

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR POLK COUNTY, FLORIDA**

**AV HOMES, INC,
a Foreign Corporation,**

CASE NO.: 2017-CA-002349-0000-00

Plaintiff,

vs.

**ASSOCIATION OF POINCIANA
VILLAGES, INC., a not-for-profit
Corporation,**

Defendant
_____ /

DECLARATORY JUDGMENT

THIS MATTER came to be heard by this Court on July 21, 2017 on Plaintiff's Motion for Summary Judgment and, after reviewing Plaintiff's Motion, Defendant's Response and hearing argument by counsel for the parties this Court hereby declares the rights and obligations of the parties regarding Plaintiff's voting rights and Defendant's obligations for determining the number of votes Plaintiff AV HOMES, INC. may cast and Defendant ASSOCIATION OF POINCIANA VILLAGES, INC. should count for Plaintiff's unplatted Tracts of land governed by Defendant.

1. This Court has jurisdiction over this dispute pursuant to Section 86.011, Fla. Stat.
2. Plaintiff brought this action under Section 86.021, Fla. Stat., which allows anyone who may be in doubt about its rights under a contract, article or written instrument to obtain a declaration of rights, status, or other equitable or legal relations thereunder.

3. Plaintiff has shown that it is in doubt as to its voting rights under Article VI, Section 4 of each of Defendant's Village Associations' Amended and Restated Articles of Incorporation attached to Plaintiff's Complaint.

4. This Court finds that Plaintiff's request for declaratory relief is a bona fide, actual, present, practical request and Plaintiff is in need of a declaration of its voting rights to resolve a controversy regarding Plaintiff's voting rights and Defendant's obligations in determining and counting Plaintiff's votes cast for Plaintiff's unplatted Tracts of land.

5. The present, practical controversy is the number of votes Plaintiff may cast, and Defendant should count, for Plaintiff's unplatted Tracts of land in the elections managed by Defendant, including the upcoming August 1, 2017 election and in each election thereafter.

6. This Court finds that the parties are uncertain and in dispute over Plaintiff's voting rights for its unplatted Tracts of land due to a June 23, 2017 Summary Final Order and subsequent July 12, 2017 Order issued by the Department of Business and Professional Regulation, Division of Condominiums (DBPR), in an arbitration between Defendant and one of its homeowners that did not involve Plaintiff.

7. This Court further finds that due to the June 23 and July 12 Orders, the Defendant has taken an adverse position to Plaintiff regarding counting Plaintiff's votes for its unplatted Tracts of land, and the parties' adverse positions have created a justiciable controversy.

8. The portion of Article VI, Section 4 of each Village Association's Articles of Incorporation in dispute is, "For undeveloped portions of [each] Village . . . which are not platted as lots, the owner of such unplatted land shall be entitled to one (1) vote for each Home which may be constructed on such land pursuant to applicable law. . ." and "The term Home

may not reflect the same division of property as reflected on a plat” and “The term ‘Home’ includes any interest in land, improvements or other property appurtenant to the Home.”

9. Plaintiff contends that Article VI, Section 4 of each Village Association’s Amended and Restated Articles of Incorporation entitles Plaintiff to cast votes for the undeveloped portions of each Village Association Tract governed by Defendant that are not platted as lots without having to plat each unplatted Tract into lots.

10. Plaintiff further contends that it may cast as many votes as “Homes” may be constructed on such unplatted Tracts of land governed by Defendant pursuant to the Comprehensive Development Plan for the Poinciana Planned Unit Development approved by Osceola County on August 31, 1971 and the Polk County Poinciana Master Development Plan approved on October 5, 1971, with revisions approved on September 12, 1972, which plans and vested rights were preserved by a State of Florida, Department of Community Affairs, Division of Local Resource Management May 17, 1983 Binding Letter of Interpretation of Vested Rights Status letter (BLIVR) for the platted and unplatted Tracts owned by Plaintiff.

11. In support of its contention, Plaintiff relies on the above documents and land use and property ownership records provided to Defendant and attached as Exhibit “B” to the Complaint, which establish the maximum number of Homes that may be built on each acre of unplatted land owned by Plaintiff in order for Defendant to determine the maximum number of Homes and therefore votes Plaintiff may cast for each unplatted Tract of land.

12. Pursuant to the June 23, 2017 and July 12, 2017 Orders issued by the DBPR, Defendant contends that Plaintiff must plat its unplatted Tracts into lots before Plaintiff can cast votes for its unplatted Tracts, otherwise, per the July 12 Order, Plaintiff may not cast and Defendant will not count any votes for Plaintiff’s unplatted Tracts.

13. This Court finds that Article VI, Section 4 of each of Defendant's Village Association Articles of Incorporation gives Plaintiff the right to cast votes for its unplatted Tracts of land without having to plat them into lots because "The term Home may not reflect the same division of property as reflected on a plat."

14. Absent a plat, Article VI, Section 4 of each of Defendant's Village Association Amended and Restated Articles of Incorporation allows Plaintiff to demonstrate to Defendant the number of "Homes" "which may be constructed on such land pursuant to applicable law" based on Plaintiff's "interest in land".

15. This Court finds that the Comprehensive Development Plan for the Poinciana Planned Unit Development approved by Osceola County on August 31, 1971 and the Polk County Poinciana Master Development Plan approved on October 5, 1971, with revisions approved on September 12, 1972, which plans and vested rights were preserved by a State of Florida, Department of Community Affairs, Division of Local Resource Management May 17, 1983 Binding Letter of Interpretation of Vested Rights Status letter (BLIVR), along with the land use maps and proof of ownership provided by Plaintiff to Defendant, are sufficient to determine Plaintiff's interest in such unplatted Tracts, including the number of "Homes" that "may" be constructed on each unplatted Tract of land owned by Plaintiff.

16. This Court further finds that that a reasonable method of determining the number of "Homes" that "may" be built on each unplatted Tract owned by Plaintiff is to use the maximum density for each unplatted Tract allowed by Osceola and Polk County.

IT IS ORDERED AND ADJUDGED

A. Article VI, Section 4 of each of Defendant's Village Association's Amended and Restated Articles of Incorporation entitles Plaintiff AV HOMES, INC. to cast votes for its unplatted Tracts of land without platting them into lots.

B. For unplatted Tracts of land governed by the Defendant, Plaintiff AV HOMES, INC. may cast as many votes as Homes may be built on each unplatted Tract per the Comprehensive Development Plan for the Poinciana Planned Unit Development approved by Osceola County on August 31, 1971 and the Polk County Poinciana Master Development Plan approved on October 5, 1971, with revisions approved on September 12, 1972, as these development plans may be lawfully amended from time to time by Polk and Osceola County.

C. For purposes of determining the number of votes Plaintiff can cast for each of its unplatted Tracts of land governed by Defendant, Defendant ASSOCIATION OF POINCIANA VILLAGES, INC. shall calculate Plaintiff AV HOMES, INC.'S voting rights for each unplatted Tract as equal the maximum number of Homes per acre (maximum density per acre) for each unplatted Tract multiplied by the number of acres in each unplatted Tract.

DONE AND ORDERED this 21st day of July, 2017 in Bartow, Polk County, Florida.

W DONALD G. JACOBSEN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished through the Florida E-Portal to all interested parties listed therein.