



**SUSAN B. SWIMLEY**  
*Attorney and Counselor At Law*

1807 West Dickerson, #B  
Bozeman, MT 59715  
Phone: (406) 586-5544  
Facsimile: (406) 586-3130

August 30, 2013

Lazy TH Estates Homeowners' Association  
c/o Nicholas Hether  
373 Sir Arthur Drive  
Bozeman, Montana 59718

Re: Covenants Questions

Dear Nick:

Your email to me dated July 29, 2013 had a number of questions that I would like to address here in letter format. The questions posed, with the answers are as follows:

1. The First Supplemental Declaration of Protective Covenants and Restrictions has been drafted consistent with the ballot and minutes provided by Lazy TH. It has been executed sent for recording. First Supplemental Declaration sets out the amendments of §§ 3.3, 3.4 and 3.10, which were voted on at your HOA meeting on June 18, 2013. Once we have the recorded original returned from the Clerk and Recorder, my office will supply the original to you for placement with the Association Secretary and my office will maintain a copy. Of course the recorded copy will always be available on the public record.

2. Is there a problem with the usage of "assessments" and "special assessments" in the covenants?

Answer: Article III, §3.1 addresses annual assessments, charges and special assessments. The annual and special assessments are charges against the land and may become liens on the property as well as personal obligations of the lot owner. Section 3.3 further defines annual assessment. Section 3.4 further defines special assessments. The balance of Article III addresses processes and clarifies the Association's ability to assess. All provisions of the covenants must be read together giving meaning to each provision. I find no issue with the terms as they are used in the covenants of Lazy TH.

3. A concern was raised regarding the appearance of "co-mingling" funds received from annual and special assessment payments.

Answer: I understand that the Association tracks and accounts for these different funds as separate line items in the budgets and reports. I find no requirement that the Association maintain separate bank accounts for annual assessments and special assessments. Just as many owners pay both annual and special assessments with one check, the Association may maintain those funds in one account so long as it is clear from the accounting reports that each type of assessment is received and categorized correctly.

4. Do the covenants address the Association transferring unspent general funds to the special funds reserve account?

Answer: On this specific question the covenants provide no specific direction. Section 3.3 provides that the annual assessment shall not substantially exceed the actual and reasonable costs incurred by the Association in carrying out the purpose of the Association. Section 3.4 addresses special assessments. The most conservative approach would be to seek the Association approval for such a transfer via a vote at a noticed meeting when the budget is considered.

5. Concern was raised about the undeveloped lots being assessed for things like snow plowing, etc. which there were claims that these lots “do not benefit them”. Does this covenant change cause an issue and what is the recourse for non-payment of a portion of the annual assessment?

Answer: No lot receives exactly the same benefit from any general action of the Association. Routine park land maintenance can be perceived to benefit the lots directly adjacent to the park land more than lots further away. Repair of a pot hole benefits the lots on the adjacent street more than lots further away. Snow plowing may be perceived to benefit the developed lots more than undeveloped lots. However, undeveloped lots received the benefit of accessibility from snow plowing as well as the benefit of road maintenance that is accomplished by routine snow removal. These types of routine repair and maintenance are the very reason such costs are in the budget and voted on as part of the annual assessment. They benefit all lots. It is not feasible and functional to utilize a proportional equation for general and regular repair and maintenance. While there is a perception of “no benefit”, as I do not understand the usage of the annual assessments to support that claim.

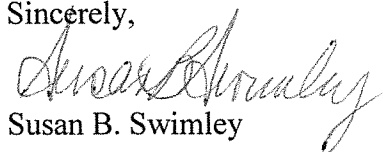
As for the change in the covenants which provides for each lot being assessed, that change was presented to the owners consistent with the covenants, having met the requirements of notice, attendance and voting. The vote supported the change to the covenants. Subsequent to that action, the covenants were amended. Failure to pay any portion of an annual or special assessment may become a lien on the lot and an obligation of the owner failing to pay. The Association is authorized to collect the assessment levied and take action to do so.

6. An ancillary question to the amendment to the covenants regarding assessment of undeveloped lots was raised regarding the allowance for delayed payment of assessments.

Answer: Section 3.7 of the covenants authorizes the Board of Directors to determine the due date for annual assessments and special assessments. The covenants requires no less a specific period of time to commence collection. I find no prohibition for extending the time for collection.

As always it is a pleasure to work with your Association. Should you have further questions or find any of the above responses unclear or non-responsive to the issues, please contact me so that I may remedy any issues.

Sincerely,



Susan B. Swimley