

RE: The Common at Sinnott Farm

Dear Jim:

Let me start with the usual attorney disclaimers: in transmitting this information to you, I am not serving in the capacity of your attorney or as an attorney for the association of homeowners of which you are the acting president. The information contained here is not to be construed as legal advice, nor is it to be relied on in that capacity. It is given purely as a favor to my favorite brother and solely because I love you dearly.

I pulled our file on this PRD development and looked at the search file we have to see if I could determine the status of the area of Sinnott Farm commonly known as "The Knoll". This was done in response to your questions about who owns this area and whether or not it could be developed. As nearly as I can determine, "The Knoll" is an area of land that lies on the southerly side of Terry Plains Road and the easterly side of Ryefield Hollow Drive. It is shown on the survey filed with the declaration creating your development as "Additional Land – Development Rights Reserved In This Area All Improvements In This Area Need Not Be Built". It is land that was owned by the original developer, Peter Stich, and is part of what was declared under the Declaration of The Common at Sinnott Farm. In that declaration, the developer created 66 units or lots and reserved the right to create an additional 33 on this and possibly some other land. The developer had a mortgage on this entire development with The Connecticut Bank and Trust Company. At some point, the developer got into financial difficulty and so did the bank, and the end result was that Peter Stich, to avoid a foreclosure, deeded this, some units and some other property in the development back to FDIC as Receiver for New CBT, in satisfaction of that mortgage. That deed is recorded in Volume 561, Page 341 of the Bloomfield Land Records. It describes the land in this area by a "classic" legal description, but the deed does not specifically mention that the developer was also conveying to FDIC the development rights and special declarant rights that went with this land. That would have been the right to create and declare the additional 33 units. The deed does convey "all right, title and interest". This is really where the legal fun begins.

FDIC sold the land and existing unsold units it received from Peter Stich to James Street Development Corp. by quitclaim deed recorded in Volume 631, Page 95. The property was described as subject to the Declaration, which it is. This deed also conveyed whatever special declarant rights FDIC had to the extent it had any. The argument over whether FDIC in fact had any development rights and special declarant rights surfaced at this time. Peter Stich maintained that he purposely omitted any specific reference to the development rights and special declarant rights in his deed to FDIC, and that he intentionally did not transfer them, because he was dissatisfied with the deal FDIC handed him and wanted them to have to renegotiate with him. He maintained that he still held the

right to build and declare the additional 33 units. FDIC maintained that he parted with "all" his right, title and interest in the land, and that meant "all".

James Street Development Corp. transferred what it got from FDIC to James Street Development Corp. LLC at Volume 648, Page 307. Subsequently, James Street Development Corp. LLC transferred some but not all of what it owned to Toll CT II, Limited Partnership by deed recorded in Volume 1025 Page 269. This deed described certain units by number, property known as "The Highlands" and property described as the "Canfield Parcel". I did not research what the "Canfield Parcel" is. Toll CT did not receive property described as "The Knoll".

Our search extends to July 17, 2000. At that point, no transfer of the land known as "The Knoll" had been made to the Association, that I can see from our file, although under this scheme of development, the Association is supposed to end up owning title to the common elements, which is everything in the development that is not a unit. There is also no evidence in our file that the dispute between Peter Stich and FDIC/James Street over the ownership of the right to development<sup>of</sup> the remaining units was ever resolved. That may be why you can't get a clear answer out of the town. It will probably require some litigation to resolve whether those rights were transferred by Stich or not.

The other little twist here is that the development rights were only reserved for 21 years from the date of the declaration. It was recorded July 22, 1988. They would normally expire in 2009; however, there is some peculiar language in the copy of the declaration I have, describing the termination of the special declarant rights that may lead or already have led to the termination of the development rights before then, under the recent case of *Cantonbury Heights Condominium Association v. Local Land Development LLC*, which was decided May 24, 2005. This is way too complicated for me to get into with you, but if the rule of that case applies to your development, it would mean that neither Stich, nor James Street, nor Toll could build any more units without coming back to the unit owners for consent.

The only piece of advice I will give you here is that the Association should vote to spend some money for an initial conference with a good CIC lawyer to sort this out. It would be money well spent to have your declaration reviewed with this specific question (can someone come in and build more units?), in the light of that case law, and it may not cost that much.

So I hope this is helpful as a starting point for further work by the Association. If you're going to contact a lawyer, I would recommend Matt Perlstein in Farmington, because this is all he does, he's very smart and very interesting, and you won't have to spend a lot of time educating him as to the issues.