

LAWSUIT

Plaintiffs gain partial lawsuit victory

Judge orders Sun City is planned community

By Rusty Bradshaw
INDEPENDENT NEWSMEDIA

Sun City residents who filed a lawsuit against Recreation Centers of Sun City to force some operational changes gained a partial victory.

Arizona Superior Court Judge Roger E. Brodman ruled Sept. 4 that Recreation Centers of Sun City is subject to the Arizona Planned Communities Act, ARS 33-1801. However, the judge ruled that plaintiffs did not satisfy all requirements of a class action lawsuit, and that portion of the suit can be revisited, according to court documents.

Just what changes that will bring to RCSC operations is unclear at this point.

“We are unable to say what changes need to be made,” Jan Ek, RCSC general manager, told residents during a Sept. 10 member/director exchange meeting. “We will still operate under Title 10 (of Arizona Revised Statutes), but if this ruling stands, we will have to be under the Planned Communities Act.”

Ms. Ek said RCSC officials can ask for clarifications on the ruling or object to it. She told residents at the exchange meeting the order was not final.

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The judge denied a motion for the class certification portion of the suit without prejudice, which means it can be revisited. Discovery documents were not presented in arguments on that portion of the case by the plaintiffs due to a stipulation, agreed to by both parties, that discovery not be exchanged until the main motion, regarding the Planned Communities Act, was settled, according to Mrs. Stewart. RCSC then filed a motion for summary judgment on the class certification prior to the judge’s decision on the main portion, she added. Mrs. Stewart said the class

certification motion will be revisited after discovery is filed.

“Only reimbursement of illegal fees is needing class certification,” she said. “If plaintiffs get their money returned, will others file lawsuits to get theirs back, too? If so, probably class certification will save court time.”

More than 20 Sun City residents, including Anne Randall Stewart, who coordinates a movement called Sun City Formula Registry, filed the lawsuit, claiming RCSC officials should be subject to the Planned Communities Act and the corporation charges fees unfairly and unequally. RCSC is a nonprofit corporation charged with maintaining recreational facilities and offering recreational and social activities for residents in the age-restricted active retirement community on unincorporated land in Maricopa County. There are about 27,000 households with a population of about 40,000 people in the community.

Sun City resident Gene Westemeier, a former RCSC board member, asked if operating under the Planned Communities Act would affect the corporations meetings. Ms. Ek said that was accurate.

RCSC conducts two board meetings per month — the exchange and the regular board meeting — that are open to cardholders, other residents and the media. However, only cardholders are able to speak during “open forum” portions of those meetings. RCSC officials also conduct “workshop” meetings following each of the open meetings. Those events are closed to cardholders, residents and the media. RCSC also has several standing committees that make recommendations to the board. Those committee meetings are open to cardholders but the media is not allowed to attend.

Mrs. Stewart said the ruling provides protection for Sun City homeowners.

“This will mean RCSC meetings have to be open, we can go into the work sessions and we can record the meetings,” she said.

The Planned Communities Act, which was instituted for homeowner protection of association abuses, according to Mrs. Stewart, also places limits on an association’s ability to foreclose on a property. It may also force changes to RCSC’s preservation and improvement fee, a \$3,500 charge for each property transfer.

“The (RCSC) board has established bylaws and policies that remove homeowners’ rights,” Mrs. Stewart said. “And the PIF is not linked to need.”

RCSC officials kept their plans of future action on the case close to their vest last week.

“Both the plaintiffs and the defendants could take action on the ruling,” Joelynn Higgins, RCSC communications and marketing director, stated in an email when asked if RCSC officials would appeal. “No action has been taken by either at this time.”

She also stated what RCSC officials will do to comply with the order will be studied in the coming weeks.

“That requires considerable evaluation and review, which cannot be done in such a short time period,” she stated.

Under the Planned Communities Act, all board and committee meetings must be open to residents and anyone designated, in writing, to be a resident’s representative. Under the act, RCSC can conduct closed door meetings under five specific discussion items — legal advice; pending or contemplated litigation; personal, health or financial information; job performance, health records or compensation of employees; and a member’s appeal of violation. Prior to going into a closed session, the board must

identify the general nature of the discussion as defined by the five exceptions for closed meetings.

The act also has provisions designed to make association records open to members or their designated representatives.

Regarding foreclosures, the statute prohibits the association from foreclosing on a property until a year of delinquency has passed or the amount owed reaches or exceeds \$1,200, whichever comes first.

The statute also limits fees the association can charge for services relating to a sale of property to \$400, which can be increased up to 20 percent per year but only if the fee was less than \$400 prior to Jan. 1, 2010. The association can also charge a rush fee of \$100 and an update fee of \$50, if either is requested or needed.

The Planned Communities Act does not have a provision for a fee equivalent to RCSC’s preservation and improvement fee.



Anne Randall Stewart



Jan Ek

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