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Woodland Pointe HOA  
c/o Mike O'Brien, Community Association Manager  
Iris Management Group, LLC  
7449 Cypress Court  
Macedonia, Ohio 44056

Re: Owner Common Element Improvements

Dear Mr. O'Brien:

On behalf of the Board of Directors for Woodland Pointe Homeowners Association, you asked for our office's opinion regarding the Board's authority to allow owners to install gardens and other improvements in the common element open areas immediately behind their lot. My response to this request is based on my review of the information received, review of the Woodland Pointe Declaration and Bylaws, research and review of the Ohio Planned Community Act, Ohio Nonprofit Corporation Act, and pertinent case law, and on our experience in representing community associations throughout Ohio.

Declaration Article XI, Section 1 provides that the Association is responsible for managing and controlling the common elements. Next, Bylaws Article III, Section C(15) explains that the Board is "...responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs." Accordingly, the Board determines how the Association manages the common elements.

The Ohio Planned Community Act lists various powers that community association boards possess in carrying out their common element management. Specifically, Ohio Revised Code 5312.06(D)(8) authorizes the Board to "grant easements... and concessions through or over the common elements." That said, like all Board powers, the Board must exercise its easement authority in a reasonable manner. As such, when an owner requests to make a landscaping or garden improvement in the common elements, the Board may grant the owner an easement for the installation if the area is immediately adjacent to the owner's lot and in an area other owners do not generally use (i.e. directly behind their lot).

I understand that the Board is considering adopting a common element improvement policy that also considers the common element use following an owner selling their lot. Specifically, the Board desires to allow the new owner the opportunity to continue to use the common element area in the same way as the old owner, or, allow the area to revert back to its former natural appearance. This policy is acceptable, however, the Board must keep this in mind when deciding whether or not to grant an easement for the particular improvement.

For example, while natural improvements can revert back to natural open space, hardscaping requires that objects be physically removed from the area before it will revert back to a natural appearance. The Association will not be capable of requiring that the new lot owner pay for the costs of the hardscape removal unless the easement that the Board grants the owner is reduced to writing, recorded with the county recorder's office, and specifically references that the Association can remove the improvement at the owner's expense if the improvement is not properly maintained.

In summary, the Board has authority to grant owners reasonable easements for installing landscaping and gardens in the common element areas immediately behind their lots and to create an improvement policy that helps clarify the improvement request and maintenance process, along with an explanation of the types of improvements that the Board will approve.

I trust the above responds to the Board's request. If you or any Board members have any questions or would like to discuss this matter further, please do not hesitate to contact me.

Sincerely yours,



NICHOLAS J. MEINERT

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