

SCHEUERMAN LAW OFFICE, P.C.
JACK J. SCHEUERMAN, ATTORNEY AT LAW
5616 NORTH UNION BOULEVARD
COLORADO SPRINGS, COLORADO 80918-1940
Jack@JackScheuerman.com
TELEPHONE (719) 522-1012
FACSIMILE (719) 573-6050

DEC 04 2008

December 4, 2008

Board of Directors
Deer Creek at Northgate HOA, Inc.
c/o Colorado Association Services
Attn: Tiffany Stowe
10 N. Meade Ave.
Colorado Springs, CO 80909

Re: Opinion on relationship to the Northgate Business Owners Association

Dear Members of the Board:

Tiffany Stowe has asked me to give an opinion as to your relationship to the Northgate Business Owners Association and what your rights are. She did not have a copy of the Declaration of Covenants for the Northgate Business Owners Association and I sent her a copy because I also represent another association in your position.

On July 10, 1997, a Declaration of Covenants, Conditions, Restrictions and Easements for Northgate Residential Properties was recorded with the County Clerk and Recorder. It defines "Association" as the Northgate Business Owners Association. It further defines "Lot" as a parcel of land subject to the Declaration and defines "Owner" as the persons who own title to a Lot. It further says that Owners are not members of the Northgate Business Owners Association and cannot participate in the affairs or governance of that Association but are nevertheless obligated to pay assessments

One might then ask whether the provisions of the Colorado Common Interest Ownership Act ("CCIOA") apply and invalidate the provisions that prohibit you from participating in the affairs of the Association. The Northgate Residential Properties would constitute a common interest community as defined in CCIOA but, unfortunately, the developer structured the community as a "Limited Expense Community" under CCIOA by prohibiting assessments from ever exceeding \$300. See Sections 2.3 and 4.4(d) of that Declaration. That means none of CCIOA applies except three sections that do not impact your right to be involved.

At the time the Declaration for the Northgate Residential Properties was recorded there was no Northgate Business Owners Association. It was not formed until about a year

later when the declaration for the Northgate Business Properties was recorded. That declaration defines "Common Expenses" and "Shared Common Expenses." The Shared Common Expenses are the expenses for the Common Elements referenced in the Residential Properties Declaration or shown as shared elements on plat maps. The Shared Common Expenses are what the assessments made against you under the Residential Properties Declaration are for. The Business Properties Declaration also sets out provisions for the Association. It makes it clear that only the owners of Building Sites in the Business Properties are members of the Association and can vote. The Business Properties Community is not exempt from CCIOA but your properties are not defined as units in that Community so CCIOA does not give you any advantage there either.

Each lot in the Northgate Residential Properties cannot be required to pay more than \$300 in a year and cannot be required to pay more than 25% of the total Common Expenses that would be allocated to that Lot. That means that the share of Common Expenses allocated to a Lot cannot exceed \$1,200 a year. I doubt if they would since all the assessments are for landscaping and maintenance of certain aesthetic improvements. The rest is to be paid by the Business Association. Pursuant to Section 4.5 of the Residential Properties Declaration, the Business Board is to adopt a budget for the Common Expenses of the Residential Properties and notify Residential Owners of what their assessment obligation is. There is no provision that allows you to obtain a copy of the budget or otherwise verify that the Board has complied with the 25% provision or that the budget is realistic. There is no provision that allows you to veto or otherwise challenge the budget. CCIOA does not help since this is not a CCIOA community. The Colorado Revised Nonprofit Corporation Act does not help because the provisions in it allowing inspection of records only apply to members in the Association. You are not members. This is a classic case of taxation without representation. It is possible that if owners bring an action in court to be provided with the records, a judge would find the provisions in the Declaration denying you that right to be unconscionable and contrary to public policy and force the Association to produce the records. Persons or associations desiring to challenge this in court will have to decide if the cost will be worth it and understand that if they lose, they will be paying the attorneys' fees and costs of the Business Association.

Tiffany also asked what would be involved in amending the Declaration to either eliminate the Association control or to require production of records. Section 10.3 requires the approval of 67% of the total lots and the Declarant if the Declarant still owns any property in either the Northgate Residential Properties or the Expansion Property. You can be assured that the Declarant would not approve of any such amendment. The legal description of each of those areas are attached to the Declaration as Exhibits A and B but are in a metes and bounds description. Finding out if the Declarant still owns properties in the areas could be difficult. The Declarant might tell us, if you can believe

December 4, 2008

Page 3 of 3

it. Otherwise we would have to determine what the areas encompass by pulling plat maps or contacting a surveyor. Then we would have to check ownership records to determine if the Declarant still owns property in the areas. The Declarant is identified as Picolan, Inc., is still in good standing and has the same registered agent as the Northgate Business Owners Association.

I hope this provides you with the information you need to consider a course of action. If not, please feel free to contact me.

Sincerely,

SCHEUERMAN LAW OFFICE, P.C.


By: Jack J. Scheuerman

JJS/js



Associa®

Colorado Association Services

Deer Creek at Northgate Homeowners Association, Inc.

June 22, 2009

To: Deer Creek at Northgate Owners

From: Deer Creek at Northgate Board of Directors

Re: De-annexation

Enclosed you will find a letter from the Association's attorney dated December 4, 2008 regarding the Annual Master Association Assessment that is paid to the Northgate Business Owners Association c/o Wasson Properties. The Board of Directors would like your support in going to the media or the Northgate Business Owners Meeting and attempt to de-annex ourselves from the Master Association.

If you agree or disagree with the de-annexation, please sign and send back the enclosed stamped postcard.

Thank you for your attention to this request.