members to the Recreation Association board of directors at the annual meeting. Art. XIX, § 1, Bylaws, No. 2 Association (amended Oct. 24, 1986). The Association's three representatives on the Recreation Association vote on Recreation Association business and "shall not be subject to the control of the Board of Directors or the voting membership of the Sub-Association; provided, however, that a special meeting may be called pursuant to Article III, Section 4, of these By-Laws for the purpose of directing the vote of Sub-Association Representatives at Recreation Association meetings." Art. XIX, § 5, Bylaws, No. 2

Association. Under article III, section 4 of the Bylaws of No. 2 Association, related to unit owner meetings, a special meeting to discuss and get a membership vote on how the representative shall vote in the Recreation Association meeting may be called by 20% of the unit owners, a majority of the board, or the president. Art. III, § 4, Bylaws (amended Oct. 24, 1986). The Association recently amended article VI of its bylaws related to its assessment authority: "In the event a special assessment or capital expenditure in excess of Fifty Dollars (\$50.00) per unit is made by the Recreation Condominium Association [Recreation Association], then this Association (Condo 2) will cause the issue to be determined by a majority vote of the Unit Owners of the Association by mail or by proxy." Art. VI, § 7, Bylaws, No. 2 Association (amended May 8, 2002).

12. The Recreation Association bylaws may be amended by  $\frac{3}{4}$  of the total vote of the sub-association representatives at a duly called and noticed board meeting. Art. XI, § 2, Bylaws, Recreation Association (amended Jan. 2, 1996). Each sub-association representative/director has one vote. Art. III, § 2, Bylaws Recreation Association (amended Jan. 2, 1996); art. IV, § 4.3, Art. Incorpor., Recreation Association (Dec. 9, 1988).

13. Article V, section 8, of the Recreation Association Bylaws provided:

**SECTION 8. Assessments.** The Board of Directors of the Recreation Association shall have the power to assess for maintenance, repairs, taxes and operation of the areas controlled by the Recreation Association and to make betterments and/or improvements to the association property, with the following limitations:

- A. The maximum amount for general improvements and/or betterments to be included in a yearly budget may not exceed ten per cent (10%) of the total amount of the prior year's budget.
- B. Matters which would result in a total special assessment not exceeding fifty dollars (\$50) per unit (apartment) for a single project involving

betterments and/or improvements may be approved by a majority of the Directors present and voting at a meeting called to consider the proposed assessment. Notice of the date, time and place the proposal will be voted on must be given to each Director at least fourteen (14) days before the scheduled date of the meeting.

- C. Matters which would result in an expenditure in excess of the amounts for betterments and/or improvements set forth in sub-paragraphs 8A and 8B of this Article require the following:
- (1) Approval by a majority of the Board of Directors present and voting at a meeting, as provided in sub-paragraph 8B above, to consider the proposed expenditure, and
  - (2) Approval by a majority of the Board of Directors of each Sub-Association, present and voting at a meeting called to consider the proposed expenditure. Each Board will have not more than (60) days to act upon the proposed expenditure. Their failure to act within this time limit shall be deemed to constitute acceptance of the proposed expenditure.

Art. V, § 8, Bylaws, Recreation Association (amended Jan. 2, 1996).

14. On February 3, 2003, the Recreation Association Board of Directors proposed amendments to the bylaws that deleted all of subparagraph 8(C) and replaced it with a requirement for a direct unit owner vote of all of the unit owners in the two condominium associations.

15. On February 28, 2003, the Recreation Association Board of Directors approved "an amendment to Article V Section 8c(2) of its bylaws to delete the requirement that the Board of Directors of the sub associations [sic] vote to approve any improvements or betterment's in the annual budget exceeding 10% of the total amount of the prior year's budget, or a special assessment which would result in a per unit charge in excess of \$50.00 for a single project." Minutes of Feb. 28, 2003 Recreation Board of Directors meeting. [exhibit to Firestone petition] The board also approved "an amendment that the Board agree to accept the vote of the unit owners. Id. Both amendments passed by a vote of 5 to 1. Id.

16. Firestone submitted another proposed amendment dated March 3, 2003 that would delete the limitations in article V, section 8(A) through (C) of the bylaws and empower the Recreation Association board to make all decisions on expansion and improvement of the recreation areas without unit owner or association input. Firestone does not allege that this amendment has been acted upon or even considered.

17. The amendments relate to a proposed expansion of the clubhouse, which would require a sizeable loan. Unit owners are divided on the issue of expanding the clubhouse at substantial expense or renovating the clubhouse with existing funds. Firestone provided a letter from the Association to the president of the Recreation Association that indicates the preference vote of the unit owners of both condominiums was 49% in favor of expansion and 51% in favor of renovation only. The petitions by Cooke, Ross, and Firestone relate to the clubhouse issue.

18. Firestone did not request a hearing.

### **CONCLUSIONS OF LAW**

19. The Division has jurisdiction to enter this Order in accordance with sections 120.565 and 718.501, Florida Statutes (2002).

20. Petitioner is substantially affected by the provisions in chapter 718 which govern the operation of condominium associations.

21. Number 2 Condominium Association Palm Greens at Villa Del Ray, Inc. (No. 2 Association) is a condominium "association" as that term is defined by section 718.103(2), Florida Statutes.

22. The Recreation Association is a master condominium association subject to chapter 718, Florida Statutes, the Condominium Act. § 718.103(2), Fla. Stat. (2002); Downey v. Jungle Den Villas Recreation Ass'n, Inc., 525 So. 2d 438 (Fla. 5th DCA 1988), review denied, 536 So. 2d 244 (Fla. 1988).

