

DEED RESTRICTIONS LAWSUIT Q&A

8/5/25

This document contains questions from BSI property owners and answers to them by the BSIA Board of Directors concerning the legal challenge to the BSI deed restrictions. Additional information will be provided as it becomes available.

Q: The Association seems quite sure of winning 'round 2' in this legal battle. I seem to recall they were pretty sure they'd win 'round 1' but they didn't. What makes us so sure?

A: This is a very good point. Nothing is guaranteed. Why we think we have a strong case is as follows. The judge ruled against BSIA based primarily on a case presented by the opposing council from Sarasota County. The case was Lyday vs. Myakka Valley Ranch. Our counsel believes that that case was faulty and read things into the law that weren't intended. (The law here being the Florida Marketable Records Title Act or MRTA.) As our lawyer put it, "judges are not supposed to legislate from the bench" and that appears to be what happened in the Lyday case. When this was presented to our judge, he simply said he is not in a position to challenge another judge's decision. We requested a rehearing, but he denied that. This is what led us to the appeal. Our appeals attorney (a specialist in appeals) thinks we have a good case especially since this about a legal interpretation of the law and not about a financial judgement, which apparently many appeals are about.

Q: What happens if BSIA continues the legal battle/appeal and wins?

A: If we win, we can continue to enforce our deed restrictions as they were originally filed.

Q: What happens if BSIA continues the legal battle and loses the appeal?

A: If we lose, BSIA will become a social organization similar to PGI Civic Association. Anything regarding property will be referred to the city. One important note here. Roughly \$10,000 of our annual budget is spent on maintaining our common areas around the entrances on Madrid and Monaco. The city will not maintain them. We will still need to come up with that money or have volunteers maintain it.

Q: If we lose and BSI falls under the restrictions of the City, how do those restrictions differ from what we have now?

A: The thing that started this was a challenge on a roof being installed that was not acceptable under our deed restrictions. While we have allowed metal roofs, we have always tried to keep the look intended by the original developers. Therefore, we have denied requests for flat metal roofs. If we lose, those will be allowed as they are in PGI. Anything the city allows in PGI will be allowed in BSI.

Q: Who in the City approved the permit to install the standing seam roof in the first place? The City is well aware that there are certain deed restrictions in our community that differ from the City's restrictions. One big difference being roofing material/style. Why weren't our deed restrictions taken into consideration by the City?

A: All city permits include a notice that their approval doesn't preclude getting an approval from any HOA governing the property. One detail that was surprising about this permit is that it actually called for asphalt shingles yet a metal room was installed and apparently approved. This has no real bearing on the challenge to the validity of our deed restrictions.

Q: Has this plea for money been asked of ALL BSI residents? Did a mailing go out?

A: We are working on a post card mailing to all BSI property owners, not just BSIA members. It will be the same message as what you received by email.

Q: Are the donations going into some kind of escrow account?

A: We have created a separate checking account and have begun receiving donations. Your current board members have contributed amounts well above the requested \$150. Note we used that number as a minimum suggested amount. It is indeed a donation. Whether we win or lose, we are asking people to make an investment. Moneys will not be returned or co-mingled with the BSIA operating budget going forward. In the unlikely case that we have more money than we need, it will be held in a reserve for future legal matters.

Q: What if you collect some, but nowhere near the amount needed to continue the legal battle? What happens to the collected money?

A: That is a possibility. We will withdraw our appeal and will have to accept that we lost. We would then proceed on a process that the state allows to 'revitalize' expired deed

restrictions. It's a somewhat cumbersome process that would require a simple majority of all BSI property owners to vote yes. Note that non-responses would count as no votes.

Q: Are we still a legally enforceable deed restricted community based on the results of the initial lawsuit?

A: As a result of the judge's ruling, they are expired. Right now, we have no grounds to legally enforce the deed restrictions. The board is asking for the cooperation and support of all property owners to voluntarily uphold the existing deed restrictions while the legal process moves forward.

Q: On what basis does the Board believe we can win an appeal? What new information would be presented at the appeal that would shift the courts' decision in our favor?

A: The issue is that we (our Attorney, the appeal attorney, and the BSIA Board) feel that the district judge misapplied the law. The first renewal was done late but in total compliance with the State of Florida law that was in effect at that time. The proper documents were filed with Charlotte County and the State of Florida and approved. Our deed restrictions are still shown on the county website. That was 24 years ago.

Q: If we do not win the appeal, what happens to our deed restrictions? Do they still apply?

A: If we lose the appeal, or if we don't get enough donations to fund the appeal, BSIA will become a social only organization. What this means is that any issues regarding individual properties for example dirty roofs, uncut lawns, commercial vehicles in driveways for overnight extended periods etc. will be enforced by Code Compliance from the City of Punta Gorda.

