

The Views of Asheville Homeowners' Association Annual Meeting Minutes

December 7, 2016 (Final, as approved December 21, 2017)

The meeting called to order by President Bill Uhle at 7:03 p.m.

A tribute to Joe Bonamarte, who passed away in November, was presented by Bill Uhle.

Roll Call:

Homeowners present: Bill and Chandra Uhle, Richard and Judy Green, Diane Summey, Nancy Osborne, Rainer and Suzy Kolb, Skip and Beth Garrett, Gerry and Margaret Stanley, Dan and Eva Steward, Toni Meador, Todd and Sharon Henady, Jill Sagarin. New owners Rainer and Suzy Kolb introduced themselves.

Homeowners represented by proxy: Al Patel, Jane Robison, Joanie Alston, Kathy Gainey, Neil Altman, Linda Jorgenson, Ernie Bott, Daniel Baseman (Quorum established).

Proof of Notice of Meeting: Confirmed by Secretary Diane Summey and the homeowners in attendance.

Reading of the minutes of previous meeting: Waived, minutes from last year's meeting were distributed on 13 Feb 2016 and posted for review on HOA website, no further changes were recommended and the minutes were approved as written.

Selection of 2017 Board of Directors: Moved to the end of the meeting to allow discussion on the Lot 5 property transfer to occur before the vote.

Committee Reports:

Architectural: The Board is currently acting as the Architectural Committee, as no other homeowners have volunteered. Homeowners were reminded that any changes to exterior of houses (to include painting) or the building of any exterior structures must be coordinated with the Architectural Committee before commencing with the project. Several projects were approved in 2016 to include: (a) a right of way agreement and water access agreement with 99 Distant View Drive (DVD); (2) landscaping requests on HOA land from 91, 95, 102, and 104 DVD; (3) removal of a dead tree on HOA land behind 78 DVD; (4) landscaping to fill in a depression on HOA land next to 78 DVD; and (5) conditional approval of a gate across the driveway at 116 DVD pending City of Asheville approval (which the City has said requires easement agreements to be signed by the Stewards and the HOA; see New Business below).

Landscape: The Board thanked Joanie Alston for serving as head of the Landscape Committee for 2 years. The Board is now acting as the Landscape Committee as no other homeowners have volunteered. Indigenous Design (ID) continues as the HOA landscaper as the current contract ends 31 March 2017. The contract calls for cutting the grass every 10 days during the growing season, pruning shrubs and trees along the road four times per year, and maintaining the storm water drainage ditches. Additional work performed this year included (1) new mulch in the common beds and (2) aerating, fertilizing, lime, and over-seeding the

grass along Distant View Drive. The board is seeking homeowner comments on the quality of work by ID and suggestions for another company to possibly replace ID if desired.

Appalachian Arborists (AA) removed three dead trees, a Hemlock behind the retaining pond on Park Ave, a Maple behind 78 DVD, and a Poplar along the curve above 77 DVD. Gerry Stanley urged homeowners and the Board to check hemlocks for woolly adelgid. The Board will ask AA to look at hemlocks on HOA land during 2017.

Finally, the HOA had planned to improve the appearance of the entrance sign with some new, colorful shrubs. However, due to the draught and the lack of an adequate watering source in the area, that has been postponed until 2017.

Storm water: In March 2016, the City of Asheville inspected and cleaned all catch basins and re-grouted those catch basins in need. The 30 ft. pipe buried near 111 DVD was twice scoped (Dec 2015 and Mar 2016) but only the first 13' was accessible. In May, the buried pipe was excavated, found to be intact and open at the end; so the pipe was capped and reburied. Several months later, the land around the pipe had settled somewhat as expected, and was filled and reseeded. This may be a recurring project, so the Board will continue to monitor. Since the project was not as extensive as first thought, the money saved was used for other landscaping projects.

Reports of Officers:

Treasurer: Jill Sagarin reviewed the financial report as of 31 Oct 2016. The 2016 end of year financial statements, as of 31 Dec 2016, are attached. Overall, \$14,250 was collected in dues, Operating Expenses totaled \$13, 629.32, and Reserve Account Expenses were \$1275 (all for the storm water buried pipe work). Jill reminded everyone that the annual assessment for 2017 is due by March 1, 2017. It was noted that final end of year financial information will be attached to the meeting notes (Attachments 1 – 4).

Secretary/VP: no reports

President: Sweeten Creek Association of Neighborhoods (SCAN) was established to act as a liaison with the city of Asheville on behalf of 900+ South Asheville households to provide feedback on community issues, specifically the plan to build an apartment complex at the intersection of Sweeten Creek Road and Mills Gap Road and the NCDOT's plans to widen Sweeten Creek Rd. Jill Sagarin (The Views) and V.J. Kapoor (Ballantree) have worked tirelessly with SCAN and continue to stay active with these projects. The Board also submitted a "Plan on a Page" about The Views to the City of Asheville as an input to the future planning efforts.

Several complaints about excessive speed from Park Ave and Pinnacle residents have been received. Residents were asked to be considerate and slow down around the curves and reminded that those that live adjacent to the curves are particularly vulnerable when entering or exiting their driveways or getting their mail due to the limited sight distance.

Unfinished Business: none

New Business:

Security Gate for 116 DVD and the Lot 5 Property Transfer: On 3 Dec, Bill Uhle, on behalf of the Board, emailed all the homeowners a background paper regarding the Stewards'

purchase of Lot 5 and its relationship to their 5 July 2016 request to install an automatic gate across their driveway. During the process of getting written approval from the City Water Department for the security gate, an issue regarding the ownership of the Water Tank Site Lot surfaced. The HOA Attorney, Zephyr Jost of Dungan Law, is of the opinion that the HOA is the legal owner of the Water Tank Site Lot since (1) the 2009 petition circulated by the Stewards requesting the property transfer did not include the Water Tank Site and (2) the Water Tank Site Lot is a separate and distinct lot according to the plat recorded in Buncombe County in PB80 PG09 and is thus not conveyed by the Deed, which transferred "all of lot 5" as shown on that recorded plat (see Attachment 5). In addition, Buncombe County currently reflects the HOA as the owner of the Water Tank Site and the City of Asheville Attorney's office agrees that the HOA is the owner. The Stewards maintain they are the legal owners of the Water Tank Site, and sent all the homeowners an email on 7 Dec that challenged the Board's position and documents. The Stewards cite their attorney's opinion that there is a note in the recorded plat that says the total area of Lot 5 is 1.52 acres, a surveyor has verified that the Water Tank Site is included in that 1.52 acres, and since the Water Tank Site was not specifically excluded by language in the deed, it is owned by the Stewards (see Attachment 6).

Bill Uhle began the discussion noting that the Board had not been able to fully review and research the information sent by the Stewards earlier that day. The first discussion concerned the proposed width of the security gate. The drawing given to the board showed a single structure with two gates, one for vehicles and one for pedestrians. The Board's interpretation of the notation below the drawing was that the total structure was 16 feet wide, with a 12 foot wide vehicle gate and a 3 foot wide pedestrian gate. The Stewards stated this was incorrect and that the vehicle gate will be 16 feet wide and the total gate structure will be approximately 22-23 feet wide. (This has been corrected in Attachment 5).

Though further discussions ensued between the Board and the Stewards concerning statements made in the Board's background paper and statements made in the Stewards' documents, both maintained their positions as stated in their documents so are not repeated. During the discussions, Nancy Osborne said that it shouldn't matter to the Stewards who owned the Water Tank Site since they can still plant whatever trees they want on their own property in order to minimize the view of the tower. Jill Sagarin added that, since the Water Tank supplies water to all of the lots within The Views, she wanted the Water Tank Site owned by the HOA and not by any one particular resident. The Board said they would provide the Stewards' documents to the HOA attorney for review. The Stewards maintained that they owned the Water Tank Site Lot and that the HOA's only recourse would be to take legal action against them.

2017 Budget: The proposed 2017 Budget was presented. The annual assessment will remain \$500 per lot (except for those empty lots reserved for privacy which are assessed at a rate of 50%). The majority of the discretionary funding in the Operating Account was allocated to landscaping improvements to provide new mulch, improve the grass along DVD, and improve the entrance sign area. The legal account was increased to \$1000, and if no legal expenses are incurred during the year that money will be used to begin the process of updating the *Declaration of Covenants, Conditions, and Restrictions* to remove references to "Developer Rights" and to address maintenance of the parts of the storm water system that are located on private property. For the Reserve Account, the top priority will be re-grouting the pipe exiting

the drop inlet behind lot 113, and work to inspect and clean the concrete junction boxes along the main line will be researched. The 2017 Budget was approved as presented.

Selection of 2017 Board of Directors: Bill Uhle noted that Richard Green has been on the board since its inception 14 years ago, Diane Summey has served for 4 years, and he has served for 3 years. Though all three are willing to serve another year, they believe that having at least one new member on the board this year would be best for the HOA. Nominations were opened for Board members for 2017. No new members volunteered or were nominated. The current board members were nominated by Skip Garrett; then seconded by Gerry Stanley. The motion was approved and the Board of Directors for 2017 will remain Bill Uhle, Richard Green and Diane Summey.

Other Items:

Ernie Bott's statement: Because Ernie Bott was unable to attend the meeting, he requested another owner, Gerry Stanley, read a letter concerning one of the statements contained in the Stewards' Lot 5 Property Transfer documents. The letter was read by Gerry Stanley (attachment 7).

Eva Steward responded by expressing her disagreement with several of the points made in Mr. Bott's statement.

Management Company: Citing the lack of new volunteers for the Board and the HOA committees, Jill Sagarin inquired about the cost to hire a management company to take over the duties of the Board. Bill Uhle pointed out that the HOA would still need an elected Board of Directors to act with the management company, but that having a management company would reduce the amount of work currently being done by the Board. The Board will research the hiring of a management company and present the costs at the next annual meeting.

The meeting was adjourned at 8:23 p.m.

Attachments:

1. CY2016 Income Statement (as of 31 Dec 2016)
2. CY2016 Expense Statement (as of 31 Dec 2016)
3. CY2016 Consolidated Income/Expense Statement (as of 31 Dec 2016)
4. CY2017 Budget (as approved)
5. HOA Background Information on Lot 5 Property Transfer
6. Eva and Dan Steward's documents on Lot 5 Property Transfer
7. Ernie Bott's Statement in response to the Steward's documents
8. Eva and Dan Steward's letter dated 10 Dec 2017 with inputs to the meeting minutes
9. Board of Directors letter dated 15 Dec 2017 in response to the Stewards' 10 Dec 2017 letter

Attachment 1. CY2016 Income Statement (as of 31 Dec 2016)

| THE VIEWS OF ASHEVILLE HOA | | | |
|---|--------------------|--|---|
| 2016 INCOME STATEMENT (OPERATING ACCOUNT)* | | | |
| | | | |
| Dues | | | |
| 2016 Dues | \$14,250.00 | | |
| TOTAL DUES | \$14,250.00 | | |
| | | | |
| Other Income | | | |
| Asheville Savings Bank | \$21.64 | | |
| Owner Bank fee reimbursement | \$10.00 | | |
| TOTAL NON-DUES INCOME | \$31.64 | | |
| | | | |
| TOTAL INCOME | \$14,281.64 | | |
| | | | |
| | | | *as of 12/31/2016 |
| | | | |
| THE VIEWS OF ASHEVILLE HOA | | | |
| 2016 INCOME STATEMENT (RESERVE ACCOUNT)* | | | |
| | | | |
| Transfer | | | |
| Funds from Operating Account | \$5,270.00 | | |
| TOTAL TRANSFER | \$5,270.00 | | |
| | | | |
| Income | | | |
| Asheville Savings Bank | \$2.86 | | |
| Reserve Account funding | \$1,000.00 | | Note: Paid from the Operating Acct directly to The Workx for buried pipe repair work since the work was accomplished prior to the establishment of the Reserve Acct |
| TOTAL INCOME | \$1,002.86 | | |
| | | | |
| TOTAL (TRANSFER + INCOME) | \$6,272.86 | | |
| | | | *as of 12/31/2016 |
| | | | |
| | | | |

Attachment 2. CY2016 Expense Statement (as of 31 Dec 2016)

| The Views of Asheville HOA | | | |
|--|--------------------|-----------------|---|
| 2016 Operating Account Expense Statement* | | | |
| PAYEE | AMOUNT | DATE PD. | COMMENT |
| LANDSCAPING | | | |
| Indigenous Design | \$581.50 | 01/08/16 | Dec. monthly fee and culvert dig out |
| Indigenous Design | \$484.00 | 02/24/16 | Jan. monthly fee |
| Indigenous Design | \$484.00 | 03/07/16 | Feb. monthly fee |
| Indigenous Design | \$484.00 | 04/06/16 | March monthly fee |
| Indigenous Design | \$484.00 | 05/08/16 | April monthly fee |
| Indigenous Design | \$484.00 | 06/14/16 | May monthly fee |
| Indigenous Design | \$484.00 | 07/05/16 | June monthly fee |
| Indigenous Design | \$484.00 | 08/07/16 | July monthly fee |
| Indigenous Design | \$1,109.00 | 09/02/16 | August monthly fee and new mulch for common beds |
| Indigenous Design | \$1,500.00 | 09/23/16 | Aeration, seed, fertilize, lime grass areas along DVD |
| Indigenous Design | \$484.00 | 10/06/16 | September monthly fee |
| Indigenous Design | \$484.00 | 11/02/16 | October monthly fee |
| Indigenous Design | \$484.00 | 12/04/16 | November monthly fee |
| Appalachian Arborists | \$1,020.00 | 07/12/16 | Remove dead Hemlock (Park Ave), Remove diseased Maple (behind 78), Remove dead poplar (DVD curve) |
| Carolina Lawn | \$250.00 | 09/23/16 | Repair ground depression next to 78 |
| TOTAL LANDSCAPING | \$9,300.50 | | |
| LEGAL/ACCOUNTING/BANKING | | | |
| Dixon Hughes | \$300.00 | 03/19/16 | Tax prep |
| McGuire Wood Bissette | \$378.00 | 02/07/16 | Legal review of Driveway Right-of-way Agreement (w/99) |
| Dungan Law Firm | \$270.00 | 10/03/16 | Legal review of Water tank site ownership |
| TOTAL LEGAL/ACCOUNTING | \$948.00 | | |
| TAXES/FEES | | | |
| City of Asheville | \$806.40 | 05/20/16 | Stormwater tax |
| City of Asheville | \$846.72 | 11/21/16 | Stormwater tax |
| TOTAL TAXES/FEES | \$1,653.12 | | |
| INSURANCE | | | |
| Nationwide | \$500.00 | 07/12/16 | Liability, D&O insurance |
| Nationwide | \$40.00 | 12/11/16 | Liability, D&O insurance |
| TOTAL INSURANCE | \$540.00 | | |
| MISC. | | | |
| Jill Sagarin | \$9.80 | 03/01/16 | postage |
| Jill Sagarin | \$9.40 | 11/12/16 | postage |
| Diane Summey | \$11.88 | 11/21/16 | postage |
| Go Daddy Webhosting | \$146.62 | 01/25/16 | domain registration, website hosting |
| Asheville Savings Bank | \$10.00 | 03/31/16 | bank fee for returned check |
| TOTAL MISC. | \$187.70 | | |
| RESERVE ACCOUNT | | | |
| Annual Reserve Acct funding | \$1,000.00 | | Note: Paid from the Operating Acct directly to The Workx for buried pipe repair work since the work was accomplished prior to the establishment of the Reserve Acct |
| TOTAL OPERATING ACCT EXPENSES | \$13,629.32 | | |
| | | | *as of 12/31/2016 |
| 2016 Reserve Account Expense Statement* | | | |
| STORMWATER SYSTEM | | | |
| The Workx | \$1,000.00 | 04/01/16 | Buried pipe scope/repair (paid from Operation Acct using the \$1000 annual funding since accomplished prior to establishment of the Reserve Acct) |
| Superior Yardwork | \$275.00 | 12/04/16 | Fill in depression/hole and reseed with grass area where buried pipe was repaired |
| TOTAL STORMWATER SYSTEM | \$1,275.00 | | |
| TOTAL RESERVE ACCT EXPENSES | \$1,275.00 | | |
| TOTAL HOA EXPENSES | \$14,904.32 | | |
| | | | *as of 12/31/2016 |

