IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2014011691

The Marina at the Bluffs Condominium Association, Inc., Petitioner.

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (the Division) issues this Declaratory Statement under section 120.565, Florida Statutes.

PRELIMINARY STATEMENT

The Division received a Petition for Declaratory Statement on March 19, 2014 from The Marina at the Bluff Condominium Association, Inc. (the Association or Petitioner) seeking a declaratory statement as to what vote is required under section 718.113(2)(c), Florida Statutes, for a material alteration to Association real property where approximately half of the declarations of condominium within the multicondominium are silent on the issue and the rest of the declarations of condominium require a vote of the board of directors.

Division counsel responded April 1, 2014 to confirm receipt of the Association's petition for a declaratory statement. Division counsel notified the Association that the Division may not interpret and apply ambiguous provisions in a condominium's governing documents and requested a complete set of the governing documents of the Association as well as the underlying associations in order to review the petition.

Notice of receipt of the petition was published in the April 2, 2014 issue of the Florida Administrative Register.

The Petitioner did not request a hearing.
FINDINGS OF FACT

The material facts are set out in the petition. The Division takes no position as to the accuracy of the facts and accepts them as submitted by the Petitioner for the purposes of issuing this declaratory statement.

1. The Marina at the Bluffs Condominium is a Florida multicondominium.¹
2. The Petitioner is the Association that operates the multicondominium.²
3. The Association has a storage area that was built over a decade ago.³ The town of Jupiter is requiring the Association to remove the storage area due to permitting issues.⁴
4. The Association has a pump house that is not within the footprint of any of the twenty-two (22) condominiums that comprise the Association.⁵ The Association would like to materially alter the building by extending its boundaries to create a new storage area to replace the one that will be removed.⁶
5. The Association is operating under the original declaration of condominium for approximately half of the condominiums, and the amended declaration of condominium for the other half of the condominiums.⁷
6. Under the original declaration, there is no procedure for how to approve material alteration of Association property.⁸
7. Condominiums 5, 7, 8, 9, 11, 12, 13, 19, 21, and 22 all amended their declarations of condominium to provide procedures for approving alterations to Association property.⁹
8. The Association would like to obtain approval of seventy-five percent (75%) of the total voting interests of those unit owners under the original declaration and a Board vote for those unit owners under the amended declaration.¹⁰

² Id.
³ Id.
⁴ Id.
⁵ Id.
⁶ Id.
⁷ Id. at 3.
⁸ Id. at 2.
⁹ Cert. of Amendment to the Declarations of Condo. at 1.
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CONCLUSIONS OF LAW

9. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes.

10. Section 120.565, Florida Statutes, provides:
    (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.

11. Rule 28-105.001, Florida Administrative Code (2007), provides:
    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 to resolve questions or doubts as to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

12. The Association has standing to petition for a declaratory statement. 11

13. Section 718.113(2)(c), Florida Statutes, provides:
    There shall not be any material alteration of, or substantial addition made to association real property operated by a multi-condominium association, except as provided in the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein. If the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein do not specify the procedure for approving an alteration or addition to association real property, the approval of 75 percent of the total voting interests of the association is required.

14. A material alteration or substantial addition in regards to a building means to
    "palpably or perceptively vary or change the form, shape, elements, or

11 §§ 718.103(28), 120.565, Fla. Stat.
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predictions of a building from its original design or plan, or existing condition, in such a manner as to appreciably affect or influence its function, use, or appearance.\textsuperscript{12}

15. The Association would like to remove the storage facility from Association real property, extend the boundaries of the pump house building, and construct a new storage area. These are perceivable changes in the form, as well as the specifications of the buildings. Thus, they are material alterations and section 718.113(2)(c), Florida Statutes, applies.

16. Under section 718.113(2)(c), Florida Statutes, the Association may use procedures as provided in the declaration as originally recorded or as amended to approve this material alteration. However, where a declaration is silent, the alteration will require "the approval of 75 percent of the total voting interests of the association" under section 718.113(2)(c), Florida Statutes. (emphasis added)

17. Although the amended declaration for approximately half of the condominiums allows the Association to make alterations to Association property through the approval of the Board of Directors and without the approval of the unit owners, the original declaration does not provide procedures for approving such an alteration.

18. In a multi-condominium, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association.\textsuperscript{13}

19. The Association affords each unit one collective vote, cast by the owner or owners of that unit.\textsuperscript{14}

20. Therefore, the Association must receive the approval of at least 75 percent of the total voting interests of the Association under the plain language of section 718.113(2)(c), Florida Statutes, in order to remove the storage facility, extend the pump house, and construct a new storage area.

\textsuperscript{12} Sterling Village Condominium, Inc. v. Breitenbach, 251 So. 2d 685, 687 (Fla. 4th DCA 1971).
\textsuperscript{13} § 718.103(30), Fla. Stat. (2012).
\textsuperscript{14} § IX, Declaration of Condominium.

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For the reasons stated above it is hereby:

ORDERED that The Marina at the Bluffs Condominium Association, Inc. must obtain approval from 75 percent of the total voting interests of the Association under section 718.113(2)(c), Florida Statutes, in order to remove the existing storage facility, modify the Association pump house, and construct a new storage area.

DONE and ORDERED this 17th day of June 2014, at Tallahassee, Leon County, Florida.

RONNIE WHITAKER, Director
Department of Business and Professional Regulation
Division of Florida Condominiums, Timeshares, and Mobile Homes
Northwood Centre
1940 North Monroe Street
Tallahassee, FL 32399-1030
NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY ADVERSELY AFFECTED 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 The Marina at the Bluffs Condominium Association, Inc., c/o Mark D. Friedman, Esq., Registered Agent, Becker & Poliakoff, P.A., 625 North Flagler Drive, 7th Floor, West Palm Beach, FL 33401 on this 27th day of June 2014.

[Signature]
Agency Clerk's Office

Copies furnished to:

Brittany Finkbeiner
Chief Attorney

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