A. Tape Recording.

23. Every condominium association is required to maintain its official records and to allow unit owners to inspect and copy those records. § 718.111(12)(a)-(c), Fla. Stat. (2002). The official records include “[a] book or books which contain the minutes of all meetings of the association, of the board of directors, and of unit owners, which minutes shall be retained for a period of not less than 7 years.” § 718.111(12)(a)6, Fla. Stat. (2002). In addition to the official minutes, the association is required to maintain “[a]ll other records of the association not specifically included in the foregoing which are related to the operation of the association.” Id. § 718.111(12)(a)15.

24. Florida Administrative Code Rule 61B-23.002(5)(b)6 specifically includes tape recordings of board meetings within the scope of “all other records” required to be maintained under section 718.111(12)(a)15, Florida Statutes. The rule provides that among the other records that must be kept includes:

6. Audio and video recordings made by the board or committee or at their direction. Except, however, recordings of board of directors, unit owner, or committee meetings shall be maintained as official records at least until the minutes of the meeting which was the subject of a recording are approved by the body authorized to approve said minutes. After said approval, the recording may be discarded; however, if the body authorized to approve said minutes elects to preserve the recording, it shall maintain its status as an official record under this provision. It is not the intent of this rule to require that such recordings be made but to require that if they are made that they be maintained at least until minutes of the meeting which was recorded are approved. This accommodates associations which record meetings only as an



aid for preparing minutes of the meeting. Thereafter, recordings purposely preserved shall be official records.

Fla. Admin. Code R. 61B-23.002(5)(b)6 (2002).

25. The rule expressly designates the tape recording of the board meeting to be an official record until the minutes of the meeting are prepared and approved. It ceases to be an official record once the minutes are approved and the board discards the tape. Therefore, if a unit owner requests a copy of the tape or to listen to the tape while it is deemed an "official record" under the rule, then the association is required to permit the unit owner to have access to the tape. However, the board may adopt reasonable rules regarding the frequency, time and manner of inspecting the tape. § 718.111(12)(c), Fla. Stat. (2002). Such reasonable rules would ensure that at least the master tape is kept free from accidental erasure or loss until the minutes can be prepared. Unit owners may, of course, make their own tape recording of any board meeting. § 718.112(2)(c), Fla. Stat. (2002).

B. Bylaw amendment.

26. As corporations, condominium associations are governed by their articles of incorporation and bylaws. § 718.112(1), Fla. Stat. "No amendment to the articles of incorporation or bylaws is valid unless recorded with identification on the first page thereof of the book and page of the public records where the declaration of each condominium operated by the association is recorded." § 718.112(1)(b), Fla. Stat. (2002). Condominium association bylaws must include specific statutory provisions related to the form of administration and the operation of the association. Id. § 718.112(2). Bylaws must provide for a method of amendment that is consistent with the

Condominium Act. Id. § 718.112(2)(h). If the bylaws fail to provide a method of amendment, the bylaws may be amended by a two-thirds vote of the voting interests.

27. The 1996 amendments to the Recreation Association bylaws provide for amendment by a three-fourths vote of the sub-association representative members—the voting interests in this master association. Art. XI, Bylaws, Recreation Association (amended Jan. 2, 1996). The recent amendments to the bylaws were passed by a vote of 5 to 1, which satisfies the three-fourths majority needed to approve amendments. Because the bylaws provide a method of amendment that is consistent with section 718.112(2), Florida Statutes, by requiring a greater percentage of approval, this amendment satisfies section 718.112(2)(h), Florida Statutes. However, Firestone states that he is unable to determine if the February 28, 2003 amendments have been filed in the public records. In order for the bylaw amendments to be valid, they must be filed in the public records. § 718.112(1)(b), Fla. Stat. Unless filed, the 1996 bylaw amendments remain in effect for any vote taken on the clubhouse. If the February 2003 amendments were filed in the public records at the time of the vote, then a vote of the unit owners and not the two condominium boards would be required.


### **ORDER**

WHEREFORE, based upon the statement of facts and conclusions of law, it is  
DECLARED:

(1) The tape recording of the minutes of the master association's board meeting are an official record of the association open to unit owner inspection under section 718.111(12)(a) and (c), Florida Statutes, and rule 61B-23.002(5)(b)6; and

(2) The association may adopt a bylaw amendment to replace a requirement for approval by a majority of the board of directors of the two condominium associations for a material alteration and addition to the master association common areas with approval by a majority of unit owners in accordance with the amendment provisions in the bylaws if the amendment is properly recorded in the public records under section 718.112(1)(a) and (b), Florida Statutes.

DONE and ORDERED this 6<sup>th</sup> day of May 2003.


  
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EETWOOD, Director  
Florida Land Sales,  
Condominiums, and Mobile Homes  
Department of Business and  
Professional Regulation  
Monroe Street  
Tallahassee, FL 32399-1030

**NOTICE OF RIGHT TO APPEAL**

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER 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(c), FLORIDA RULES OF APPELLATE PROCEDURE BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217 WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Sidney H. Firestone, Vice President, No. 2 Condominium Association Palm Greens at Villa Del Ray, Inc., 5801 Via Delray, Delray Beach, Florida 33484, this 8<sup>th</sup> day of May, 2003.

  
Carol Windham,  
Docket Clerk

Copies furnished to:

Ross Fleetwood  
Director

Janis Sue Richardson  
Chief Assistant General Counsel  
Office of General Counsel

In Re: Petition for Declaratory Statement,  
Sidney H. Firestone, Vice President, No. 2 Condominium Association Palm Greens  
at Villa Del Ray, Inc., Docket No. 2003053516

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