6 March 2017

MEMORANDUM TO LAKES OF LOCKWOOD REGARDING COMBINING LOTS

The Lakes of Lockwood's Declaration states in its opening paragraphs "WHEREAS the Developer proposes to create on such property a Subdivision containing 125 residential home lots, together with the common areas as more fully described below (hereafter referred to as the "Subdivision")." Article I, Section 4 of the Declaration provides the definition of "Lots" when it states the definition "shall mean and refer to any plot of land with such improvements as may be erected thereon intended and subdivided for detached home sites use, specifically Lot 1 through 125 shown on the Subdivision Plat, but not include the Common Areas as herein defined." [Emphasis added]. Additionally, Article II, Section 1 of the Declaration provides "Membership. Every person or entity who is an Owner of any Lot that is subjected by the Declaration to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot, which is subject to assessments." Finally, Article VII, Section 3 of the Declaration allows for Lot size to be increased by combining Lots, but not decreased to any size less than the original Plat. We reference these sections in your Declaration because these sections contain the language the case law considered when deciding how homeowners should be assessed by the association when combining lots. CASE LAW: Claremont Property Owners Association Inc. v. Gilboy, 142 N.C. App. 282 (2001) holds that "the intention of the Developer at the time the restrictions were filed was to establish lots with obligations at the time of the filing and thereafter to pay …assessments." The Court further held that road maintenance costs should be calculated according to the division of lots appearing in the original plat." The reasoning behind the Court's holding is that purchasers bought with notice as to the recorded covenants and plat. Thus, a purchaser could reasonably rely on costs for annual and special assessments being divided by 125, since that is the number of lots originally platted and described in the Covenants. Citing Ingle v. Stubbins, 240 N.C. 382, 82 S.E.2d 388 (1954), the Claremont Court derived two principles: First, "servitudes imposed by the restrictive covenants of a subdivision attach to each individual lot at the moment of the subdivision becomes subject to the covenants." Second, "any ambiguous terms in the covenants must be interpreted according to what they meant at the time the servitudes attached to the individual lots." The Claremont Court continued "This is not to suggest that lots may not be combined or re-subdivided. As in Ingle, the property may be combined or re-subdivided into different lots for purposes of ownership or convenience, but absent a provision in the covenants to the contrary, the property must always conform to the servitudes created by the covenants as they originally attached to the property." [Emphasis added]. The Claremont case and holding has been followed and cited often and in a wide geography of courts. Claremont was most recently cited in Fawn Lake Maintenance Com'n v. Abers, 202 P.3d 1019, 149 Wn. App. 318 (Wash App, 2009). Similar to Fawn Lake, Lake of Lockwood's Declaration requires the "Owner of any Lot, by acceptance of Deed therefore covenants and agrees to pay assessments to the Association" (Declaration, Article IV, Section 1). The Court in Fawn Lake held that using "ownership" as opposed to "membership" for criteria for assessment payments was further proof that the Developer intended for each lot owner to pay its pro rata share. In conclusion, each of your lot owners has a right to expect to be assessed for each lot owned at 1/125th of the cost of annual budgeted assessments or special assessments, and no more, unless and until there is a vote and recordation of an amended Declaration of Covenants and Restrictions allowing some other arrangement.