

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

MERITAGE HOMES
OF FLORIDA, INC., ETC.,

Appellant/Cross-Appellee,

v.

CORRECTED
Case Nos. 5D14-2019
5D14-4463

LAKE ROBERTS LANDING
HOMEOWNERS, ETC.,

Appellee/Cross-Appellant.

Opinion filed March 4, 2016

Appeal from the Circuit Court
for Orange County,
Lisa T. Munyon, Judge.

Michael J. Furbush and Anna E.
Ketcham, of Roetzel & Andress, LPA,
Orlando, for Appellant/Cross-Appellee.

Robyn M. Severs and Patrick C.
Howell, of Becker & Poliakoff, P.A.,
St. Augustine, for Appellee/Cross-
Appellant.

PER CURIAM.

Meritage Homes of Florida, Inc. ("Meritage"), appeals the final judgment entered in favor of Lake Roberts Landing Homeowners Association, Inc. ("Association"). Meritage contends, *inter alia*, that the judgment must be reversed because the trial court's ruling

that the requirement relating to reserve accounts contained in the City Code of Winter Garden cannot be waived creates an impermissible conflict with section 720.303(6)(f), Florida Statutes (2008), which expressly grants homeowners associations the right to waive reserves. We affirm, but not for the reason set forth by the trial court.

Meritage is a Florida corporation that develops, builds, and sells single family homes in Florida. In 2007, Meritage incorporated the Association, which is governed by chapters 617 and 720, Florida Statutes, and by the Declaration of Covenants, Conditions, and Restrictions for Lake Roberts Landing (“Declaration”). The Declaration incorporated the reserve provisions set forth in section 110-157 of the City Code of Winter Garden, which require annual deposits into four different reserve accounts: one a routine-community subdivision infrastructure maintenance account for scheduled maintenance and unscheduled repair of the roads, drainage systems, sidewalks, street lights, gates, and other infrastructure in Lake Roberts, and three capital-repair accounts for the major repair, replacement, and reconstruction of the subdivision’s roads, drainage systems, and other infrastructure improvements. Under the city code, deposits must begin during the year in which Winter Garden issues a Certificate of Completion for the subdivision’s infrastructure.

The Association's initial 2008 annual budget planned for an \$11,000.00 deferred maintenance reserve account. However, in September 2008, the management company for Lake Roberts prepared a draft of the Association's 2009 annual budget which proposed to waive reserves for 2008 and 2009. When the Association’s Board of

Directors¹ met on October 21, 2008, the 2009 draft budget was approved unanimously. Accordingly, no reserves were included in the final budgets for 2008 and 2009. Meritage was the only member of the Association in attendance at the October 21, 2008 Board meeting.

In October 2012, the Association filed a complaint against Meritage alleging that Meritage breached the Declaration by failing to adequately fund the reserve accounts. The trial court found that the Meritage-controlled Board Meeting met the requirements of section 720.303(6)(f) and thus, entitled the Board to waive reserves for the years 2008 and 2009. However, the trial court further held that chapter 110 of the Winter Garden City Code did not permit waiver and, therefore, Meritage was prohibited from waiving the reserve.

Meritage appeals, arguing that the reserves were properly waived. We disagree.

In order to waive reserves pursuant to section 720.303(6)(f), it is the members, upon a majority vote at which a quorum is present, that determine whether reserves required by section 720.303 will be waived. The language of the statute states: "Once a reserve account or reserve accounts are established, the membership of the association, upon a majority vote at a meeting at which a quorum is present, may provide for no reserves or less reserves than required by this section." Accordingly, based on Meritage's own account of the facts, the 2008 and 2009 reserves were not properly waived because the October 21, 2008 meeting was a Board, not a member, meeting. As such, Meritage was required to fund reserves pursuant to the Winter Garden City Code.

¹ On October 21, 2008, Meritage controlled the Board, which was comprised of three Meritage employees from the time the Association was established until May 25, 2011, the time of the turnover meeting.

In all other respects, we affirm, finding no merit in Meritage's remaining arguments on appeal, nor the Association's argument on cross-appeal.

AFFIRMED.

PALMER and BERGER, JJ., and JACOBUS, B. W., Senior Judge, concur.