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January 27, 2025

Silver Springs Lake Property Owners Association
c/o Mr Nathan Lehner
N9338 Oakwood Ln
Neshkoro WI 54901

RE: Silver Springs Lake Property Owners Association

Dear Mr. Lehner:

It is my understanding that at the request of the Silver Springs Lake Property Owners Association, you wish to obtain a legal opinion regarding the process of amending the Covenants and your recent balloting which proposed amendments to the Protective Covenants.

First, to address the nature of covenants: Covenants placed on a conveyance of land inure to the benefit of all the purchasers of lots within the covenants. It is considered a valuable property right, which will be enforced. Hall v. Church of the Open Bible, 4 Wis.2d. 246, 248, 89 N.W.2d. 798, 799 (1958). There is no Wisconsin statutory provisions which govern how proposed amendments to covenants must be made or a specified voting process. One area that often leads to confusion is that, while owners' associations can be used as a means of requesting changes to the covenants; the covenants themselves are not a corporate document. In fact, a corporation is not required to establish or amend covenants, and the rules of corporate action do not apply to amending covenants. In other words, the board or any member of the association may use the platform of the association to request amendment of the covenants by the lot owners, but the amendment of the covenants is not a corporate act, it is the act of the individual lot owners. The fact that the votes were collected by the board through a balloting process is a matter of convenience, but is not a legal requirement.

Specifically, the covenants provide:

> That anytime the owners of a majority of the lots in Silver Springs may agree to a change of said covenants in whole or in part, and/or

> reaffirm the covenants, including, but not limited to, that these covenants may be extended for an additional period of time from the date the covenants are changed in whole, in part, and/or reaffirmed.

I understand that the board circulated ballots with specified changes. This does not have to be in any particular form, the board could, as it did, ask for changes to specific paragraphs, sections, or could have simply done up a new, complete draft of the amended covenants and submitted those to the other lot owners. As long as a majority of the lots approve the amendments they may be properly recorded with a certification to that effect.

I understand, that certain lot owners returned ballots where they did not initial every page, but did sign their approval of the changes. For preparing a certification for recording of the covenants, I suggest that you simply confirm with those lot owners that they agree to all of the terms as indicated on their ballot form, that would be sufficient and a certification can be prepared correctly stating that those lot owners assented to the amendments.

Further, it is my understanding that even without the affected ballots, a majority vote was obtained on all requested areas except for "Action 2." Action 2 provides: "The granting of a variance by the County of Marquette or Town of Neshkoro shall not serve to override these Protective Covenants." I consider this requested change moot in any event, simply because it is a correct statement of the law, regardless of whether it is incorporated into the covenants or not. County Zoning has jurisdiction over its own ordinances, as does the Town of Neshkoro. It lies within the power of those government entities to grant variances to their own ordinances by the rules prescribed in those ordinances. The covenants arise out of the law of private contract, where the owners of the property at its creation, established protective covenants as a right of private contract. Once established, the covenants inure to the benefit of all the purchasers of the property covered by the covenants and are then a matter of private enforcement. In other words, neither the county nor the town has any more right to grant a variance from the covenants than the subdivision owner's have a right to grant a variance from county or town ordinances. These are separate sets of rules which rest on separate foundations.

Finally, I turn to what is designated Action 4, a restriction on the outside storage of trailers upon the lots. As I understand it, the most restrictive provision passed by a majority of the votes. I interpret the balloting as then providing that the votes of the lot owners wishing to have the least restriction as possible, combined with the yes votes to the two proposed modifications to this provision, establish that the majority of lot owners approved the proposed provision with the lesser restrictions, resulting in an approved amendment to the covenants as follows:

> Outside storage is allowed for one boat trailer and a one utility trailer (including campers), which do not exceed twenty feet in length and/or seven (7) feet in height. Storage of any excluded vehicle or trailer in an approved enclosed garage or storage structure on the property is permissible.

I believe the amended covenants can be recorded with a certification that the amendments have

been approved by a majority of lots as stated above. As a final cautionary note, I would mention that the bylaws for the association involve a different process than amending the covenants. Bylaws are a corporate document and may be amended at any regular or special meeting of the members by a vote of a majority of the quorum of members present, in person or by proxy. A quorum, is one-half of the members entitled to cast votes. In other words, it does not require an absolute majority of all of the lots, as the covenants require, for amendment. Bylaws do not have to be recorded but they may.

Please feel free to contact me if you have any questions regarding the above matters.

Sincerely,
KUBASTA, BICKFORD & LORENSON, S.C.

Thomas A. Lorenson
TAL:cls

Enclosures as stated