Attachment 3. CY2016 Consolidated Income/Expense Statement (as of 31 Dec 2016)

| THE VIEWS OF ASHEVILLE HOA 2016 INCOME & EXPENSE SHEET (OPERATING ACCOUNT)* | | | | |
|--|----------------------------------|---------------------------|---|---------------------------|
| 1/1/16 BEGINNING BALANCE: | | | <u>\$12,394.62</u> | |
| | | 2015 | 2016* | 2016 |
| | | <u>TOTAL</u> | <u>TOTAL</u> | <u>BUDGET</u> |
| INCOME | | | | |
| | Dues | \$11,600.00 | \$14,250.00 | |
| | Non-dues | \$33.09 | \$31.64 | |
| | <u>TOTAL INCOME</u> | <u>\$11,633.09</u> | <u>\$14,281.64</u> | |
| EXPENSES | | | | |
| | Landscaping | \$7,928.50 | \$9,300.50 | \$9,053.00 ** |
| | Legal/Acct./Banking | \$2,655.50 | \$948.00 | \$850.00 |
| | Taxes/Fees | \$1,589.40 | \$1,653.12 | \$2,400.00 |
| | Insurance | \$500.00 | \$540.00 | \$500.00 |
| | Misc. | \$4,436.18 | \$187.70 | \$447.00 |
| | Reserve Acct Funding | \$0.00 | \$1,000.00 | \$1,000.00 |
| | <u>TOTAL EXPENSES</u> | <u>\$17,109.58</u> | <u>\$13,629.32</u> | <u>\$14,250.00</u> |
| | Uncleared check | \$0.00 | \$0.00 | |
| | Create Reserve Account | \$0.00 | \$5,270.00 | |
| | 10/31/2016 ENDING BALANCE | \$12,394.62 | \$7,776.94 | |
| | | | *as of 12/31/2016 | |
| | | | ** includes \$2,325 budgeted as available for other prioritized items | |

| THE VIEWS OF ASHEVILLE HOA 2016 INCOME & EXPENSE SHEET (RESERVE ACCOUNT)* | | | | |
|--|----------------------------------|----------------------|--------------------------|--|
| 1/1/16 BEGINNING BALANCE: | | | <u>\$0.00</u> | |
| | | 2015 | 2016* | |
| | | <u>TOTAL</u> | <u>TOTAL</u> | |
| INCOME/TRANSFER | | | | |
| | Interest Income | \$0.00 | \$2.86 | |
| | Transfer from Operating Account | \$0.00 | \$5,270.00 | |
| | Annual Funding | \$0.00 | \$1,000.00 | |
| | <u>TOTAL INCOME</u> | <u>\$0.00</u> | <u>\$6,272.86</u> | |
| EXPENSES | | | | |
| | Stromwater System | 0 | \$1,275.00 | |
| | <u>TOTAL EXPENSES</u> | <u>\$0.00</u> | <u>\$1,275.00</u> | |
| | Actual account balance | \$0.00 | \$4,997.86 | |
| | Uncleared check | \$0.00 | \$0.00 | |
| | 10/31/2016 ENDING BALANCE | \$0.00 | \$4,997.86 | |
| | | | *as of 12/31/2016 | |

Attachment 4. CY2017 Budget (as approved)

HOA Budget for CY 2017 (as approved 7 Dec 2016)

| <u>HOA ACCOUNTS BALANCE (as of 31 Dec 2016)</u> | <u>Amount</u> |
|--|----------------------|
| Operating Account | \$7,776.94 |
| Reserve Account | <u>\$4,997.86</u> |
| Total | \$12,774.80 |

2017 INCOME

| | |
|----------------------------|----------|
| Annual Assessment of \$500 | \$14,250 |
|----------------------------|----------|

2017 OPERATING ACCOUNT EXPENSES

| | | |
|--|---------------------|---------|
| Landscaping | \$9,378 | |
| Indigenous Design Contract (\$519/month) | | \$6,228 |
| Includes Mow, Edge, Blow every 10 days, | | |
| Bed Maintenance, 3x Pruning along DVD, | | |
| 8x Inspect/clean stormwater ditches | | |
| I.Design- Aerate, fertilize, seed grass along DVD | | \$1,500 |
| I.Design - Mulch common area beds | | \$600 |
| Arborist/Indigenous Design - tree removal or other | | \$800 |
| work needed due to disease, storm damage, etc. | | |
| Improvements to Entrance Sign bed | | \$250 |
| Legal, Accounting, Banking | \$1,325 | |
| Tax Prep (Dixon Hughes) | | \$325 |
| Legal Advice | | \$1,000 |
| Taxes / Fees | \$1,700 | |
| City storm water tax | | \$1,700 |
| Insurance | \$550 | |
| Insurance | | \$550 |
| Reserve Account funding | \$1,000 | |
| Miscellaneous Expenses | \$297 | |
| HOA Website | | \$150 |
| Postage/Supplies | | \$75 |
| Annual Meeting | | \$25 |
| Other | | \$47 |
| Total Operating Account Expenditures | \$14,250 | |

2017 RESERVE ACCOUNT EXPENSES

| | | |
|--|------------|-----|
| Storm water system | TBD | |
| Re-Grout drop inlet behind 113 DVD | | TBD |
| Inspect/Clean Junction Boxes along main line | | TBD |

Attachment 5. HOA Background Information on Lot 5 Property Transfer

Background Information on Property Transfer of Lot 5 to the Stewards

1998

- 21 Apr: The original developer records the plan for The Pinnacle at Park Avenue Phase 3 (which is later renamed as The Views of Asheville). Plat Book 68, Page 146 establishes Lot 5 as all the property at the top of the mountain east of the last section of Distant View Drive.

2001

- 2 April: The Views of Asheville LLC re-plats Lot 5, creating three buildable lots (Lot 122, Lot 124, and Lot 126) and a Lot Water Tank Site Lot. The survey is recorded with Buncombe County at PB80 Page 9 (Attachment 1). The survey also has several dashed/dotted lines describing the City easements for the water lines and for access over the shared driveway to the Water Tank.
- Date Unknown: The City of Asheville establishes six lots within the section of property formerly considered as Lot 5. The six lots are Lot 122, Lot 124, Lot 126, Lot 5, Lot Water Tank Site, and Lot Reserved (which includes the property containing the water lines and the shared driveway that provides access to Lot 122, Lot 124, Lot 126, and Lot Water Tank Site).

2009

- 3 Sept: The Stewards circulate a Petition to the owners dated 3 September 2009 (Attachment 2) asking for "the transfer of the HOA Common Area Property surrounding our lots, which is less than 1 acre. See attached plat." The plat attached to the petition highlights in green all the property east of the last section of Distant View Drive except Lot 122, Lot 124, Lot 126, and the Water Tank Site Lot.
- Date Unknown: The Stewards collect signatures from a majority of the owners accepting the petition offer.

2010

- The Stewards and the HOA Board of Directors (the Board) engage in negotiations on the terms of how the land will be transferred and when the Stewards will pave the road leading to their house.

2011

- 28 Sept: The Stewards and the Board sign an Escrow Agreement (Attachment 3) detailing each party's responsibilities pertaining to the property transfer and the paving of the Stewards driveway.
- 27 Oct: The Special Warranty Deed that was attached to the Escrow Agreement as Exhibit A is modified by the parties. The Stewards and the Board agree on the wording of the Special Warranty Deed, the HOA Board signs the Deed, and it is held by the Escrow agent per the agreement (Attachment 4). The Deed transfers the property described as "all of Lot 5 shown on the plat recorded in Buncombe County Plat Book 80 at Page 9 (the "Plat"). Lots 122, 124 and 126 shown on the Plat are not conveyed and are not a part of said Lot 5 ...". There is no mention of Lot Reserved or Lot Water Tank Site in the Deed.

2012

- Date unknown: The Stewards complete paving the driveway to Lot 122 (116 Distant View Drive)
- 10 July: The signed Deed is recorded by the Escrow Agent with Buncombe county.

Attachment 5. HOA Background Information on Lot 5 Property Transfer

2016

- 5 July: The Stewards approach the Board asking permission to install a ~~12~~ 16 foot wide security gate across their driveway. The owners are notified with no objections.
- 9 July: Because the City of Asheville has a 20 foot easement centered over the ~~12-foot~~ driveway for access to the Water Tower (which supplies the water to all homes in The Views), the Board requests the City of Asheville Water Department confirm in writing their approval of the security gate.
- 19 Aug: The City Water Department sends a new easement agreement to the Stewards and to the Board, indicating that the HOA still owns a portion of the property within the easement.
- 26 Aug: After questions from both the Board and the Stewards, the City Deputy Attorney responds that "the City's title work indicates that the Views of Asheville Homeowners Association, Inc. is the legal owner of the property containing the water tank, waterlines and access road" (Lot Reserved and Lot Water Tank Site).
- 26 Aug: The Stewards inform the Board that they have consulted with their attorney and a corrected deed is needed to resolve the issue.
- 27 Aug: After some initial research by the Board, the Stewards are informed of the existence of the Sub Lot Reserved and Sub Lot Water Tank Site on the City tax records. The Stewards respond that they do not want to try to resolve this with the City and will pay for their attorney to draft a corrective deed.
- 28 Aug: Further research by the Board reveals a copy of the 3 Sep 2009 petition in the HOA records. Upon review, the petition seems clear to the current board that Lot Reserved (the lot containing the access road and water lines) was approved by the owners for transfer to the Stewards as it was highlighted in green on the petition attachment, and that Lot Water Tank Site was not approved by the owners for transfer to the Stewards since the Water Tank Site was not highlighted in green. Additionally, the board's review of the PB80, Page 9 survey confirms the existence of solid lot lines enclosing Lot Water Tank Site, but finds only dashed and dotted lines separating Lot 5 from Lot Reserved, indicating that Lot Reserved is not a separate lot but is actually part of Lot 5. The Stewards are informed and asked to clarify their position on the ownership of the Water Tank Site.
- 6 Sept: The Stewards reconfirm their opinion that the Water Tank Site should have been transferred.
- 8 Sept: Because NC Law mandates that HOA property cannot be transferred without a majority of the homeowners approving of the transfer, the disagreement between the board and the Stewards as to the ownership of Lot Water Tank Site is referred to the Dungan Law firm to obtain a legal opinion on the petition, the escrow agreement, and the Special Warranty Deed.
- 22 Sept: The Dungan Law Firm (Attachment 5) letter confirms the board's position. The Water Tank Site Lot is separate and distinct from Lot 5. The Steward's petition and the escrow agreement did not include the Water Tank Site Lot. The only property legally conveyed by the deed is Lot 5.
- 23 Sept: The Stewards are sent a copy of the Dungan legal opinion and informed that the board (1) cannot take any actions to transfer Lot Water Tank Site unless a new proposal to do so is discussed, voted on, and approved by a majority of the owners, but that the board (2) can support efforts to convince the City that Lot Reserved (the property containing the access road and water lines) is not separate and distinct from Lot 5 and should have been conveyed by the recorded deed.
- 30 Sept: The board informs the City of the HOA legal opinion.

