

Final Order No. BPR-2000-04916 Date: 12-1-00
FILED

Department of Business and Professional Regulation
AGENCY CLERK
Sarah Wachman, Agency Clerk

By: Brandon M. Nichols

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

DS 2000-020

IN RE: PETITION FOR DECLARATORY)
STATEMENT)
)
Water Club Condominium Association, Inc.,)
)
Petitioner.)
)
)
)
)
)

Docket No.: CD2000-151

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes (Division), enters this declaratory statement pursuant to sections 718.501, and 120.565, Florida Statutes:

PRELIMINARY STATEMENT

On August 30, 2000, the Division received a Petition for Declaratory Statement from Water Club Condominium Association, Inc., filed by Marilyn Bezner, President. Notice of the petition was duly published in Florida Administrative Weekly, Volume 26, Number 37, September 17, 2000. No hearing was requested or held.

FINDINGS OF FACT

The following Findings of Fact are based on information submitted by Petitioner. The Division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this final order.

1. Water Club Condominium Association, Inc., (Petitioner or Association) is responsible for the operation of Water Club I at Longboat Key, A Condominium (Water Club I) and Water Club II at Longboat key, A Condominium (Water Club II).

2. Water Club I and Water Club II are residential condominiums created by the recording of separate declarations of condominium in the public records of Sarasota County, Florida. Each condominium consists of 86 units.

3. The services of a water aerobics instructor are used by a small number of unit owners. A question has arisen as to whether the cost of the water aerobics instructor is an appropriate common expense assessed against all unit owners.

4. Neither the declarations of condominium, the articles of incorporation, nor the bylaws of the association indicate that the cost of a water aerobics instructor would be deemed a common expense.

5. The initial budget that was contained in the Prospectus for each condominium contained a line item designated "personal trainer".

6. Petitioner requests a declaratory statement as to whether, pursuant to section 718.115, Florida Statutes, and/or pursuant to the declarations of condominium, the articles of incorporation or the bylaws of the association, the cost of the water aerobics instructor is an appropriate common expense.

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes.
2. Petitioner has standing to seek a declaratory statement.
3. The purposes and use of declaratory statements are set out in Chapter 120, Florida Statutes, and Chapter 28-105, Florida Administrative Code:

120.565 Declaratory Statement by agencies. –

- (1) Any substantially affected person may seek a declaratory statement regarding the agency's opinion as to the applicability of a statutory provision, or of any rule or order of 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.

28-105.001 Purpose and Use of Declaratory Statement. A declaratory statement is a means for resolving 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 declaratory statement is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency. A petition for declaratory statement must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

4. Section 718.115, Florida Statutes (1999), provides, in relevant part:

718.115 Common expenses and common surplus.

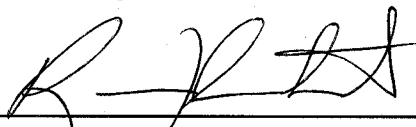
(1)(a) Common Expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the common elements and association property, costs of carrying out the powers and duties of the association, and any other expense, whether or not included in the foregoing, designated as common expense by this chapter, the declaration, the documents creating the association, or the bylaws. Common expenses also include reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications, and security services, which are reasonably related to the general benefit of the unit owners even if such expenses do not attach to the common elements or property of the

condominium. However, such common expenses must either have been services or items provided from the date the control of the board of administration of the association was transferred from the developer to the unit owners or must be services or items provided for in the condominium documents or bylaws.

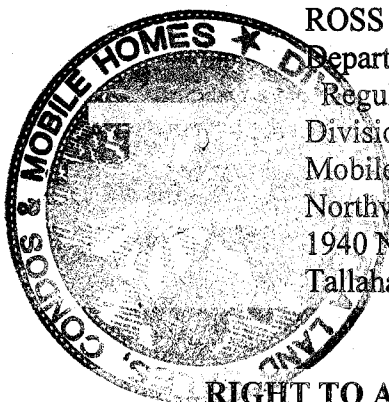
5. The cost of providing an aerobics instructor is not related to the operation, maintenance, repair, replacement or protection of the common elements or association property. Neither is the cost for reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications and security services, which are reasonably related to the general benefit of the unit owners. See, *Scudder vs. Greenbrier Condominium Association, Inc.*, 663 So. 2d 1362 (Fla. 4th DCA 1995). The mere fact that the initial operating budget included the cost as a line item does not meet the requirement of the foregoing provision that such expense must be designated by chapter 718, the declaration, the documents creating the association, or the bylaws, or be one of the designated expenses provided from the date transfer of control of the association occurred or provided for in the declaration or bylaws. Accordingly, the cost of the water aerobics instructor is not a common expense within the meaning of the foregoing statutory provision.

WHEREFORE, the Division declares that based on the facts of the petition, the cost of a water aerobics instructor is not a common expense within the meaning of section 718.115, Florida Statutes.

DONE AND ORDERED this 28th day of November, 2000.



ROSS FLEETWOOD, DIRECTOR
Department of Business and Professional
Regulation
Division of Florida Land Sales Condominiums, and
Mobile Homes
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1030



RIGHT TO APPEAL

THIS DECLARATORY STATEMENT 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(d), 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 30 DAYS OF
THE RENDITION OF THIS DECLARATORY STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Marilyn Bezner, President, Water Club Condominium Association, Inc., 1261 Gulf of Mexico Drive, Longboat Key, Florida 34228 this _____ day of _____, 2000.

Kristie Harris
Docket Clerk

Copies furnished to:

Martha F. Barrera
Chief Assistant General Counsel

Jim Mullins, Acting Chief
Suzanne Schmidt, R.E.D.S.
Bureau of Condominiums

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