



PRFSC April 2017 Meeting Minutes

On Monday April 3, 2017 PRFSC hosted a meeting in the Poinciana Library to discuss with the community the current lawsuits that are taking place in Poinciana between the homeowners the HOAs, CDDs and the developer AV Homes (Avatar). Like all PRFSC meetings it was open to the public. The meeting was well attended with a variety of persons from different Poinciana groups attending. No credentials were checked at the door and after the meeting the presentation materials and minutes will be distributed to the public.

The meeting started out by describing the three lawsuit actions taking place. The three actions discussed were the lawsuit filed by the Poinciana homeowners against the Association of Poinciana Villages HOA, the Election complaint filed with the Florida Department of Business and Professional Regulation (DBPR) and the lawsuit in Solivita between the homeowners and the Community Development District (CDD).

Why are the lawsuits being filed?

The first topic addressed was 'Why are we doing this?' or why are the lawsuits being filed? The answer is that in the eyes of the homeowners filing the lawsuits, Poinciana, including Solivita, has been forced to live for the past 46 years as a community controlled by a developer who's primary interest is promoting their own corporate interests. The developer of Poinciana, Avatar, is a publically held 'for profit' corporation who has maintained control of the Poinciana community affairs well past the time when the running of the community should have been turned over to the homeowners. The feelings of Poinciana homeowners has been publically described as the homeowners being used as ATM machines, being asked to pay their money to maintain the community while the developer reaps the benefits, paying nothing to the homeowners associations for the properties that they own. The homeowner's feelings were described as 'Enough is Enough'. In the eyes of the homeowners, the lawsuits will benefit every homeowner and renter who lives in Poinciana.

Martin Negron vs APV Case # 2017-01-1731

The first legal action described was the Election Complaint filed by homeowner Martin Negron with the Florida Department of Business and Professional Regulation (DBPR). While Florida HOA

disputes fall under the jurisdiction of Florida Civil Courts, under Statute 720 the courts have no jurisdiction to settle HOA election disputes. Under Florida law election disputes can only be settled by the DBPR using the process of binding arbitration.

The DBPR complaint deals with the actions of APV during the Feb 2017 HOA election. The complaint centers on two election issues.

Issue #1 deals with the number of open HOA board positions placed for election on the ballot. Each of the 8 separate village boards up for election in Feb 2017 consists of 5 Director positions. Normally 1 or two director positions for each village would be voted on in a single election. In August 2016 the APV attorney recommended to the master APV board that more director positions for each village be put up for election. The meeting minutes show that the attorney recommended that each existing village board be asked to vote to approve this election change as required by the village charters. Instead the master board appears to have made the decision themselves rather than delegation of the decision to votes by the village boards as required by the HOA charter documents. This issue has caused the complaint to be filed with the DBPR.

Issue #2 deals with the number of votes the APV allowed Avatar to cast in the elections. Florida Statute 720 requires that Florida HOA report the number of Parcels to the DBPR. The statute provides a clear definition of parcels/lots that may be used for HOA voting purposes. In October 2013 the APV reported that APV was made up of 26,000 parcels. That number is consistent with the numbers recognized in county records and the numbers of parcels reported by the APV in the Poinciana Pioneer. According to county property records at the time of the election, Avatar owned 447 parcels out of the 26,000 total parcels meaning 25,503 parcels were owned by someone other than Avatar. Yet records show that Avatar was allowed to cast thousands of votes in the election with the result that Avatar supported candidates were elected to a majority of the board positions for each village. The complaint states that Avatar should not have been allowed to cast that many votes.

The complaint argues that APV did not require Avatar to follow the election law required under statute 720. F.S. 720 requires that each parcel for which a vote can be counted in an HOA election the property owner must pay HOA fees. In Poinciana, Avatar pays no HOA fees and thus should not be allowed votes for the parcels they own from which no fees are collected. F.S.720 also requires that parcels for which votes may be counted must be legally recognizable and transferrable. Avatar was allowed to cast votes for future homes of an undeterminable number in single unplatted parcels that at the time of the election were not recognizable in county or state records. Not being recognized as legal parcels they could not be capable of legal conveyance, (i.e. bought or sold), as required by law. Hence the votes should not have been allowed.

The relief (remedy) requested by the DBPR complaint is that the election results should be nullified and that in the future Avatar should be treated in HOA elections like all other Poinciana homeowners as required by Florida law.