Attachment 5. HOA Background Information on Lot 5 Property Transfer

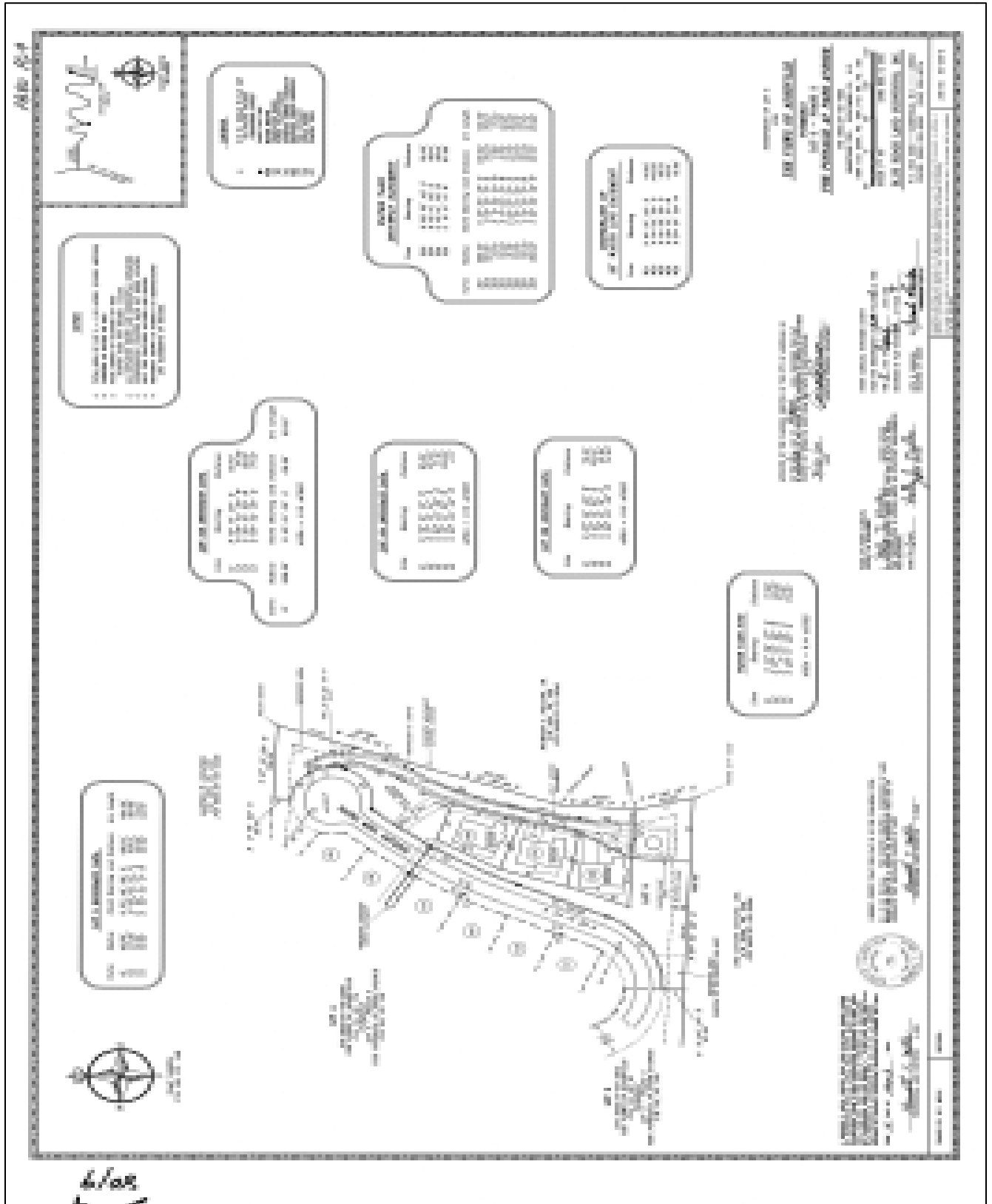
- 20 Oct: The City Attorney informs the board and the Stewards that they had re-reviewed the survey at PB80 Pg9 and agreed with the HOA position that the HOA was the owner of Lot Water Tank Site and that the Stewards were the owner of the property containing the access road (Lot Reserved).
- 20 Oct: The Stewards inform the City that they disagree with the City's positions, that their attorney is working on these issues, and they cannot further discuss any of these items until the attorney finishes his work.

ATTACHMENTS:

- 1: Survey at PB80 Page 9, recorded on 2 Apr 2001
- 2: Steward's Petition, dated 3 September 2009
- 3: Escrow Agreement, dated 28 Sept 2011
- 4: Special Warranty Deed, recorded in DB4998 Pg824 on 10 Jul 2012
- 5: Legal opinion letter from Dungan Law Firm, dated 22 Sept 2016

Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Information Attachment 1: Survey at PB80 Page 9, recorded on 2 Apr 2001



Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Information Attachment 2: Steward's Petition, dated 3 September 2009

Dan and Eva Steward

116 Distant View Drive
Asheville, NC 28803

September 3, 2009

Dear Views of Asheville Homeowners,

We are your neighbor at 116 Distant View Drive. We also own contiguous lots 122, 124 and 126 at the top of the ridge. When we originally purchased these lots we were offered the surrounding land around the lots at no additional cost by Richard Green, the developer and seller. We refused the additional land because we did not want to maintain it. Ever since we purchased it four years ago, this common area (especially the road to our lots) has not been maintained by the HOA because it does not have the money to do so as stated by the Board. As a result, we have been spending a considerable amount of time and money of over \$2,000 per year to maintain the road. It has been a burden to us both physically and financially. We should not have to solely maintain something that does not belong to us, but to the entire community. Our lawyer also agrees with us. Please see the letter attached by Mr. Robert J. Deutsch.

As a solution to the dilemma, on September 22, 2008 we offered to all the Homeowners improvements to the neighborhood in exchange for the land around our three lots. After investing a lot of time and money, we received a majority vote but were short four votes for the 80% needed. After speaking to some of the folks who dissented, the major reason was that they did not believe it to be a benefit to the entire community. Therefore, we are withdrawing our last proposal and offering you one that we believe will provide more of a benefit to the entire community as follows:

- 1) We will pay the HOA \$1,000 for transfer of the HOA Common Area Property surrounding our lots, which is less than 1 acre. See attached plat.
- 2) We will pave the road within nine months of receiving all the votes needed. Updates will be given regularly to the HOA of votes. Paving the road will be an expensive process for which we will need to save up money to make happen during this difficult economic downturn.
- 3) We will discharge the balance due to us by the HOA in the amount of \$1,985.04 for maintaining the road from September 1, 2008 to August 11, 2009. See attached.
- 4) We will discharge future road maintenance fees that are accrued in the meanwhile until the transfer has occurred. After transfer, the property is ours to maintain.
- 5) We will pay the closing costs to transfer the land.
- 6) All road and utility easements will remain the same and are unchanged from their origin.

Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Information Attachment 2: Steward's Petition, dated 3 September 2009

The Views of Asheville
Page 2 of 2

Let us know if you have any questions or concerns. If you are the type of neighbor that doesn't like to get involved in community activity, please know that your decision not to vote is a "NO" vote. That decision will cost you and all other homeowners increased HOA dues in the future to maintain the road and pay for legal fees. If we do not receive enough votes by September 30th, we must undoubtedly pursue legal remedies.

Thanks for your consideration.

Sincerely,

Dan and Eva Steward

MAILING ADDRESS:

P.O. Box 357
Skyland, NC 28776

(828) 551-5670 Dan's phone

Enc: Attorney Letter
Invoice
Plat map
Petition

Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Information Attachment 2: Steward's Petition, dated 3 September 2009

ROBERT J. DEUTSCH, P.A.

ATTORNEYS AT LAW
75 NORTH MARKET STREET
ASHEVILLE, NORTH CAROLINA 28801

ROBERT J. DEUTSCH
TIBKUN A.S. GOTTSCHALK, Associate

(828) 251-0600
Fax: (828) 251-5508
Email: bob@bobdeutschlaw.com

July 28, 2009

Mr. Dan Steward and Ms. Eva Steward
PO Box 357
Skyland, NC 28776

re: The Views of Asheville Homeowners Association ("HOA")

Dear Dan and Eva,

I have reviewed the Declaration of Covenants, Conditions, and Restrictions for your subdivision relative to the issue of the HOA obligations on the road leading to your property ("the Road") extending eastward and southward from the cul-de-sac to your lot.

You have requested that I review the covenants regarding the HOA obligations with respect to maintenance of the Road. In my opinion, the Road is a "Common Element" as defined in Section 1g of the covenants since it is included within the Development Area shown on the plat of the subdivision. Section 25 of the covenants provides, "The Homeowners Association has been created for the purpose of (1) providing for the enforcement of these restrictions; and (2) providing for maintenance of the common elements of the Subdivision."

Therefore, in my opinion, the HOA clearly has the obligation to maintain the Road. I have reviewed Steve Goldstein's letter to the HOA, and while I have the greatest professional respect for his legal ability, I believe that his analysis based on "custom and common practice" cannot be supported by the language of the covenants, and most likely would not be supported in a court of law. I also note that Mr. Goldstein also states that "other interpretations of the Covenants with respect to this issue may exist". In this case, the covenants are very straightforward as to the HOA maintenance obligation, and in my professional opinion, no other interpretations exist.

Please let me know if I can provide any further information for you on this matter. Best Wishes,

Very truly yours,

ROBERT J. DEUTSCH, P.A.



Robert J. Deutsch

RJD/rld

(12312182)

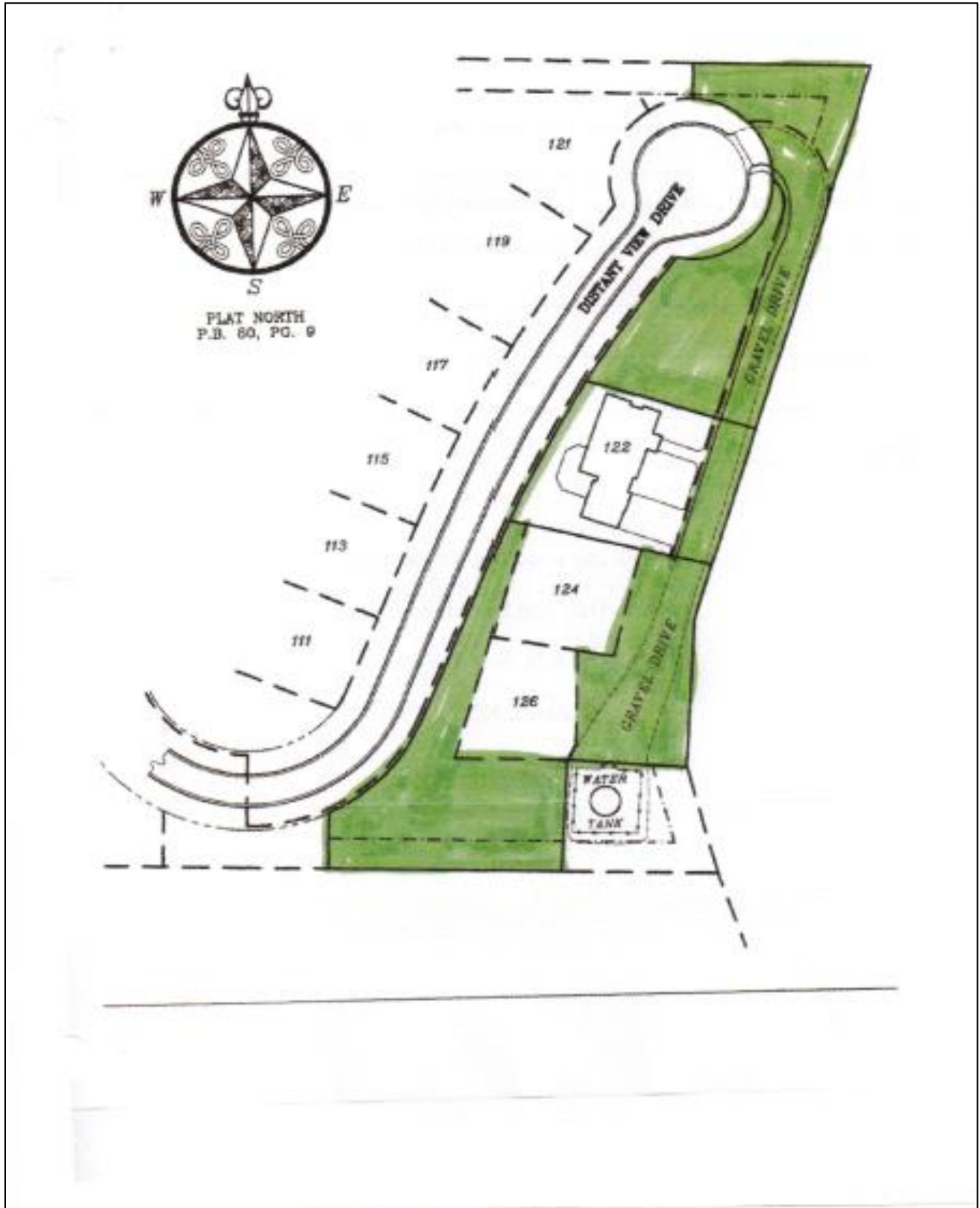
Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Information Attachment 2: Steward's Petition, dated 3 September 2009

| <p>Majestic Estate Builders LLC P.O. Box 1221 Arden, NC 28704 (828) 274-4424</p> | <h3 style="margin: 0;">Invoice</h3> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <th style="width: 50%;">Date</th> <th style="width: 50%;">Invoice #</th> </tr> <tr> <td style="text-align: center;">8/11/2009</td> <td style="text-align: center;">1063</td> </tr> </table> | Date | Invoice # | 8/11/2009 | 1063 | | | | | | | | | | | | |
|---|---|------------------------|-----------|--|--------|---|--------|--|--------|--|--------|--|--------|---|--------|--------------|-------------------|
| Date | Invoice # | | | | | | | | | | | | | | | | |
| 8/11/2009 | 1063 | | | | | | | | | | | | | | | | |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 100%;">Bill To</th> </tr> <tr> <td>Views of Asheville HOA</td> </tr> </table> | Bill To | Views of Asheville HOA | | | | | | | | | | | | | | | |
| Bill To | | | | | | | | | | | | | | | | | |
| Views of Asheville HOA | | | | | | | | | | | | | | | | | |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;">Description</th> <th style="width: 30%;">Amount</th> </tr> </thead> <tbody> <tr> <td>Purchased gravel for road placed in September 2008</td> <td style="text-align: right;">900.00</td> </tr> <tr> <td>Rented equipment to grade road and spread gravel from CJ Stone September 2008</td> <td style="text-align: right;">245.04</td> </tr> <tr> <td>Grade road and spread gravel, 12 hours at \$30 per hour September 2008</td> <td style="text-align: right;">360.00</td> </tr> <tr> <td>Grade road and spread gravel, 6 hours at \$30 per hour December 2008</td> <td style="text-align: right;">180.00</td> </tr> <tr> <td>de road and spread gravel, 6 hours at \$30 per hour March 2009</td> <td style="text-align: right;">180.00</td> </tr> <tr> <td>de road and spread gravel, 4 hours at \$30 per hour July 2009</td> <td style="text-align: right;">120.00</td> </tr> <tr> <td style="text-align: right;">Total</td> <td style="text-align: right;">\$1,985.04</td> </tr> </tbody> </table> | | Description | Amount | Purchased gravel for road placed in September 2008 | 900.00 | Rented equipment to grade road and spread gravel from CJ Stone September 2008 | 245.04 | Grade road and spread gravel, 12 hours at \$30 per hour September 2008 | 360.00 | Grade road and spread gravel, 6 hours at \$30 per hour December 2008 | 180.00 | de road and spread gravel, 6 hours at \$30 per hour March 2009 | 180.00 | de road and spread gravel, 4 hours at \$30 per hour July 2009 | 120.00 | Total | \$1,985.04 |
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| Total | \$1,985.04 | | | | | | | | | | | | | | | | |

Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Information Attachment 2: Steward's Petition, dated 3 September 2009



Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Information Attachment 2: Steward's Petition, dated 3 September 2009

Petition to The Views of Asheville HOA

I am the property owner on the deed for the following address below in The Views of Asheville and I accept the attached offer made by Dan and Eva Steward dated September 3, 2009.

| Homeowner Name(s) as on Title | Distant View Address or Lot# | Signature(s) |
|-------------------------------|------------------------------|--------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

Date: _____

Please send the original to:

Dan and Eva Steward
P.O. Box 357
Skyland, NC 28776

Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Information Attachment 3: Escrow Agreement, dated 28 Sept 2011

ESCROW AGREEMENT

This Escrow Agreement is made as of the 28th day of September, 2011 (the "Date"), by and among The Views of Asheville Homeowners Association, Inc., hereinafter called the "HOA", Daniel B. Steward and wife Eva G. Steward, hereinafter called "Steward" and McGuire, Wood & Bisette, P.A., hereinafter called "Escrow Agent".

