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January 17, 2017

Patrick Kennedy
[redacted]

Carol Opatrny
[redacted]

Re: Cedars Homeowners Association
Our File No. 18985.001

Dear Patrick & Carol:

Thank you for meeting with me to discuss the Cedars HOA. As I understand it you have several questions which you wish to have addressed:

1. Can phase 1 of the development standalone as its own HOA?
2. Does the fact that Camelot was not the Declarant of the other phases change the analysis?
3. What is the effect of the "sole enjoyment of phase 1" language on the plat for phase 1?
4. What is the effect of the annexation language in section 4?
5. If there is no possibility of forming a standalone HOA is there a way to enforce assessments for the maintenance of phase 1 common areas?

I have reviewed the file folder of material you provided and conducted some research on the issue.

Under Washington law court interpret CC&Rs as a whole, and attempt to ascertain the intention of the original drafter. Riss v. Angel 131 Wn 2d612 (1997). In interpreting CC&Rs courts will look to an interpretation which benefits the homeowners as a whole. Wilkinson v. Chiwawa 180Wn2d245, 250 (2014).

From my review of the CC&RS I find numerous references throughout the document, which in my opinion, make it clear that the original drafter intended that there be only one HOA for all phases of the development. For example:

Exhibit A, the legal description, describes the entire development. Article I, section 1 makes reference to a singular HOA.

Article 1, section 3 defines properties as those which may be annexed by the declarant with or without consent within seven years. Granted, this provision could be interpreted to mean that subsequent phases which were not annexed within the seven years are not part of the development, however for reasons stated below I do not believe this would be the conclusion of the court.

Article I, section 4 states clearly that all owners enjoy use of "all" common areas.

Article I, section 6 defines the declarant as Camelot, its successors, or assigns. For this reason I believe that the subsequent developers would be considered successors of Camelot and the language in Article 1, Section 3 would not be limited to direct purchasers from Camelot.

Article II, section 1 states that all owners have a right to the common areas. That same section makes reference to the HOA maintaining the entrance sign, which again I believe, would be further evidence of the intent that there be just one HOA.

Article III, section 1 states every member is a member of the Association. Again, implying one HOA.

In reviewing the plat, it does state that the common areas are intended for use by the owners in Phase 1 however that notation goes on to say as more fully described in the CC&R applicable to the plat. It also states that the CC&Rs are incorporated into and made part of the plat. For this reason I do not believe that the language in the plat for phase 1 would somehow alter, or limit, the interpretation of the CC&Rs to having a separate HOA.

I understand that at least one other phase of the development has been operating as its own HOA. I do not believe this in any way influence a court's decision for the simple reason that under Washington law it is the intent of the original drafter which is important to the court. If there is ambiguity in the language a court can look to parole (outside) evidence to interpret those ambiguities however I do not believe that the actions of a party many years later to create a standalone HOA for a separate phase within any way influence the court's decision in interpreting the original drafter's intent and such evidence would not be material or relevant to the court's determination of the drafters original intent.

In short I do not believe there is a firm legal basis to argue in support of a standalone or separate HOA for phase 1.

In light of my opinion what are your alternatives? Of course, if all the parties agree in phase 1 they can agree to voluntarily form their own group. However the parties will not agree to do so. Thus I do not see this as a viable option, unless perhaps a group was formed solely for the purpose of maintaining common areas and limited and scope.

There is case law in Washington were nonmembers of HOA have been assessed reasonable expenses relating to their use of a common easement. In reviewing those cases, however, they all appear to relate to roadway easements. And in all of those cases there was no dispute that the party refusing to contribute was actually using the roadway. While it occurred to me that perhaps you could make an analogy from those cases and attempt to charge the other homeowners for common area expenses I think the argument would be weak. There is not as much of a direct connection between the common areas, such as the unused playground, as there would be to someone who is actually using a road for ingress or egress to their property. Also in the cases reported in Washington the parties did not deny that they were actively using the roadway, whereas here the parties may deny that they actively use some of the common areas in question. Thus although perhaps an argument can be made I think it a weak one and I would not recommend pursuing it.

I wish I could have come to a different conclusion for you.

Very truly yours,

ALBERT F. SCHLOTFELDT

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