Q: Is the \$150 being requested of all homeowners in BSI or just those that are members of the association?

A: The request is going to all property owners as this will affect all properties in BSI. The initial requests were made to BSIA members by email because we have those on file. We will be sending a mailing via USPS in the very near future to all property owners in BSI requesting the \$150.

Q: If the \$75,000 is not raised to pay for the appeal, I'm assuming BSIA will be unable to appeal and the original judgement stands meaning BSIA will no longer be a deed-restricted community. Did I interpret the judge's ruling correct when he declared the deed restrictions for all properties in BSIA have been declared extinguished (e.g., no longer valid)?

A: The \$75K is considered the high end of the amount to complete lawsuit. We may be able to resolve this without needing the full \$75K but we want to avoid asking for additional monies if at all possible. The Board was given permission at the Nov 2024 annual BSIA membership meeting to spend the \$50K in our legal reserve. That money is almost gone.

Q: If our deed restrictions have been declared extinguished (e.g., no longer valid), then I'm interpreting this to mean that sheet metal roofs are acceptable, grass landscaping does not need to be kept up/approved by BSIA, other buildings/structures can be built on properties, houses can be painted any color, etc. Basically, all the restrictions in the deed restrictions are null and void.

A: Your assumption is correct. The Board makes every effort to address violations in a neighborly way. If the deed restrictions are gone, we would have to rely on the city code enforcement to enforce the applicable city ordinances. BSIA would be taken out of the process.

Q: If BSIA appeals, what happens to the deed restrictions in the interim? Do they still apply? For example, can someone put a metal roof on their house during the process of the appeal?

A: Unfortunately, they are not in effect. The board is asking every property owner for their cooperation and support by voluntarily upholding the existing deed restrictions while the legal process moves forward.

Q: If BSIA loses the appeal, what steps can be taken to create a new document to ensure we remain a deed restricted community? Is this something that can be done instead/or after the appeal if not successful?

A: Yes, there is a process and it can be done after the appeal is not successful. But to be honest it will be difficult. We would have to get a majority of ALL property owners to vote to reinstate the deed restrictions. We currently have about 450 members out of about 1,300 properties. We would need to get 50% plus 1 voting in favor of recording new deed restrictions. The real hurdle is anyone that does not vote is considered a NO vote. Our typical

first-class mailings have an 8% to 10% return as undeliverable so this us in a negative position almost from the beginning of the process.

Q: If we have to rewrite the restrictions, can we add things to it to include the exclusion of nightly rentals? I know Mondovi Bay condominiums already include this in their covenants.

A: Unfortunately, no. New restrictions would require 100% of all property owners to vote in the affirmative. Additionally, the state is not allowing any local entities to put new restrictions on rental properties.

Q: If in the end we are no longer a deed restricted community, will the HOA still be needed?

A: The HOA would become primarily a social entity not unlike PGICA. We would still have the responsibility to maintain the islands at the entrances because the city has told us they do not have the staff to do so. That currently costs between \$9K and \$10K per year.

Q: Is there any discussion to make the HOA mandatory? Seems unfair to have some homeowners get the benefits of the HOA without paying into it.

A: This has been discussed in the past but because it would require would require a positive vote from 100% of all effected property owners, it is considered impossible.

Q: After reading the message about the need for us to contribute \$150 to pursue the lawsuit regarding deed restrictions and to replenish the legal reserve, we have a question. On what basis is the appeal being done. Our understanding is that we can't appeal simply because we don't like the judge's ruling. Why does BSI believe we have a case for appealing. Do we think we actually have a chance to win or is this a long shot.

A: Our attorneys and the BSIA Board both believe that a mistake was made in applying the law as it pertains to our case. The regular BSIA attorney believes that there is a very good chance to get the ruling overturned on appeal.

Q: I have read the newsletter email as well as what David sends out about the deed restriction issue. I have a question or request might be a better word. Since someone had to write to the City back in the day to request the restrictions be put back in effect, do we have a copy of that

and the response from the City. I think knowing that the City either reinstated them and we have that proof or not is something I know people would be interested in. I was on the board back in 2013 for 4 years and no one ever mentioned this lapse.

A: Deed restrictions are not something that the city gets involved with. Deed restrictions are recorded with the County. The process is to get them reaffirmed is with the county. According to our attorneys (who became the BSIA attorneys in Jan. 2001) it was realized that the deed restrictions reaffirmation did not occur on a timely basis. Again, according to our attorney, they went thru the process that was then state law to get them reinstated. That occurred in April 2001. That process included getting them filed with the county. Today, if you do research, the county is showing that they are current. It is on that basis that our appeal is being filed.