Whereas, HOA and Steward have negotiated for some time regarding the property shown on the plat (the "Plat") recorded in Buncombe County Plat Book 80 at page 9 as Lot 5 thereon (the "Property"); and

Whereas, the parties have reached agreement regarding the conveyance of the Property from the HOA to Steward by a Special Warranty Deed (the "Deed"); and

Whereas, Steward has agreed to pave the approximate area identified as the "Proposed 12' Drive," shown on the Plat (the "Road") to the southeast corner of Lot 122, as shown on the Plat, not later than June 30, 2012 (the "Road Paving"); and

Whereas, Steward has also agreed to pave the Road to the southeast corner of Lot 124, as shown on the Plat, if and when a residence is constructed on said Lot and to pave the Road to the water tank site shown on the Plat, if and when a residence is constructed on Lot 126 as Steward is required to pave the Road to those Lot(s), if and when a residence is constructed thereon; and

Whereas, Steward does not wish to begin paving until the Deed has been executed by the HOA and the HOA does not wish to produce the Deed until paving to the southeast corner of Lot 122 has been completed by Steward; and

Whereas, the HOA has agreed to execute the Deed and deliver the same to Escrow Agent, which will record the Deed only upon the completion of the paving by Steward pursuant to the terms set forth herein.

Now, therefore, in consideration of the foregoing and for other good and valuable considerations, it is agreed as follows:

1. The provisions hereof shall inure to the benefit of and bind the parties and their respective heirs, successors and assigns. This document shall not be construed against the party whose counsel drafted the same, both parties being represented by counsel. All matters at issue between the HOA and Steward are deemed resolved by this Agreement and no other prior agreements, understandings, contracts (inclusive of the Offer to Purchase and Contract between Majestic Estate Builders, LLC ("Majestic") and HOA), and/or other documents to which they are a party, shall have any further force or effect, all the same being considered merged herein. Steward represents that they are in sole and total control of Majestic and that said limited liability company has and shall have no further rights or remedies against the HOA after the Deed is recorded. By execution hereof, the HOA releases any and all rights and remedies it may have against Steward, Majestic and their collective heirs, successors,

Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Information Attachment 3: Escrow Agreement, dated 28 Sept 2011

assigns, officers and directors. Steward, after recordation of the Deed, for themselves and for Majestic releases any and all rights and remedies they or it may have against the HOA, Patla, Straus, Robinson & Moore, P.A. ("PSRM") and/or their collective successors, assigns, officers, directors and principals.

2. The HOA, within fifteen (15) days of the execution of this Agreement (said fifteenth day, the "Deed Date"), shall execute the Deed, a copy of which is attached hereto as Exhibit A, and shall deliver the same by the Deed Date to Escrow Agent to hold in accord with the provisions hereof. Escrow Agent shall, upon receipt of the Deed, immediately notify Steward and PSRM, in writing, of Escrow Agent's receipt of the executed deed (said notification date, the "Notice Date"). Steward shall within five (5) business days after they have been informed that the Notice Date has occurred, deliver the sum of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) (the "Funds") to Escrow Agent, said Funds to be disbursed pursuant to the terms set forth herein. **The original and one copy of all signed and dated petitions for transfer of the land will be delivered to the Escrow Agent along with the \$1500. The copies will be forwarded to the HOA via same day mail.** This Fee is refundable by the HOA, if Steward's do not pave the Road by **June 30, 2012**, or the HOA fails to give approval on the Road after it has been paved by the Stewards or HOA should hereafter file something of record in Buncombe County which in any way affects the title to the Property described in the Deed, unless Steward has consented thereto, in advance, in writing. Once the Escrow Agent has received the Funds, they will notify PSRM and HOA of its receipt of said sum. The HOA shall not hereafter cause anything to be filed of record in Buncombe County which would affect the title to the Property described in the Deed or otherwise further encumber the Property, unless Steward first consents thereto in writing.

3. Steward shall cause the Road to the southeast corner of Lot 122 to be paved (to said point) by **June 30, 2012**. Upon completion of said paving pursuant to the standards set forth herein, Steward shall notify HOA in writing that the paving has been completed and HOA shall verify the same within five (5) days of its receipt of said notice by providing written notice to Escrow Agent, Steward and PSRM that either the Road paving is not in accord herewith with details thereof, or that the Road paving is in accord and that Escrow Agent must record the Deed and must simultaneously disburse the Funds to the HOA. In the event Steward has not paved the Road to the southeast corner of Lot 122 by **June 30, 2012**, the HOA shall so notify Escrow Agent and PSRM in writing that Escrow Agent must return the Deed to PSRM and must return the Funds to Steward. If Steward should pave the Road to the southeast corner of Lot 122 prior to **June 30, 2012**, they shall so notify the HOA in writing, and the HOA shall, within five (5) days of its receipt of said notice (so long as it be true) so notify Escrow Agent and PSRM thereof, and Escrow Agent shall promptly record the Deed and disburse the Funds to the HOA.

4. The quality of the paving over and upon the Road to the southeast corner of Lot 122 must be substantially similar to the balance of the paving within The Views of Asheville at the Pinnacle at Park Avenue (the "Development") roads.

5. Notices hereunder must be in writing and provided to the parties hereto by email as follows: if to the HOA- rhgreen@aol.com (Richard Green); if to Steward- eva@bestquestrealty.com (Eva G. Steward); if to Escrow Agent- ~~td~~dwilson@mwbavl.com and abrock@mwbavl.com (Doug Wilson and Annika Brock); and in all instances of notice being given to- sig@psrmlaw.com (Steve Goldstein).

Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Information Attachment 3: Escrow Agreement, dated 28 Sept 2011

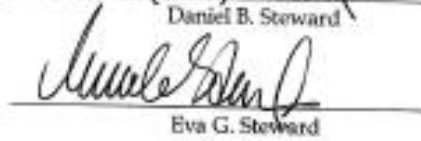
In witness whereof, the parties hereto have caused the due execution of the foregoing.

McGuire, Wood & Bissette, P.A.

By:

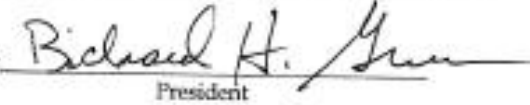

Douglas Wilson


Daniel B. Steward


Eva G. Steward

The Views of Asheville Homeowners Association, Inc.

By:


President

By:


Vice-President

By:


Secretary-Treasurer

Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Information Attachment 3: Escrow Agreement, dated 28 Sept 2011

EXHIBIT A

NORTH CAROLINA SPECIAL WARRANTY DEED

Revenue Stamp: \$2.00
Property Situs: Distant View Drive

Prepared by: Steven I. Goldstein
Box to: Doug Wilson/#_____

The Preparer is informed that the property conveyed does not include the primary residence of a Grantor.

This North Carolina Special Warranty Deed is made as of the ____ day of _____, 2011, by and between **The Views of Asheville Homeowners Association, Inc. Grantor**, whose address is 91 Distant View Drive, Asheville, NC 28803 and **Dan Steward and wife Eva Steward, Grantee**, whose address is P.O. Box 357, Skyland, NC 28776. The designation "Grantor" and "Grantee" as used herein, shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

The Grantor, for valuable consideration received from Grantee, conveys to Grantee, in fee simple (unless otherwise stated below), the property described as follows (intending to and including all appurtenances thereto):

BEING all of Lot 5 as shown on that plat recorded in Plat Book 80 at Page 9, Buncombe County Registry, less and except Lots 122, 124 and 126, which lots have previously been conveyed to Grantee. Lying in the City of Asheville, Buncombe County, North Carolina, and being all of Lot 5 shown on the plat recorded in Buncombe County Plat Book 80 at Page 9 (the "Plat"). In order to clarify exactly what is conveyed hereby, the "Water Tank Site" and Lots 122, 124 and 126 shown on the Plat are not conveyed and are not a part of said Lot 5.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and that Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor (but no further), except for the following: All matters shown on the Plat, easements and rights of way of record or in place, restrictions of record, the use provisions of any governmental ordinance affecting the above, taxes for the year

Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Information Attachment 3: Escrow Agreement, dated 28 Sept 2011

2011, and all subsequent years, and all matters set forth in the Declaration recorded in Buncombe County Book 2023 at Page 603, as supplemented and amended thereafter, whether by that document contained in Buncombe County Book 2775 at Page 86, or otherwise.

In witness whereof, as of the above date, Grantor signed this deed, as the act of Grantor.

The Views of Asheville Homeowners Association, Inc.

President

State of North Carolina - County of Buncombe

I, a Notary Public of said County and State, certify that _____, being personally known to me, came before me this _____ day of _____, 2011, and acknowledged that he/she is the _____ President of The Views of Asheville HomeOwners Association, Inc., a North Carolina corporation, and that he/she, as _____ President, being authorized to do so, executed the foregoing on behalf of the corporation, as its act and deed.

My Commission Expires: _____ Notary Public

Printed Name: _____

Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Info Attachment 4: Special Warranty Deed, recorded in DB4998 Pg824 on 10 Jul 2012

2

In witness whereof, as of the above date, Grantor signed this deed, as the act of Grantor.

The Views of Asheville Homeowners Association, Inc.

Richard H. Green
President

Michael D. Osborne
Vice President

Gerald W. Stanley
Secretary-Treasurer

State of North Carolina - County of Buncombe

I, a Notary Public of said County and State, certify that Richard H. Green, Michael D. Osborne and Gerald W. Stanley being personally known to me, came before me this 27 day of October, 2011, and acknowledged that each of them, respectively, is the President, Vice President and Secretary-Treasurer of The Views of Asheville HomeOwners Association, Inc., a North Carolina corporation, and that he/she, in such capacity, being authorized to do so, executed the foregoing on behalf of the corporation, as its act and deed.

My Commission Expires: 12/13/2015

Jill C. Dotson
Notary Public


Printed Name Jill C. Dotson



4026-1008-4972, v. 2

Attachment 5. HOA Background Information on Lot 5 Property Transfer

HOA Background Information Attachment 5: Legal opinion letter from Dungan Law Firm, dated 22 Sept 2016



THE DUNGAN LAW FIRM

Dungan, Kilbourne & Stahl, P.A.

ROBERT E. DUNGAN (NC & GA)
JEFFREY K. STAHL (NC)
JAMES W. KILBOURNE, JR. (NC)

MINDY C. FISHER (NC)
ZEPHYR JOST (NC)

September 22, 2016

William Uhle, Jr.
President, Board of Directors
The Views of Asheville Homeowners Association, Inc.

Sent by email to: wwujr1@gmail.com


Dear Bill:

You recently sought our firm's advice regarding a transaction that occurred between The Views of Asheville Homeowners Association, Inc. ("Association") and Dan and Eva Steward ("The Stewards") during 2009-2012. Specially, you asked whether the conveyance from the Association included the adjacent lot on which the water tank is situated. It is our opinion that it did not.


First, the property description in the deed by which the property was conveyed, recorded in Deed Book 4998, Page 824 of the Buncombe County Registry, does not include the water tank lot. The deed only includes that property identified as Lot 5 on the plat recorded on Plat Book 80, Page 9 of the Buncombe County Registry. The lot on which the water tank is located is separate and distinct from Lot 5 and therefore was not transferred.

Further, neither the Escrow Agreement nor the petition circulated by The Stewards requesting members' approval for the conveyance included the water tank lot. Accordingly, even if it was The Stewards intention for that property to be included in the conveyance, there is no evidence that conveyance of the water tank lot was approved by the membership. Accordingly, the only property conveyed by the deed recorded in Deed Book 4998, Page 824 is Lot 5.

Please let me know if you have additional questions.

Sincerely,

Zephyr Jost

ONE RANKIN AVENUE, THIRD FLOOR, ASHEVILLE, NC 28801
TELEPHONE: (828) 254-4778 • FAX: (828) 254-6646 • WWW.DUNGANLAW.COM



Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer

DANIEL & EVA STEWARD

116 DISTANT VIEW DRIVE
ASHEVILLE, NC 28803

828.551.5680

December 7th 2016

To The Views of Asheville Homeowners:

The following information is an addendum to the information "Background..." that was sent out to you by the Board on Saturday 12/3/16 containing information they felt was necessary to explain legal expenditures from the budget. Unfortunately, their account was not only incomplete, but contained several inaccuracies. Your ability as a property owner to form opinions or make objective decisions about community issues is impaired when you are only provided with partial information lacking accuracy. Therefore, we are providing additional information and clarifying the inaccuracies for the record to clarify what happened from our perspective and with actual proof so you can see it for yourself.

