

July 20, 2023

Sent via Email

Lynn Kirby  
lynn@a1shelters.com

RE: Water Wheel Cove Road Maintenance

Dear Lynn:

I've had an opportunity to review your existing documents and below is an overview of my opinion on the current standing as well as recommendations for how to deal with ongoing road maintenance in the future.

The original governing document for the subdivision is a "Restriction Agreement" recorded at Book 346, Page 105 of the Haywood County Register of Deeds. That document provides for several restrictions on property usage as well as for the obligation to pay for road maintenance. Unfortunately, a recent North Carolina Supreme Court decision determined that any such restrictions over 30 years old are likely invalidated by the North Carolina Real Property Marketable Title Act. While the state legislature did amend the Marketable Title Act to create some exceptions, none of those apply to your subdivision. As a result, those restrictions are no longer enforceable except for the provision requiring lots be used only for residential purposes.

However, in North Carolina any person who uses a road has an obligation to pay his or her pro rata share of the road maintenance. In the absence of a road maintenance agreement/homeowner's association, this is done by one or more people maintaining the road and then filing suit against those who refuse to contribute. As you can imagine this is not an ideal process and also not very effective.

To avoid that type of arrangement, a common solution is to prepare a simple road maintenance agreement to present to the lot owners for consideration and signature. Everyone who signs the road maintenance agreement would of course be bound by that agreement. Those folks who do not sign the agreement would not be bound by the actual agreement but would of course still be responsible for their pro rata share of road maintenance.

Often such an agreement includes provisions for the formation of a road maintenance association. That association would then be responsible for handling road maintenance, collecting assessments, and enforcing the road maintenance agreement (the association would also enforce against those who refused to sign the road maintenance agreement). The existence of a road maintenance association is beneficial also as a means of accountability for lot owners. Meaning, since everyone is obligated to pay their pro rata share of the road maintenance anyway, if folks are willing to sign the road maintenance agreement and join the association, they would have a vote and would be able to run for the board, and otherwise have a say so in how their funds are spent. If they refuse to sign and refuse to pay, they have no accountability and still must spend the money on the road. It is an additional incentive to get folks to sign the agreement.

The process would be to draft a road maintenance agreement and circulate it to the lot owners. After review (and any revisions), all lot owners willing to sign would need to do so in front of a notary and the agreement would be recorded. If the agreement provides for forming a road maintenance association, that association

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would need to be formed with the North Carolina Secretary of State and a set of bylaws adopted to govern management of the association (i.e. election of board members, terms, etc.)

The cost for me to prepare a road maintenance agreement would be \$1,000.00. The cost to form the nonprofit association including preparing an initial set of bylaws would be \$750.00. If you would like me to move forward with those items please let me know. I'm also happy to discuss any follow-up questions arising from this letter either in person or we can schedule a call.

I will wait to hear from you regarding if I can be of any assistance.

HYDE BROWN WILSON, P.A.



Mark A. Wilson