

WHITEWATER SPRINGS POA BOARD MEETING
JULY 26, 2016

ITEM NO. VIII - MS. HEYER RESPONSE

REPLY FROM CONNIE HEYER – June 14, 2016

Here is what I've found out to date:

1) Who is the developer/declarant (is there one - is there one owner with "special" declarant/developer powers under the deed restrictions? In my opinion no there is not. I am pulling a copy of the deed into Montvale, but it does not appear from Erin's spreadsheet that Montvale acquired "the project in total, or the remainder in total for purposes of development and sale." This wording is not entirely clear, but the intent appears to be, if the original developer sold all portions of the project OTHER than portions it had already sold to a third party to someone for the purpose of development and sale, then that new person would acquire declarant rights.

It looks to me from Erin's spreadsheet that Montvale acquired some of the lots, but that there are others held by other entities for purposes of development and sale. This being the case, in my opinion Montvale would not be the "declarant/developer". The deed restrictions defined declarant/developer as Suntex, or their successors and assigns PROVIDED that these successors or assigns "acquire the project in total, or the remainder in total, for purposes of development and sale."

2) Who is responsible for the fence? That is a good question that I don't yet have a good answer to. The plat shows no easement, not even for the mailbox area. The deed restrictions show no easement. I am researching the official public records to figure out if there are any easements imposed on these lots. Do you all know who owns these lots? Regardless I'll follow up asap when the title researcher has finished research on any easements on this lot. I find no documentation to indicate that these areas are "Commons" as defined in the declaration. The fence looks to be in a utility and drainage easement, but that doesn't mean anything really.

3) Can fines be instituted? Yes. The bylaws allow for rule making. I've attached a draft for your review tonight. Happy to make any changes, to standard fine amounts or otherwise.

4) Can you condense your CCRs? Yes, we could do a consolidation, it would mean finding any difference between the documents and noting them - unless you wanted to have all six sections vote 67% (each section votes 67%) to adopt a new all-encompassing declaration. But I think they are all virtually identical, so a consolidation would likely not be that much trouble.

5) What about the dam? Does the board need authority for new improvements? No in my opinion the board does not need authority to undertake new improvements. The declarations (Article VII section 2) expressly allow annual assessments to be used for "construction" of common elements and construction of drainage systems or community facilities. That being said it is often a good idea as we discussed. But the only restriction I find is that if you needed to levy a special assessment to fund the dam, it must be approved by a majority of members casting votes.

6) Can you enforce speed limits? I believe we discussed, but yes you could adopt a speed limit rule, have volunteers out with radar guns, and enforce the rule.