In 2005, we purchased 3 lots from Richard Green, who was the developer of The Views at the time. He offered the additional common area land around it for free, but we refused since we did not want to maintain the land around it. After we built the house in 2006, we decided to live in it rather than sell it. We chose to live in The Views of Asheville by moving in 9 months later in 2007. After a year of living in the house we realized the HOA nor the City of Asheville (who used the dirt road to service the water tower near our house) was not willing to maintain the common area around our lots. It was costing us thousands of dollars each year to grade, gravel, and snow clear the road to our house and trim trees on HOA land that threatened our ability to access our house and keep it safe from falling trees. So in 2008, we asked the HOA for the land around our house since they were not willing to spend money by maintaining it (why should they, it had no value to them). Instead we would improve the land by landscaping and adding a paved road and giving the HOA \$1000 for land that was of no value to the community. Any reasonable person would agree to it, and most of the neighbors did twice, but the Board made it nearly impossible for anything to happen because of egos and politics. It was disgusting! After 4 years, 3 petitions, 100's of hours of time spent, \$1000's in legal fees we spent, \$500 on landscape architect, and \$14,000 of asphalt...the common area land was land transferred to us finally! However, our little community with the best views in Asheville was riddled with gossip, slander, distrust, and broken relationships. It was never our intention to live in a miserable community. Had we known this would happen, we would have bought elsewhere. My Father always said, "You are not buying a house, but a community, so know your community." We have always enjoyed our neighbors, community potlucks, dinner socials, playing practical jokes, and looking out for each other in every community we've lived in. However, we have never been able to do that in The Views of Asheville community. What a shame!

It is important to note that the deed that transferred the common area land to us was drafted by the HOA attorney. Our attorney reviewed, and we approved it since it was consistent with our petition. Our

Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer

petition did not stipulate metes and bounds of the property other than what "surrounds our lots" since that is what surveyors and lawyers are paid to do. But, we wanted to give the homeowners an idea of what we will be using, so we provided a map that I marked with green marker over the area we intended to use. We did not intend to use the water tank site because there is not enough land to use on it since it is only .03 acres, nor do we intend to use this site for anything other than what it is currently being used for -- to provide water for our house and all the other 25 houses in the neighborhood.

When we bought in this neighborhood, like most of you, it was because of the incredible Views. A few years ago, when we asked to have trees cut down on common area land that were growing to block our views, we were willing to pay for it, but the Board gave us nothing but a fight. They used so many ridiculous excuses, delays, and added more "guidelines" to block us. It cost us legal fees, survey expenses and over 18 months of delay all because of bad blood from the past. It didn't matter that the Covenants provided us with view preservation, politics ruled the day. However, for their personal friends, their own properties, they could do whatever they wanted to cut down trees with no consequence or accountability. To date, we have a neighbor who planted tall trees on their property with no consideration of our view and the Board won't get involved. There is no advocacy for us, nor enforcement of the Covenants as they originally were when we purchased here.

With Bill Uhle newly on the Board, we were hoping that there would be some objectivity on issues and advocacy for us now. So, we requested permission from the Board on July 5th 2016 to put up a 16 foot wide security gate at the start of our driveway due to safety concerns. Note the inaccuracy that the Board wrote on their "Background" report "5 July" stating we requested a 12 foot wide gate. No, we requested a 16 foot gate! I will attach the request again. Our property is unique from all others because it is at the end of the road, has empty lots on it where cars can hide, and a history of people parking up there without our permission. As you know we have had increased crime in our neighborhood this year. Even though the past abuses of the Board gave us plenty of legal cause to not get their permission, we felt it would be a step in right direction to make peace with our neighbors.

The Board demanded that I get permission in writing from the City of Asheville Water Department. I had called the water department twice even before I asked the Board and they said that they did not have an issue with a security gate as long as I gave them the code. In the Board's "Background" report said on page 2, "9 July: Because the City of Asheville has a 20 foot easement centered over the 12 foot driveway for access to the Water Tower (which supplies the water to all homes in The Views), the Board requests the City of Asheville Water Department confirm in writing their approval of the security gate." That's not true! Richard Green wrote an email to Mr. Dundas at the Water Department explaining their true intentions as to why they want a letter in writing:

From: Richard Green [mailto:rgreen@aol.com]
> Sent: Saturday, July 09, 2016 7:29 PM
> To: Jade Dundas <J.Dundas@ashevillenc.gov>
> Cc: Bill Uhle <billu1@gmail.com>; Diane Summey <diane8@gmail.com>
> Subject: Re: Access to water tank at The Views of Asheville Subdivision
>

Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer

> Dear Mr Dumais:

>

> One of the home owners at The Views of Asheville subdivision has made a request to the Board of Directors. Since Eva and Dan Steward live at the end of Distant View Drive, they have requested that the Board approve their proposed installation of a private gate on their driveway which also serves as a City Water Department easement to access the water tank at the top of The Views of Asheville subdivision. The City water tank provides City water to the 30 lots in the subdivision and the City Water Department regularly makes visits to the tank. I would estimate those visits to be several times a month.

>

> Eva Steward assures the Board that she has talked with an unnamed individual at the City Water Department that has told her that there are no problems with a permanent obstruction to the City's easement to the water tank. However, she refuses to provide written confirmation that the City Water Department has no issues with a metal drive gate obstructing 24/7 access to the City's water tank since she has promised to provide the gate access code to the City.

>

> The Board of Directors cannot approve installation of this proposed permanent metal gate unless the City Water Department will provide their written approval to have their access restricted as long as they have been provided the access code. Of course, during a power outage the City may not be able to access their water tank which could be a potential problem.

>

> Please advise.

>

> Regards,

>

> Richard Green

> Board of Directors

> The Views of Asheville HOA

> 828-777-0052

>

Instead of Richard asking us about his concern (like a good neighbor and Board member should) about a power outage, which we were prepared to address appropriately with the Board had they even posed the question to us; he feeds the City of Asheville Water Department with noxious fear over an issue that has an easy solution. But, this is just another power game that is being played against us. We assured the Board and the Water Department that we would give access codes, install a battery backup unit, and a special method for removing the gate even without power in case of emergency. The City of Asheville Water Department then notifies the City of Asheville attorney to prepare an easement for us to sign because the HOA still insists on it. The easement that the City of Asheville attorney created is so one-sided abusive that no rational person would sign it. They want permission to destroy the gate, our road, and our private property without warning, without consequence and/or remuneration for any reason they deem necessary. They also want the right to expand the water tank and tower at their discretion. The water tank and tower are permitted and certified to satisfy the demands of our community's water needs. But, what if the private landowners behind us want to tap into our community water tank? The City will expand the tower at our personal expense. There is no way we will give them permission to ruin our property values that we have worked so hard for. I'm sure if the HOA owned the land, they wouldn't care, because they don't have to live next door to this ugly green monstrosity of a tank. But, if

Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer

you owned the land, you would care. I told them that I would not sign their easement since there is already an easement that runs on the land and their additional terms were unfair.

The City of Asheville also wanted the HOA to sign the easement but Richard properly admitted that the HOA no longer owns the land to give permission on and that we (the Steward's) do now:

*From: Richard Green [mailto:rhgreen@aol.com]
Sent: Sunday, August 21, 2016 2:45 PM
To: jburdick@ashevillenc.gov
Cc: wwwjr1@gmail.com; diane8@gmail.com; Eva@BestQuestRealty.com; dani@maestricestatebuilders.com; kwhitlock@ashevillenc.gov
Subject: Fwd: Access to water tank at The Views of Asheville Subdivision*

Mr. Durdick:

I appreciate all of the work that your department and the City has done. However, the attached Easement Agreement and Plat is incorrect. The Views HOA deeded the HOA common area adjacent to Lots 122, 124 and 126 to the Stewards several years ago. You will need to attach the most recent plat since the Stewards also re-platted the lots with the City. In addition, the Stewards will need to sign the new easement modification since they are now the current owners of the property that the easement crosses. A search of the Buncombe County records (Dan Steward) shows that Plat Book 140, Page 182 (see attached) is the most recent plat for the property and DB 4998, Page 824 is referenced. In addition, Plat Book 140, Page 164 with references to DB 4443, Page 1891 and DB 4118, Page 1315 may also be useful for your purposes since they are also referenced.

Please let me know if you have any further questions.

Regards,

Richard Green

The Views of Asheville HOA Board

828-777-0052

After the transfer of land, we paid thousands of dollars to re-survey Lot 5 and we recorded it on 7/17/14. No one ever disputed this. The professional surveyor McAbee reviewed the history of the deeds and found that we owned all of Lot 5 and gave us no reason to question ownership. I've attached the plat and the surveyor's opinion for you.

When the Board found out the City's misunderstanding of the deed, the Board offered to amend the deed as long as I was willing to pay for the legal expenses to do it. This was all ridiculous to us because the deed seemed clear enough to 8 people in 2012 and after all, it was the HOA's attorney who drafted the deed, not us. But, we were willing to pay for this expense just to move forward.

Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer

On August 26, 2016 the City Attorney, Kelly Whitlock, sent an email to us and the Board explaining why they believe there are multiple lots and that we don't own the access road or water tank. Her reasoning we disagree with and so do several attorneys that read it. I've attached our attorney's opinion letter. The City tax office does not confer ownership on anything, but tries to understand it for taxing purposes. It took only 2 days for her letter to germinate in the Board's mind planting a seed that maybe they can get the water tank land back from us.

In the Board's "Background" document on page 2, they incorrectly state "26 Aug: After questions from both the Board and the Stewards, the City Deputy Attorney responds..." I never questioned the City Attorney. I know what happened all too clearly. There is no way that 3 Board Members, 2 attorneys, 2 surveyors, and Dan and I would all sign a deed that was not clear after all the hell we had been put through with the Board for 4 years. "All of Lot 5" means "All of Lot 5"!!! I've attached the deed for your reference since it's in the surveyor's letter.

The fact that the City was/is confused as to what Lot 5 is was a perfect opportunity for the Board to take advantage of us again FOR THE 3RD TIME!!!

The Board's "Background" document on page 2, is not true that on "27 Aug:The Stewards respond that they do not want to try to resolve this with the City and will pay for their attorney to draft a corrective deed." We tried to resolve the issue directly with the City Attorney, but she demanded that I get a legal opinion first. At that point, it would cost about a \$1000 to do that. Why? Because the Board demanded that I get a letter in writing. This is all due to the Board's unreasonable and unnecessary demands.

It took only 2 days after they got the City Attorney's letter that the Board changed their view that the water tank was not transferred as part of Lot 5. On August 28, Bill sent an email stating that even though he wasn't around at the time of the transfer (Richard and Diane were) that my petition did not include it, so therefore, he believes the Board cannot transfer it to me. We're not asking the Board to transfer the water tank to us. It's not theirs to transfer since it's already been transferred! If the Board has a problem with it, they can sue their attorney who drafted the deed. Or, they can sue the Board members at the time who signed off on it, but Richard who is still on the Board signed off on it when he was president. Can you see how twisted this is?

I sent the Board an email response on 9/6/16 (below) because of their refusal to cooperate with us and asked if they would be willing to sign a corrective deed so the City Attorney is crystal clear, but the Board did not accept our offer. Instead, they want to engage in more fighting.

Hi, Bill,

I appreciate the research you have done. I've also spent time a considerable time researching Ms. Whitlock's response and the history of Lot 5. I've consulted with an attorney. I've spoken with the surveyor to try to understand what Lot 5 consists of and how surveyors interpret lines. I've had to recall 3 petitions over a span of 4 years, hundreds of emails, and more importantly understand the original intent of transferring "all of Lot 5" as the deed specifies.

Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer

In a court of law, the 3 petitions along with the exhibit of the area that I pointed in green showing the usable area would not even be considered by the judge. The judge will not want to work through all this minutia. The only consideration would be the verbiage in the Deed 4998/824, recent memorandum, and expert witnesses like surveyors. For example: When you buy a house, the attorneys do not record the purchase contract because all the obligations have been fulfilled. Just the deed is recorded because that is what gives you legal title to the property, not the original contract. So, your idea to understand the true intent of what the homeowners intended to transfer to us is a mute issue. Your desire to create another neighborhood petition is not acceptable to us. The HOA entrusted the HOA Board for the specific legal description given by the HOA attorney and all 3 Board members signed off on it. Before the transfer 4 years ago, there was 4 years of a lot of back and forth conversations, new owners, new Board members with the exception of Richard Green. If anyone understands this situation, it would be Richard. He owned and developed Lot 5, sold us all 3 lots within Lot 5 in 2005, and then was the President of the Board when the remainder of Lot 5 was transferred to us in 2012. Richard already admitted his original intent recently in an email that you were copied on to the City. For the Board to now take advantage of us by claiming the water tank land due to the City's erroneous interpretation of Lot 5 is both unwise and seemingly wicked.

The original surveyor, Ken Mills with Blue Ridge Land Surveying knew exactly what Lot 5 was. When we were getting estimates on re-surveying Lot 5, he sent us the attached plot dated 3/9/10. Note that it did not separate out the water tank site, road, or other common area.

I telephoned Eric McAbee of McAbee Surveyors this morning to help me understand why there was a solid line around the water tank on Plot Book 80/9 and he said it was just for reference purposes only and that it was still part of Lot 5 based on his research. He said it was wrong for the Tax department to base Lot 5 only on the road curve table noted on top of plot 80/9. Notice on this survey it says on top right bubble titled "NOTES" "TOTAL AREA OF LOT 5 – 1.52 ACRES". That concurs with the new survey as well, which includes everything including our 3 lots, road, and the water tank land. If you look on the top right corner you can even see the entire portion shaded as "SITE". I will attach this for you as well. Feel free to call Eric McAbee as well (828) 628-1295.

I called the Tax Department this morning and spoke with the appraiser, Greg Green and he said that our tax bill for the last 4 years includes 1.52 acres for the "Entire Tract" as listed on the Deed 4998/0824 from the HOA. That was confirmed by the records department person, Eric Cragger as well. I've attached this for you.

Why the Tax department parcels out different sections and labels it as such does not create legal ownership. They do this for tax estimation purposes. I've asked them to correct it in the past and they say it will be done in the future. That was 3 years ago! Attorneys don't rely on tax records and PIN numbers because it is not exact. For transfer of title, they rely on recorded deeds. The City attorney Ms. Whitlock has misinterpreted the specifications noted on the original deed 2657/437 from the beginning because it referenced the water tank easement. She misconstrues that as land. It's clearly NOT by legal definition. Also, there are no metes and bounds in the legal description to describe that area as distinct from Lot 5.

Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer

We spent a lot of money re-surveying this property. If the HOA really cared about the water tank site, they should have brought it up back then or CLEARLY excluded it from the land that was transferred to us. I do remember some discussion as to them not wanting to pay for surveyor work. I still don't know what interest the HOA has in controlling that land. It is without value or use. In fact, it is a liability. For us, it is has some value because it is next door to our home. It's ugly and needs improvement in order to increase property value and to sell the lots. No other neighbor has this issue except us. No other neighbor is bothered by the City water department except us because they use our driveway regularly. It is not the HOA's burden but ours.

