
MEMORANDUM

TO: Carol McLemore
CC: Marielle Westerman
FROM: Michael E. Boutzoukas, Esq.
DATE: September 17, 2019
RE: Analysis of East Lake Park Homeowners Civic Club, Inc. ("ELP Civic Club") and East Lake Park Special Dependent District ("SDD")
Client/Matter No.: E27065-397387

Carol - Thank you for sending the additional information and providing further explanation. In addition to reviewing the documents you sent me and those available at the link you provided, I also reviewed the public records, the state division of corporation records and the records of the property appraiser. The research I undertook was focused on two areas: A) Protecting Ownership of the Clubhouse and Park Property (the "Clubhouse"); and B) identifying options to consolidate the operations of the ELP Civic Club and the SDD.

A. Continued Ownership and Control of Clubhouse

Having reviewed your emails and comments, a recurring concern pertained to the continued ownership of the Clubhouse facilities for the benefit of the homeowners in East Lake Park. Of particular note was your concern with the deed through which the developer transferred title of the Clubhouse to ELP Civic Club, recorded at Official Records Book 1407, Page 795 on February 9, 1965. Briefly, Florida Statutes protect ELP Civic Club from losing title, but the restrictions and limitations in the deed remain intact.

The deed was executed in 1964 and recorded in 1965. (The date is significant because it is after 1951 when a statute was passed that impacts some of the terms of the deed.) The law passed in 1951 limits reversionary interests such as the one created in your deed. The limitation reads:

689.18 Reverter or forfeiture provisions, limitations; exceptions.—

(1) It is hereby declared by the Legislature of the state that reverter or forfeiture provisions of unlimited duration in the conveyance of real estate or any interest

therein in the state constitute an unreasonable restraint on alienation and are contrary to the public policy of the state.

...

(4) No reverter or forfeiture provision contained in any deed conveying real estate or any interest therein in the state, executed on and after July 1, 1951, shall be valid and binding more than 21 years from the date of such deed, and upon the expiration of such period of 21 years, the reverter or forfeiture provision shall become null, void, and unenforceable. (Emphasis added)

As such, the "loss" of the property to the developer is not an issue, as the right of the developer to enforce the reverter provisions ended in 1986. However, the statute does not invalidate all the limitations in the deed. In particular, the statute does not affect the validity of the other restrictions set forth in the deed, and allows a court to enforce the same if a homeowner believes they are not, or will not, be followed. The applicable portion of 689.18 reads:

... (7) This section shall not vary, alter, or terminate the restrictions placed upon said real estate, contained either in restrictive covenants or reverter or forfeiture clauses, and all said restrictions may be enforced and violations thereof restrained by a court of competent jurisdiction whenever any one of said restrictions or conditions shall be violated, or threat to violate the same be made by owners or parties in possession or control of said real estate, by an injunction which may be issued upon petition of any person adversely affected, mandatorily requiring the abatement of such violations or threatened violation and restraining any future violation of said restrictions and conditions.

As such, the concern of loss of the property to the developer, or its successors, or the heirs of its owners is not supported. Therefore, for so long as ELP Civic Club maintains and operates the property, ELP Civic Club will control the ownership. However, Section 7 of the statute means that the restrictions on use in paragraphs 1 through 5 continue, and within those restrictions are other important limitations that impact the second part of this analysis.

B. Options to Consolidate the Operations of the ELP Civic Club and the SDD

Contained within the fifth restriction set out in the deed is a prohibition against sale or mortgaging the property. As stated above, losing the property to the developer is no longer an issue but this restriction on sale may still be. Generally, in light of the foregoing, an outright transfer to the SDD is problematic without court approval so other options should be considered.

Ultimately, your stated objective is to try to reduce the bureaucracy of two separate organizations by reducing the entities and streamline operations. This is driven by apathy on the part of the members of the voluntary ELP Civic Club and the limitations on the SDD as created by ordinance. There are many issues intertwined under this topic and the options are limited under the present documents. To cut straight to the chase, I believe that the following steps should be taken:

1. Speak with your point of contact at the county regarding the process of having the county commission amend the ordinance creating the SDD to clarify
 - Its lawful scope of expenditures
 - Create a new cap for the assessment and clarify the process through which it would be raised to protect the homeowners from unreasonable increases but always allow for enough to maintain the Clubhouse and its operations (once the SDD has control or ownership of the real estate)
 - Describe the benefits of the Clubhouse to the community so the expenses of the Clubhouse are clearly delineated as a benefit to the East lake Park owners and a valid exercise of its authority
 - If the SDD take title, or ends up with control over the ELP organization, and either is then terminated or disbanded, include a provision that returns title to the land to an entity that would hold it for the benefit of the owners (essentially recreating the Civic Club) (this is different than a right of reverter that becomes void after 21 years).

As a change to the ordinance, the residents of East Lake Park would have notice of the public hearings on the amendment

2. Simultaneous with pursuing an amendment to the SDD ordinance, the ELP Civic Club should amend its documents to provide that if the entity is ever dissolved, title to the property would go to (a) members or (b) all of the owners in East Lake Park Units One through Three (the form and extent of such a provision needs to be discussed further).

(The purpose of the above amendments is to facilitate what happens to the property upon dissolution of the entity).

3. After that above are completed, the ELP Civic Club should then file a declaratory judgment action seeking a court's determination in five separate counts
 - Count I – determine that the restriction on sale and mortgaging of the property is void and an unreasonable restraint on alienation of property, thereby allowing transfer in the manner which best suits the ELP Civic Club and the SDD;
 - Count II – as an alternative to Count I, determine that a sale to the SDD, which has the same goals and objectives of serving the homeowners in East Lake Park does not violate the restrictive covenant in the deed that prohibits sale;
 - Count III – as an alternative to Counts I and II, ask the court to rule that a “sale” of the ELP Civic Club from the “members” as defined in the charter, to the SDD in exchange for the continued carry cost and expense being borne by the SDD is NOT the same as the actual transfer of title and therefore permissible.
 - Count IV – ask the court to determine who needs to approve the sale and argue that it should be the “members” as defined in the charter
 - Count V – since these are not deed restrictions through a separate instrument, have the court determine when the restriction expire

In such a suit, all the neighborhood owners would all be given notice and an opportunity to be heard. If they do not take an active role arguing against either position then the court's ruling would be dictate the path we take to move the asset into the SDD. Both the SDD and the ELP Civic Club should work together to agree upon the final scope of the court action to clarify the restrictions in the deed.

The above process is not the only way to approach your goals but it has the least amount of risk of being sued after the fact because of (a) the approval process at the county level, and (b) the owners receiving notice at all levels, and (c) the members having a right to vote on the sale.

As for the cost of the process, I would estimate that the review and drafting of an amendment to the ordinance with the county, discussions with the county attorney and appearance at the county hearings to approve the amendment would be handled hourly and range between \$5,000 to \$10,000. I would defer to Marielle on the cost of amending the ELP Civic Club's charter, but would have to believe it would be in the range of \$950 to \$1,500. The general focus of my practice is real estate and while I have litigated matters in the past, I would want one of my litigation partners to quote a fee for the cost of the declaratory judgment action, which would include a fixed fee if no one objects and an hourly fee that could grow substantially, if owners contest the contemplated action.

Please review, and then let's discuss this further. I have expended much more time working through this process than we estimated but will cap my time at the amount of retainer paid thus far, and proceed hourly going forward.