Solivita CDD s vs State of Florida et. al. Case # 2016-CA-004023

While the audience did not include anyone from Solivita, the lawsuit regarding the Solivita Sale of Amenities was discussed. The reason is that there are similarities between what is going on between the Poinciana Developer, AV Homes (Avatar), and the Solivita homeowners to what is going on in the APV Villages. The situation in Solivita is that the deed restrictions for Solivita require every homeowner to belong to the Solivita Club which was set up not as part of the Solivita HOA or CDD but as a wholly owned property of Avatar. Avatar is threatening to sell the Solivita Club which consists of the pools, recreation facilities and other amenities to an outside buyer. This has caused great concern to the Solivita residents because of fear of what an unknown buyer might do to the Solivita Lifestyle.

As a result negotiations have taken place where Avatar has agreed to sell the amenities to the Solivita CDDs, existing entities within Solivita that have the power to enter into financial bond commitments. The Solivita CDDs are governed by Boards of Directors many of whom were originally appointed by Avatar and they are advised by an attorney originally appointed by Avatar. The sale price proposed by Avatar was \$102M which would be paid for by each Solivita homeowner making 30 year bond payments that would be approximately what is being paid today by each homeowner in Solivita Club fees. There are a sizable number of residents who feel that the price the board has agreed to is too high and they are claiming that an independent appraisal should have been done before the contract was signed. They appealed to the CDD board but upon advice of the attorney the CDD Board committed to the sale at the price requested by Avatar.

The legal case is scheduled to be heard in Bartow 10th District Circuit Court on June 14.

Again the feeling among many of the Solivita homeowners are that like what has been done in the APV, Avatar is using their control/influence over the CDD board of directors to enrich themselves at the expense of the homeowners.

Poinciana Homeowners vs APV, Avatar and Village 1 Case # 2015-CA-004499

The meeting then moved on to focus on the lawsuit filed in December 2015 by Poinciana Homeowners vs APV, Avatar and Village 1. Florida Statute 720 which controls HOAs differs from the law controlling condominium associations in those disputes between homeowners and HOAs can only be settled in civil courts as opposed to binding arbitration. This makes it very expensive for homeowners to settle grievances against their HOAs. HOAs defend themselves by hiring attorneys who specialize in creating legal obstacles that make it difficult and expensive for HOA civil cases to get into a courtroom. Because the HOAs have virtually unlimited resources for legal fees to pay lawyers and homeowners are constrained by their own personal finances, the HOAs almost always win before the case can get to trial. The case of the Poinciana homeowners vs APV et. al. is an exception.

The Poinciana lawsuit was filed in December 2015. It was originally filed by a group of homeowners called Friends of Poinciana Villages (FOPV). FOPV was established as a legal corporation but since it did not own property in the APV it was not allowed to file a lawsuit against the HOA. As a result the lawsuit was filed under the names of three Poinciana homeowners, two of whom had served as President and Vice President of the APV Board of Directors. Finally after 10 months of litigation and multiple court appearances it was agreed that the three homeowners had standing to file the lawsuit.

The lawsuit originally included 8 separate complaints. In February 2017 three of the complaints were withdrawn by the plaintiffs. The reason for the withdrawal was that the APV document which the APV has been ruled under since 1985 was a legal document not between the homeowners and the association but instead an agreement between the separate Poinciana Villages and the master APV HOA. Both the village and master boards were controlled by Avatar. The Poinciana homeowners were never actually signers to the agreement. The homeowners were identified as 3rd parties to the agreement so the remaining complaints are able to continue to be litigated with the homeowners as third parties to the agreement.

The basic complaints take issue with APV actions that the homeowners say are illegal. The complaints identify specific issues where the defendants are alleged to have broken the law. The complaints state several actions taken by the defendants that are being disputed in court.

Following the Feb 2017 hearing on March 23, 2017 the judge issued a court ruling stating that there were additional issues that needed to be addressed by the plaintiffs and that they had 30 days to respond. Those issues are being addressed.

MRTA

The major complaint that was discussed had to do with what is commonly called the MRTA (Market Records and Title Act) law as covered in Florida Statute 712. F.S.712 was enacted into law in 1963. It states that for Florida HOA communities the deed restrictions (Covenants, Conditions and Restrictions (CC&Rs)) must be revitalized before 30 years expire from when they are first created.