Right now we have 8 parties' interpretation of Lot 5 against 1 City attorney. The original HOA Board of 2012, their attorney Goldstein, HOA surveyor Ken Mills, us, our attorney, and our surveyor McAbee could not have been that ignorant. The City has requested a letter from my attorney. I'm not going to spend any more money on a legal opinion fees unless you want pay for it.

Dan and I will make one concession to the HOA: We will pay our attorney to draft and record the corrective deed. This offer is open until Friday, September 9th, 2016 at 10:00 a.m.

We are not interested in engaging in HOA War #3, but if you are unwilling to sign a corrective deed by 9/9/16 describing all PIN numbers to satisfy the City attorney's tax records, then Dan and I will pursue litigation without further negotiation against the HOA on 8 causes of action. We are confident that we will win this lawsuit against the new HOA, prior Board members, and Steve Goldstein's legal firm. This will be stressful for us because we are very busy people, but will also work to pay for the new security gate as well as reimburse us for all the legal fees and misery that the HOA has put us through in the past. Until this issue is resolved, we cannot sell our home, cannot sell our land, cannot put up a security gate, and live in an unsecured area prone to criminal activity. Time is of the essence.

Sincerely,

Eva Steward

A few days later Bill wanted to meet in person to measure the road. When I asked Bill the \$25,000 question: "Why is it so important that the HOA own the water tank land?" He could not give me a clear reason and said something to the affect that some prior Board members feel it is important. We are still wondering of what importance it is to the HOA to own unusable land...or is this just another power game for the Board's continually increasing need to be in control of private property within our community.

The Board wants to hide behind legal opinions, so they hired Dungan Law Firm to give them a letter confirming their desires on 9/22/16. Anyone can do that. Legal opinions are paid for and they are opinions, not legal decisions by a judge or jury. The attorney works for the client who pays them. I can get a legal opinion on almost anything I want if I'm willing to pay for it. This is the game that is played every day to intimidate and harass your opponent. The Board has the power to do the right thing for us, but does not WANT to. It's a matter of the will, not of the law. But, why should they? There is still bad blood from year's past. This is not about common sense and justice.

Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer

On 9/23/16 the Board decides to exercise their will by sticking with denying the water tank site was ever transferred to us, but is willing to...

"However, the Board can support your efforts to convince the City that what the City has named Lot Reserved (which is the property containing your current driveway) is not separate and distinct from Lot 5 according to the recorded plat, and thus should have been conveyed to you as part of Lot 5 by the deed"

In fact, the exercise of the Board's will to convince the City Attorney succeeds on 9/30 that Lot 5 includes the road, but not the water tank site because they are playing surveyor by interpreting that solid lines mean a separate lot, when in actuality it DOES NOT. The surveyor addresses this point in his letter.

During this time, we have hired attorneys who are working on the issues and charging us lots of money, while the Board keeps moving the target and now the City does, too. However, the Board and the City's reasoning are flawed. If it wasn't flawed, why would they have to change their minds THREE TIMES?!!! This is just ridiculous and abusive. You'd think the Board would be thrilled to have a security gate to protect a valuable asset such as water for all of us. It is also a breach of their fiduciary duty by exposing the HOA to a lawsuit, which will increase all our dues if they persist in this nefarious position.

In light of the information you have been provided, now is also the time to consider whether the current Board is truly effective or just omnipresent. There have been numerous abuses of power by a Board that leads by hate, division, bullying, and injustice being spread over the last 10 years. This is not only our opinion - others who have left the Views agree, as do some we know who live here quietly, for now. The time to hold the Board accountable for past abuses is long overdue, but the sad reality is that likely no one will unless a lawsuit is filed. No one wants to be bothered. No one wants a job as a Board member, except for a few who have a need for power, control and/or status. The job of the Board is to work for the community, not against it - to preserve property values, to preserve owners' rights to quiet enjoyment of their properties, to promote good relationships as neighbors, etc. When was the last time we did anything as a community other than the dreaded annual meetings?

I spent over a year trying to solve the issues with the developer's storm water installation problems in our community. No one volunteered except me. The Board did not want the City of Asheville involved. Had I notified the City of Asheville directly of our problems, they would probably not service our storm water system because the Board chose solutions that are against code. I wish the Board would have had the same courtesy that I gave them. Instead, they fed Dan and I to the sharks as bait.

Again, I ask the question: Why does the HOA believe they need the water tank land? If there was a good enough reason, we'd be happy to give it back. But, we will not compromise our right to quiet enjoyment of our property (the same right possessed by all owners) nor our security in order to do so.

Sincerely,

Eva and Dan Steward

Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer

FERIKES & BLEYNAT, PLLC
Attorneys at Law

JOSEPH A. FERIKES
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EDWARD L. BLEYNAT, JR.
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H. GREGORY JOHNSON*
hgreg@ferikesbleynat.com
*Certified N.C. Superior
Court Mediator

December 8, 2016 (Revised)

Dan and Eva Steward
Post Office Box 357
Skyland, North Carolina 28778

Re: Ownership of the Water Tank Site on Plat Book 80, Page 9
Buncombe County, North Carolina

Dear Dan and Eva:

I have examined all the relevant records pertaining to the ownership of the water tank site as shown on Plat Book 80 at Page 9 of the Buncombe County Registry ("tank site"). In doing so, I have also examined the plat recorded in Plat Book 140 at Page 182, and the Deed from The Views of Asheville Homeowners Association, Inc. to Dan Steward and wife, Eva Steward as recorded in Book 4998 at Pages 824-825, both references to the Buncombe County Registry. In addition, I have reviewed the letter written by Eric S. McAbee, President of McAbee and Associates, P.A., professional land surveyors who actually prepared the plats referred to herein.

The Deed recorded in Book 4998, at Pages 824-825 conveyed to you "all of Lot 5 shown on the Plat recorded in Buncombe County in Plat Book 80, at Page 9 (the plat). Lots 122, 124 and 126 shown on the plat are not conveyed and not part of said lot 5". In order to legally determine what real property Lot 5 consists of, you must review the Plat located at Plat Book 80, at Page 9. In the notes to said Plat Book 80, Page 9, it is noted that the total area of Lot 5 is 1.52 acres. As determined by Mr. McAbee, 1.52 acres does include the water tank site. Further, it is clear from your Deed that the conveyance did not include Lots 122, 124 or 126. This is obviously consistent with the fact that you already owned these lots from prior conveyances. It is my belief that if it was intended that the water tank site was not to be included within the description of Lot 5, then your Deed could have easily made reference to the fact that the water tank site was not included. Since this language does not appear in your Deed, it is my opinion that you are the owners of the water tank site which is, of course, subject to the previous easements granted to the City of Asheville.

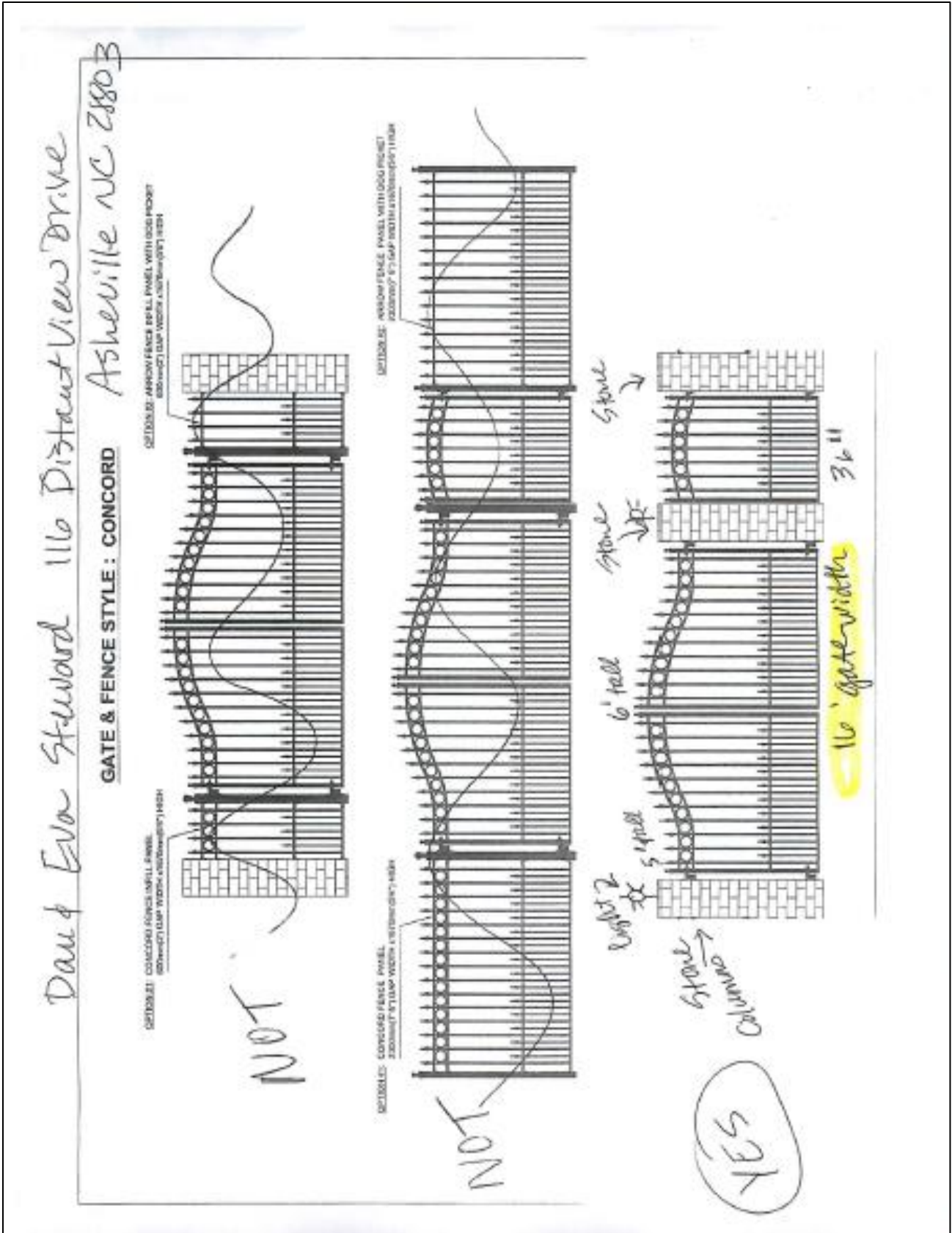
Please advise if you have any questions or if you need any further clarification.

Very truly yours,

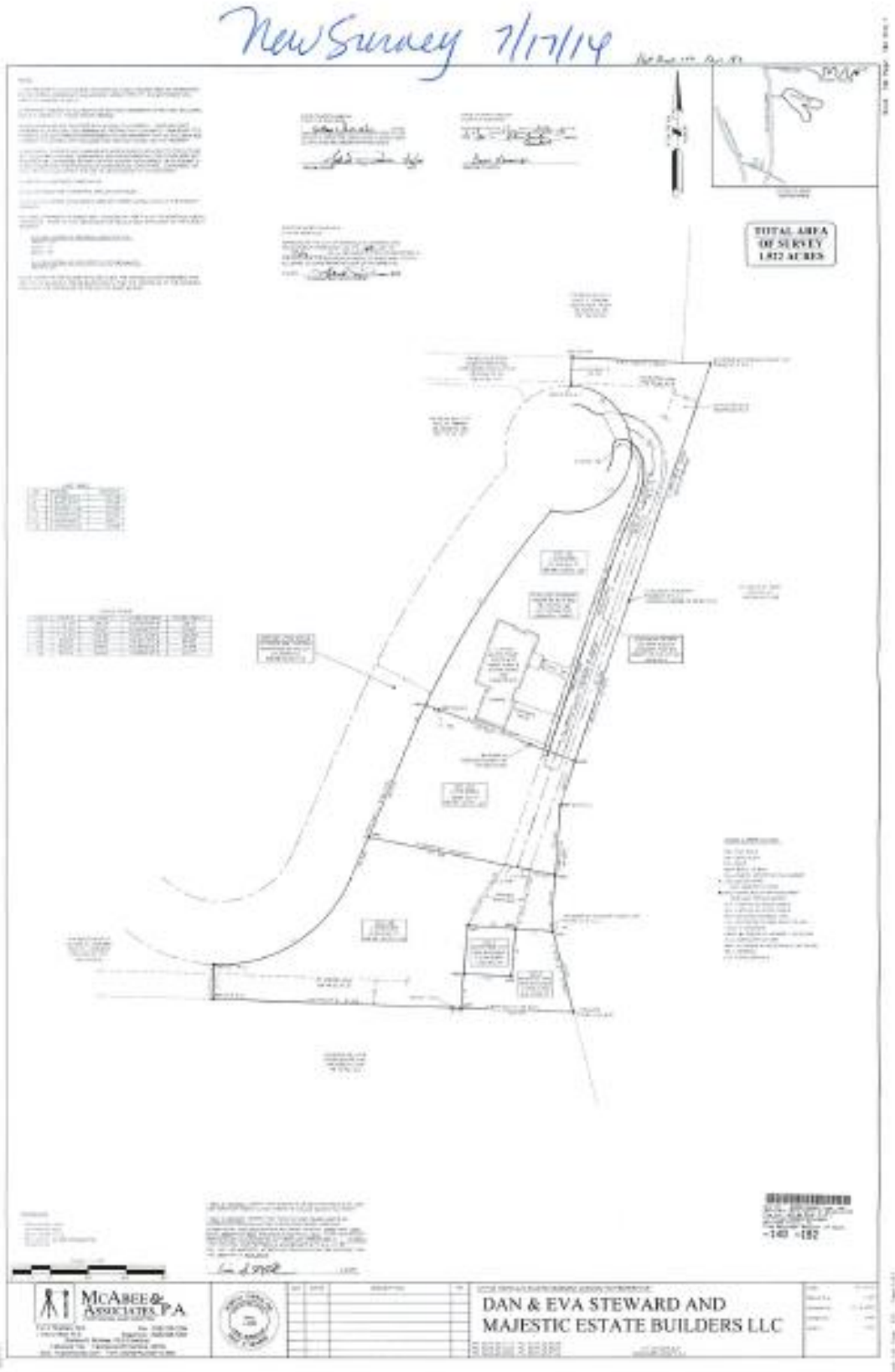

Joseph A. Ferikes

JAF/gg

48 Patton Avenue, Suite 300 • Asheville, North Carolina 28801
P.O. Box 2899 • Asheville, NC 28802
Telephone: (828) 251-1588 • Facsimile: (828) 251-2214
www.ferikesbleynat.com



Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer



Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer



MCABEE &
ASSOCIATES, P.A.
PROFESSIONAL LAND SURVEYING

Eric S. McAbee, PLS J. Barry West, PLS
Wallace S. McAbee, PLS (Emeritus)

3 McAbee Trail Fairview, North Carolina 28730
Telephone: 828-628-1255 Fax: 828-628-1294
www.mcaabee.com Firm License Number: C-694

November 17, 2016

To Whom It May Concern,

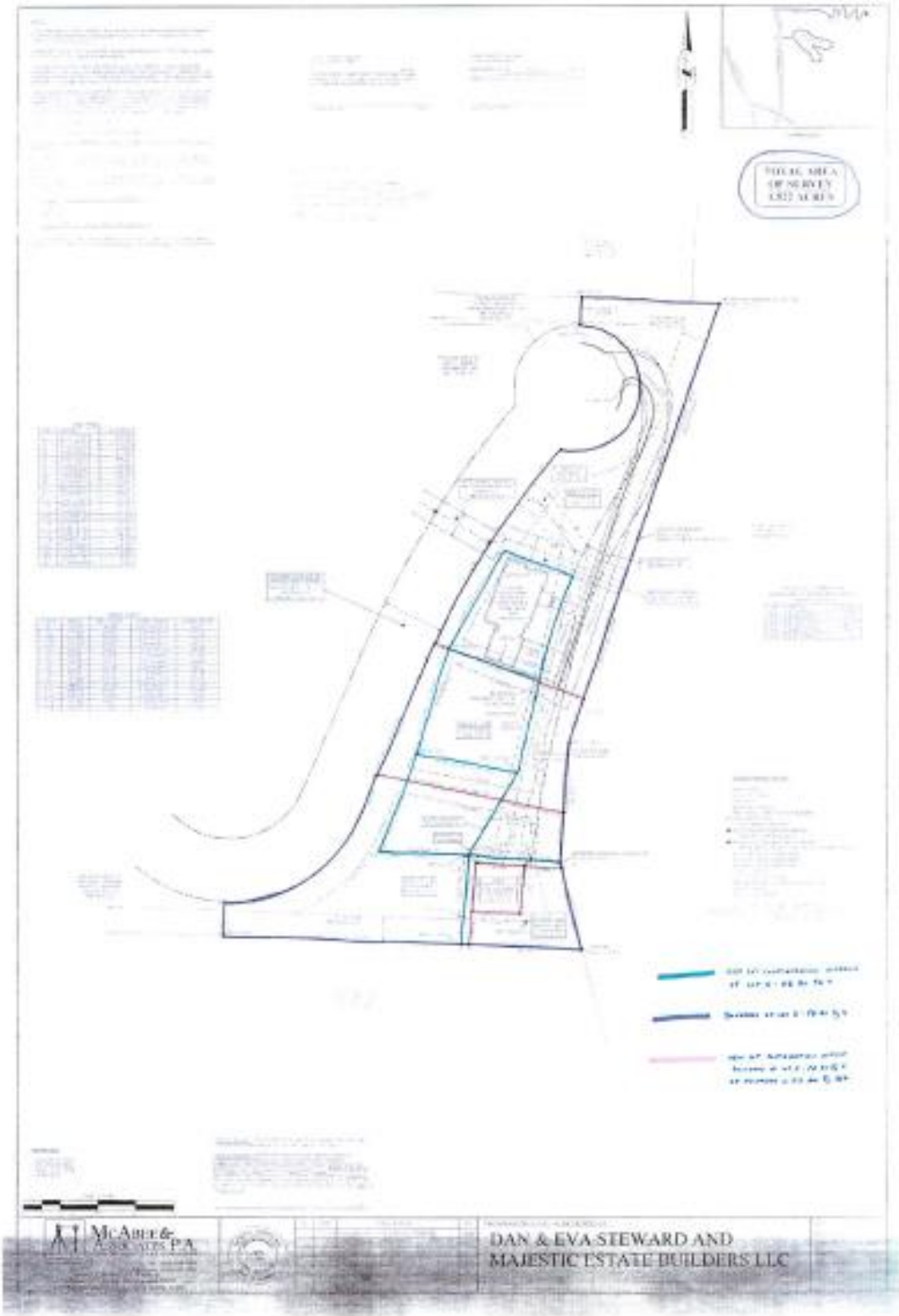
This letter is in reference to the property conveyed to Dan and Eva Steward (Grantee) by The Views of Asheville Homeowners Association, Inc. (Grantor) in Deed Book 4998 Page 824. In this deed, the Grantor conveyed all of Lot 5 as shown on Plat Book 80 Page 9, less and excepting Lots 122, 124 and 126 of said plat. Lot 5 is designated on said plat as consisting of 1.52 acres, which includes Lots 122, 124, 126 and the "water tank site". I have attached a copy of this plat with the boundaries of Lot 5 highlighted in pink. Our firm performed a re-survey and recombination of the existing lots in 2014. Our survey measurements calculated to 1.522 acres, including the "water tank site". I have attached a highlighted copy of our plat, which was recorded in Plat Book 140 Page 182, which shows the original Lot 5 exterior boundary (purple), original interior lot lines (blue), and the reconfigured lots after recombination (pink). I have also included an unrecorded plat by the original surveyor that clearly shows the "water tank site" as being included in Lot 5. While the subject deed (Deed Book 4998 Page 824) does reserve rights of ingress, egress, regress and use of the water tank to the City of Asheville, it does not imply any fee simple ownership to the City.

After researching the chain of title and doing a ground survey of the property, it is clear to me that the "water tank site" was included as part of the conveyance to Dan and Eva Steward. The solid lines surrounding the water tank site should not be taken to represent property lines that create a separate lot. Nowhere in the chain of title can we find a description matching the calls of the solid lines in Plat Book 80 Page 9 designating the water tank site as a distinct lot. Please feel free to contact me if you have any questions about our findings.

Sincerely,


Eric S. McAbee, PLS
President
McAbee & Associates, PA

Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer



Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer

Doc # 00010111-0001



Doc # 00010111-0001 Type: DOC
 Recorded: 07/12/2011 on 08:38:37 PM
 Fee Amt: \$28.00 Page 1 of 2
 Revenue Tax: \$2.00
 Verify Local 0800120108-0001
 Guilford County, NC
 Ofc of Registrar/ Registrar of Deeds
 # 4998 # 824-825

There are no ~~assessable~~ taxes that are a lien on the property described in the deed which the ~~County~~ Tax Collector is charged with collecting.

Call 7/12/12 Tax Collector [Signature]

NORTH CAROLINA SPECIAL WARRANTY DEED

Revenue Stamp: \$2.00 Prepared by: Steven L. Goldstein
 Property Site: Distant View Drive Run for Doug Wilson/WSB
 PIN: 0805-08-0003

The Preparer is informed that the property conveyed does not include the primary residence of a Grantor.

This North Carolina Special Warranty Deed is made as of the 21st day of October, 2011, by and between The Views of Asheville Homeowners Association, Inc., Grantor, whose address is 96 Distant View Drive, Asheville, NC 28803 and Dan Steward and wife, Eva Steward, collectively Grantee, whose address is P.O. Box 805, Skyland, NC 28776. The designation "Grantor" and "Grantee" as used herein, shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

The Grantor, for valuable consideration received from Grantee, conveys to Grantee, in fee simple (unless otherwise stated below), the property described as follows (intending to and including all appurtenances thereto):

Lying in the City of Asheville, Buncombe County, North Carolina, and being all of Lot 5 shown on the plat recorded in Buncombe County Plat Book 88 at Page 9 (the "Plat"). Lots 122, 124 and 126 shown on the Plat are not conveyed and are not a part of said Lot 5. Further, there is accepted and reserved hereover all rights of the City of Asheville, with respect to the rights in and to the Water Tank Site, and the access to the same on a perpetual, non-exclusive basis, shown on the Plat, or the said rights in such site, and to access such site, shall not be affected hereby.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantee received, and that Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor (but no further), except for the following: All matters shown on the Plat, easements and rights of way of record, restrictions of record, the use provisions of any governmental ordinances affecting the above, taxes for the year 2011, and all subsequent years, and all matters set forth in the Declaration recorded in Buncombe County Book 303 at Page 503, as supplemented and amended thereafter, whether by that document contained in Buncombe County Book 275 at Page 86, or otherwise.

Attachment 6. Eva and Dan Steward's documents on Lot 5 Property Transfer

2

In witness whereof, as of the above date, Grantor signed this deed, as the act of Grantor.

The Views of Asheville Homeowners Association, Inc.

Richard H. Green
President

Michael D. Osborne
Vice President

Gerald W. Sturtevant
Secretary-Treasurer

State of North Carolina - County of Buncombe

I, a Notary Public of said County and State, certify that Richard H. Green, Michael D. Osborne and Gerald W. Sturtevant being personally known to me, came before me this 27 day of October, 2011, and acknowledged that each of them, respectively, is the President, Vice President and Secretary-Treasurer of The Views of Asheville HomeOwners Association, Inc., a North Carolina corporation, and that he/she, in such capacity, being authorized to do so, executed the foregoing on behalf of the corporation, as its act and deed.

My Commission Expires: 12/13/2015

Jill C. Dotson
Notary Public

Printed Name: Jill C. Dotson



402-333-4971, v. 2

Attachment 7. Ernie Bott's Statement in response to the Steward's documents

Statement submitted by Ernest G. Bott, owner of 115 Distant View Drive, in response to Dan & Eva Stewards' Letter (hereafter referred to as The Letter) of December 7th, 2016, widely distributed to all homeowners in The Views of Asheville.

I request that the holder of my proxy, Gerry Stanley, be allowed to read this statement at the HOA meeting on December 7, 2016, and that it be included in the minutes of the meeting.

Statement: On Page 2 of The Letter, end of 2nd paragraph, they state "To date we have a neighbor who planted tall trees on their property with no consideration of our view and the Board won't get involved...".

She obviously refers to my trees at 115 Distant View. This a slanderous, deliberate misrepresentation of the facts. I bought my lot in 1996 from Ralph Kiger, the original developer. At the time, there were no lots platted out on the ridge above me. My house was finished by Bob Selby before he went bankrupt at the end of 1999, but who also did not create any lots on the ridge. I believe those lots were only created in 2002-2003 shortly before the Stewards bought them.

We planted those "tall trees" as saplings in 1999 right after we moved in, as part of the overall landscaping on our lot. I allowed topping of the trees by the Stewards several years ago but just topping without shaping was unsatisfactory to me.

When she again requested to be allowed to "trim" the trees I requested that they be shaped after topping. After telling me she did not want me talking to her tree crew because she was paying for the work I denied approval of the trimming and denied her or her representatives access to my property.

The statement that we planted "tall trees" is ridiculous. But to spread the accusation amongst all homeowners that I deliberately planted the "tall trees" to block her view approaches slander and damages my reputation in the Views. I hope and pray that she will correct her statement.

In closing, we are old & want nothing but to live our latter years in peace. We wish Mr. & Mrs. Steward well, as we do all of our neighbors.

**Attachment 8. Eva and Dan Steward's letter dated 10 Dec 2017
with inputs to the meeting minutes**

DANIEL & EVA STEWARD

P. O. BOX 357
SKYLAND, NC 28776

December 10, 2017

To: Bill Uhle and the Views of Asheville HOA Board

At the last meeting we voiced our complaint that the Annual Meeting Minutes from 12/7/16 were not an accurate record of what actually happened. You gave us a week to share our discrepancies with you in writing. This is what we believe should have been recorded in the minutes based on what actually happened at the meeting. Additionally, we disagreed with some of what you recorded on the minutes and would like to offer our proof to be posted since you offered yours.

1) Page 1, Committee Reports, Architectural, item (5):

You wrote the "*City has said requires easement agreements to be signed by the Stewards and the HOA...*"

We disagree. The City never required an additional easement agreement until you demanded that we get a letter in writing from the City of Asheville Water Department. They had already given us verbal approval twice to put in the gate as long as we gave them the code. It wasn't until after Richard Green scared them on 7/9/16 with fear of electronic failure of gate that they went to their legal department to write something up. That's when the legal department tried to act as a surveyor to determine what Lot 5 consisted of for ownership rights. The Board in its discretion demanded a written confirmation, **but you did not have to**. Since both the water department and the City attorney was confused about the ownership based on the plat map, the Board then took an opportunity to claim the land as theirs. See attached Exhibit "A".

2) Page 3, line 1:

You wrote "*recent request...*"

The request was definitely not recent, but given on 7/5/16.

3) Page 3, line 2:

You wrote "*During the process of getting written approval from the City Water Department for the security gate, an issue regarding the ownership of the Water Tank Site Lot surfaced.*"

During the meeting I explained that the Board knew about the lot ownership years ago when we re-surveyed the property in 2014 after it was transferred to us in 2012. Why didn't they have an issue two years prior? No one from the Board answered my question. Then I said that Richard knew about it and his email of 8/21/16 admits it. Richard replied that it could be explained but didn't explain it at the meeting. See attached Exhibit "B."

**Attachment 8. Eva and Dan Steward's letter dated 10 Dec 2017
with inputs to the meeting minutes**

4) Page 3, par. 3:

You wrote *"Though further discussions ensued between the Board and the Stewards concerning statements made in the Board's background paper and statements made in the Stewards' documents, both maintained their positions as stated in their documents so are not repeated."* But, there was a lot missing. There was a heated discussion between Bill Uhle and Eva Steward with regards to this situation. Both Dan and I had to ask Bill to stop shouting at me. He did, but it was obvious that the discussion was not a time to form solutions as we had hoped, but for the homeowners to hear the Board's argument. Each time I came up with an argument, I was interrupted by the Board. Then Gerry Stanley made a comment stating that when he signed the original deed at the time, he did not know he was giving the water tank land. I told him to talk to his attorney who drafted the deed then. Somewhere in the course of the dialog I asked the Board and neighbors why it is so important to own the water tank site and why is it so valuable to the HOA. No one gave a response except Jill Sagarin who said that the HOA should control it since it serves the whole community. I told her that the water services us personally as well. We have no intention of impeding the water nor will we ever do that. Additionally, the security gate only gives further protection to an already locked water tank site that only the water department can access. We just want to be able to control how the fencing around the tank looks since it is adjacent to our house. Bill said 'why don't you just plant trees to block it.' I said there are already trees planted, but it does not block the ugliness of it. Bill stated that they would not change the deed to clear up any confusion of the lot. Then, I said that's fine since we don't need it. The deed stands on its own and shows that we are the rightful owners.