When a community is first platted (created) each parcel is defined and the root deed (initial deed) includes the CC&Rs which provide the deed restrictions which is the foundation for powers for an HOA. Those powers provide to the HOA the ability to collect fees and enforce deed restrictions. Each time a property is bought, sold or replatted those deed restrictions can be rejuvenated if explicitly stated in the new deed. In most cases and every case so far seen in Poinciana the new deed simply uses the original CC&Rs created in the root deed for the property. F.S 712 states that prior to an amendment passed into law in 2014 the only way that an HOA could rejuvenate deed restrictions was by following three legally defined steps.

Step 1 required that every homeowner had to be sent a notice from the HOA of a homeowners meeting to rejuvenate the deed restrictions. 75% of the homeowners had to physically attend such a meeting to establish a quorum. Step 2 requires at the meeting 75% of the homeowners attending had to vote to rejuvenate the CC&Rs. Both the meeting invitation notices and the minutes of the meeting had to be recorded in the HOA records. Step 3 after the successful vote at the meeting, the HOA has to record a legal document in the county record books of a document called a 'Notice' declaring that the CC&Rs had been rejuvenated.

In the case of Poinciana, because it resides in two counties the 'Notice' document would have needed to be filed with both Polk and Osceola County court records. Because Poinciana was created by CC&Rs dated June 30, 1971 and filed in both county record books the CC&Rs would have been required to be renewed after thirty years or by June 30,2001. To date nobody has been able to produce the meeting invitations to the homeowners, the minutes of the required meeting or the 'Notice' documents that were required under the law in order to renew the CC&Rs. Thus the complaint states that under MRTA the Poinciana HOA was no longer allowed to collect assessments nor enforce deed restrictions after 2001. Any actions such as collection of HOA fees, debts or code enforcement actions after that date would be illegal.

There were amendments added to F.S.712 in 2014 that made it easier for HOAs to revitalize their CC&Rs by simply taking actions by their boards of directors. Those amendments do not apply to HOAs like Poinciana's that had their CC&Rs expire before the amendments were added.

If upheld in court this complaint has very serious implications for Poinciana. The damages to homeowners in terms of HOA fees, fines, debt collection actions etc taken by the APV against the all the Poinciana homeowners would total in excess of \$100,000,000.

Poinciana without Deed Restrictions

While the APV would continue to exist as a non-profit corporation it would no longer be able to collect HOA assessments nor enforce deed restrictions. It would continue to own the assets deeded under its name. It would continue to employ FSR and other employees for as long as it chose to do so. It is expected that additional litigation might be filed for damages but that would only be speculation.

So what would happen to Poinciana should the court decide that the Poinciana deed restrictions expired in 2001 and were not legally renewed?

The immediate answer is that Poinciana would continue as an unincorporated community part in Polk and part in Osceola Counties. As an unincorporated community Poinciana would continue to be regulated and served by county services. These services include public safety, public works, parks/recreation and code enforcement. Today those services are provided by both counties and supplemented by additional services provided by the APV HOA. Should Poinciana residents desire additional services provided by the counties over and above what is provided to unincorporated communities then the counties could be asked to provide such services under special services taxing districts. This happens in unincorporated communities all the time.

Should the Poinciana homeowners decide that they would really like to bring back a homeowners association for Poinciana, Florida Statute 720 under what is called the Campbell Act provides a way for the homeowners to bring back the CC&R deed restrictions that had expired. The procedures to do such a thing are outlined in the law. The homeowners would need to vote to do such a thing and it would have to be approved by the State of Florida.

Summary and Conclusion

The lawsuits are ongoing. Nothing has been decided. Hopefully these community issues will be decided soon?

If the plaintiff wins the DBPR arbitration APV elections will become fairer to the Poinciana homeowners. The developer Avatar would be treated like any other homeowner in the community. Hopefully the homeowners would gain more

power to determine the results of HOA elections at the expense of the developer Avatar.

If the plaintiffs win the APV lawsuit then there will be penalties to the APV, Village 1 and Avatar. If the CC&Rs are declared to have expired then the assessment and deed restriction enforcement abilities of the APV will go away and be assumed either by the counties or as an entirely new HOA created under existing Florida law.

In the eyes of the homeowners that are pursuing these legal actions either or both of these results would offer long term benefits to current and Future Poinciana residents and homeowners.