5) You provided "Attachment 6" which was our documents that we submitted, but they are so blurry that no one can read them. Please remove the blurriness. If you need originals, I can resend them to you that are clearer.

6) Page 4, "Other Items":

You wrote *"Eva Steward responded by expressing her disagreement with several of the points made in Mr. Bott's statement."* But you never recorded what they were. Please attach this to the minutes as I have it as Exhibit "C."

This is what we recall was discussed. We appreciate you incorporating it into the minutes regardless of whether you agree with our conclusions.

Sincerely,



Eva and Dan Steward

Enc.

**Attachment 8. Eva and Dan Steward's letter dated 10 Dec 2017
with inputs to the meeting minutes**

Eva G. Steward

From: Richard Green <rhgreen@aol.com>
Sent: Friday, August 12, 2016 11:46 AM
To: Eva@BestQuestRealty.com; dan@majesticstatebuilders.com
Cc: wwujr1@gmail.com; diane8@gmail.com
Subject: Fwd: Access to water tank at The Views of Asheville Subdivision

Eva and Dan:

The HOA continues to work through the process with the City.

Feel free to comment to the HOA or the City.

Regards,

Richard

-----Original Message-----

From: Jade Dundas <JDundas@ashevillenc.gov>
To: Richard Green <rhgreen@aol.com>
Cc: Bill Uhle <wwujr1@gmail.com>; Diane Summey <diane8@gmail.com>; Kelly Whitlock <KWhitlock@ashevillenc.gov>
Sent: Fri, Aug 12, 2016 11:36 am
Subject: RE: Access to water tank at The Views of Asheville Subdivision

Mr. Green,

I have been corresponding with Ms. Steward regarding the installation of the gate and the need for an access easement for property on which the gate will be placed. We have completed research related to the ownership of the property and discovered that there are easements referred to on the original plat. These easement references, however, are not very descriptive and certainly do not provide the City with any assurance that we would be granted access to the City water facilities in the event that a gate were to be installed.

The City is not opposed to the installation of a gate but will need to have a formalized agreement in place which will grant us unrestricted access to the property and the water infrastructure. This follow-up email is directed to you as representatives of the Homeowners Associations because in the property research that we have conducted identifies The Views of Asheville HOA as the property owner.

We have a standard agreement which can be used for the purpose of formalizing the easement requirements but it will require a signature from an authorized HOA representative. You will be receiving a copy of this document for your review and approval sometime next week. In the mean time I will reach out to Ms. Steward to inform her of the process. Upon formalizing the easement agreement the details related to the installation of the gate will be between the HOA and the Stewards but the gate will need to meet the terms of the easement agreement.

Thank you for your patience. Please contact me with any questions you may have. I have included Kelly Whitlock the City's Deputy City Attorney on the email.

Jade Dundas

-----Original Message-----

From: Richard Green [<mailto:rhgreen@aol.com>]
Sent: Saturday, July 09, 2016 7:29 PM
To: Jade Dundas <JDundas@ashevillenc.gov>

Exhibit "A"
See below where Richard
puts false fears in
COA water dept.

**Attachment 8. Eva and Dan Steward's letter dated 10 Dec 2017
with inputs to the meeting minutes**

Cc: Bill Uhle <wwuir1@gmail.com>; Diane Summey <diane8@gmail.com>
Subject: Re: Access to water tank at The Views of Asheville Subdivision

Dear Mr Dundas:

One of the home owners at The Views of Asheville subdivision has made a request to the Board of Directors. Since Eva and Dan Steward live at the end of Distant View Drive, they have requested that the Board approve their proposed installation of a private gate on their driveway which also serves as a City Water Department easement to access the water tank at the top of The Views of Asheville subdivision. The City water tank provides City water to the 30 lots in the subdivision and the City Water Department regularly makes visits to the tank. I would estimate those visits to be several times a month.

Eva Steward assures the Board that she has talked with an unnamed individual at the City Water Department that has told her that there are no problems with a permanent obstruction to the City's easement to the water tank. However, she refuses to provide written confirmation that the City Water Department has no issues with a metal drive gate obstructing 24/7 access to the City's water tank since she has promised to provide the gate access code to the City.

The Board of Directors cannot approve installation of this proposed permanent metal gate unless the City Water Department will provide their written approval to have their access restricted as long as they have been provided the access code. Of course, during a power outage the City may not be able to access their water tank which could be a potential problem.

Please advise.

Regards,

Richard Green
Board of Directors
The Views of Asheville HOA
828-777-0052

Sent from my solar powered iPad.

**Attachment 8. Eva and Dan Steward's letter dated 10 Dec 2017
with inputs to the meeting minutes**

Exhibit B: Richard admits we own all of Lot 5.

Eva G. Steward

From: Richard Green <rhgreen@aol.com>
Sent: Sunday, August 21, 2016 2:45 PM
To: jdundas@ashevillenc.gov
Cc: wwujr1@gmail.com; diane8@gmail.com; Eva@BestQuestRealty.com; dan@majesticstatebuilders.com; kwhitlock@ashevillenc.gov
Subject: Fwd: Access to water tank at The Views of Asheville Subdivision
Attachments: The Views Easement.pdf; Exhibit A PB 80 Page 9.pdf; Plat Book 140_Page 182.pdf

Mr. Dundas:

I appreciate all of the work that your department and the City has done. However, the attached Easement Agreement and Plat is incorrect. The Views HOA deeded the HOA common area adjacent to Lots 122, 124 and 126 to the Stewards several years ago. You will need to attach the most recent plat since the Stewards also re-platted the lots with the City. In addition, the Stewards will need to sign the new easement modification since they are now the current owners of the property that the easement crosses. A search of the Buncombe County records (Dan Steward) shows that Plat Book 140, Page 182 (see attached) is the most recent plat for the property and DB 4998, Page 824 is referenced. In addition, Plat Book 140, Page 164 with references to DB 4443, Page 1891 and DB 4118, Page 1315 may also be useful for your purposes since they are also referenced.

Please let me know if you have any further questions.

Regards,

Richard Green
The Views of Asheville HOA Board
828-777-0052

-----Original Message-----

From: Jade Dundas <JDundas@ashevillenc.gov>
To: Richard Green <rhgreen@aol.com>
Cc: Bill Uhle <wwujr1@gmail.com>; Diane Summey <diane8@gmail.com>; Kelly Whitlock <KWhitlock@ashevillenc.gov>
Sent: Fri, Aug 19, 2016 1:43 pm
Subject: RE: Access to water tank at The Views of Asheville Subdivision

Mr. Green,

Attached are the easement document and a copy of the plat. Will you review and seek the appropriate signature for the easement and return these documents to my office? Upon receiving the signed copy, the documents will be processed by the City for signature and recordation. A similar set of documents has also been sent to Ms. Steward and she is aware that you will be receiving this email and easement.

Regards,

Jade S. Dundas

Water Resources Director
City of Asheville
P.O. Box 7148
Asheville, NC 28802
Email: jdundas@ashevillenc.gov
Office: (828) 259-5959

**Attachment 8. Eva and Dan Steward's letter dated 10 Dec 2017
with inputs to the meeting minutes**

Steward Exhibit C – 12/7/16 TVOA Annual HOA meeting

At the 12/7/16 Annual HOA meeting a letter was read by Gerry Stanley on behalf of Ernie Bott in response to my letter to the HOA dated 12/7/16. On that letter I complained to the HOA because they are not enforcing view rights in regards to neighbors who plant tall trees that block the views of neighbors and expect neighbors to work it out rather than enforcing the view rights. After Gerry read Ernie's letter I responded by explaining what happened from our recollection and you never wrote down what I said, thereby never sharing my side of the story which is unfair to us and those who were not present to hear. This is what I said and this is what should have been recorded in the minutes...

Ernie Bott (115 DVD) planted a Blue Spruce and several Leyland Cyprus trees that block our views at 116 DVD. I asked Ernie if we could trim the tallest Leyland Cyprus a few years ago and he agreed, so we did. We paid for it and he was fine with it as long as we did not touch the Blue Spruce.

The trees continued to grow and it was time to trim the others in 2015. I asked Ernie for permission and he agreed again. I spent a few weeks in 2015 re-doing all the landscaping around our house by cleaning up the over grown brush and dead trees and replanting about 15 new trees and dozens of bushes. I hired two professional landscapers who spent several weeks doing this. One day Ernie approached one of them close to his face and squeezed his arm tightly and told him to stop working because he does not approve of the work they are doing. The landscaper was so shocked by this that he called me on the phone and said he would not work on my property if Ernie assaulted him again both physically and verbally. A few hours later I came home and met with Ernie to find out what his concerns were. He said that he did not approve the work prior to us doing it. At this time we were about 2 weeks into it. I told him we are under no obligation to ask his approval for improving our property. I asked him if there was anything we did to the landscape that he was not happy with and he replied "no" and that he likes what we are doing. I asked him not to approach my landscapers anymore and that if he had any concerns, to contact me directly. We parted ways amicably.

A few weeks later I approached Ernie about trimming the Leyland Cyprus trees that we had discussed prior. He said that he would not allow me to trim them because his wife liked them as they are. I told him that I was disappointed that he has broken his promise since his trees have grown to block our views. He never mentioned the need for shaping the trees. Had I known that, I would have been happy to do that. But, he never allowed us to touch them. I then asked him to never walk on our driveway since he was not acting like a good neighbor to us on several occasions. That was my recollection.



Eva Steward

12/10/17

**Attachment 9. Board of Directors letter dated 15 Dec 2017
in response to the Stewards' 10 Dec 2017 letter**

*The Views of Asheville Homeowners Association, Inc.
93 Distant View Drive, Asheville NC 28803*

December 15, 2017

Re: 2016 Annual Meeting minutes corrections from Eva and Dan Steward

Dear Owners of The Views of Asheville HOA:

The purpose of this letter is to respond to the recollections offered by Eva and Dan Steward to the 7 Dec 2016 Annual Meeting minutes in her letter dated 10 Dec 2017.

Item 1: As the Directors of a North Carolina NonProfit Corporation, the Board strives to maintain written documentation. As such, the Board of Directors requested a written confirmation of the verbal approvals that an employee in the City Water Department had given to the Stewards. In Eva and Dan's "Exhibit A" email, the Director of the City Water Resources Department, Jade Dundas, said:

"The City is not opposed to the installation of a gate but will need to have a formalized agreement in place which will grant us unrestricted access to the property and the water infrastructure....We have a standard agreement which can be used ..."

While the Steward's say that the Board put false fears in the City Water Department by scaring them with fear of electronic failure of the gate, the email from Mr. Dundas clearly cites the need for unrestricted access to the property and the water infrastructure as the reason for needing a formalized agreement using the standard agreement used in these situations. In addition, the Board informed the owners via email on 23 Jul 2016 of the Stewards' proposal for a driveway security gate, that the proposal required the approval of the City Water Department, and that the City needed to work out a formal access agreement. There were no owner objections to the Board's position regarding the need for City approval or an access agreement.

Item 2: The Board has no problem with being more specific by replacing the word "recent" with the words "5 July 2016" in the minutes on page 3 line 1.

Item 3: The email referenced in the Stewards' "Exhibit B" has handwritten words across the top saying "Richard admits we own all of Lot 5." The Board concurs that the Stewards' offer/petition letter and the Special Warranty Deed recorded in DB4998 PG824 on 10 Jul 2012 transferred Lot 5 to the Stewards. However, per the HOA attorney, the Water Tank Site Lot (1) is a separate and distinct lot and is not a part of Lot 5, (2) was not included in the property described in the Stewards' offer/petition letter that was approved by the owners for transfer, and (3) was not included in the property described in the Special Warranty Deed.

Item 4. The Board takes exception to the Stewards' statement that Bill was "shouting" at them and that "each time I came up with an argument, I was interrupted by the Board". While there was a heated discussion and voices were raised, there was no "shouting." Further, there were interruptions on both sides, and those by the Board were deemed necessary to immediately

**Attachment 9. Board of Directors letter dated 15 Dec 2017
in response to the Stewards' 10 Dec 2017 letter**

*The Views of Asheville Homeowners Association, Inc.
93 Distant View Drive, Asheville NC 28803*

correct areas of factual disagreement between the Board and the Stewards for the owners in attendance. In addition to Jill Sagarin's statement that the HOA should own the Water Tank Site Lot, Nancy Osbourne stated that it shouldn't matter to the Stewards who owned the water tank site since they can still plant whatever trees they want on their own property in order to minimize the view of the tower. Finally, the Board saw widespread agreement (head nods) in the audience during Jill's statement, and no one at the meeting stated that they disagreed with Jill's statement other than the Stewards.

Item 5: The Board attached the documents as received from the Stewards, and will replace if clearer copies or originals are sent to the Board.

Item 6: The Board will include Exhibit C to document the Stewards' response at the meeting to the letter read on behalf of Ernie Bott. The Board notes that the Board of Directors has no legal authority to enforce "view rights" on privately owned property as requested by the Stewards. The Board only has the authority to make decisions regarding trees growing on HOA owned common land that are deemed to impact the "view" of another homeowner. Additional guidance on view obstructions due to trees on privately owned lots, HOA Policy #1, Landscaping Guidelines, states in Section 6, Landscaping within Lot Boundaries Guidelines:

- "a. Removal and/or pruning of any trees or shrubbery on a homeowner's lot may be accomplished at the discretion of the individual homeowner."
- "e. Conflicts Between Homeowners Over View Obstructions on One Homeowner's Property: A tree on one homeowner's lot may grow to obstruct another homeowner's view. The Board will not become involved in such conflicts. The homeowner on whose property the tree stands has the final say on whether the view obstruction is removed or not..."

Overall, the Board recommends making the one correction to the meeting minutes (item 2) and adding the Stewards' letter and this letter as two additional attachments to the draft meeting minutes. The Board will also attach cleared copies of the Stewards' other attachments if received within 5 days.

Sincerely,



William Uhle, Jr
Richard Green
Diane Summey
2017 Board of Directors
The Views of Asheville Homeowners Association, Inc.