
From: Charles Nolan
Sent: Tuesday, February 05, 2019 8:21 PM
To: 'Ted Bertele'; 'Roosevelt Ridge Board'; 'Jessica H. Miller'; 'Scott Schorer'
Subject: RE: Annexation of Parcel A (lots 18-22)
Attachments: Annexation.pdf

I dispute that I am the HOA secretary; nevertheless, I am very thankful you put me in the loop. Please see attached pdf. I have 5 questions for Jessica.

From: Ted Bertele [mailto:director.ted@rooseveltridgehoa.com]
Sent: Tuesday, February 05, 2019 1:30 PM
To: Roosevelt Ridge Board <board@rooseveltridgehoa.com>; Jessica H. Miller <jessica@jhmillerlaw.com>; carolus@planetchunk.com; Scott Schorer <:sschorer1@gmail.com>
Subject: Fwd: Annexation of Parcel A (lots 18-22)

Gentlemen / Jessica

I think its pivot time. Go ahead and read / digest the email trail. Its pretty comprehensive.

Scott - you are the Declarant, so I suspect your signature is required (or at least helpful?) - Jessica, please confirm.

Charlie - you are the HOA secretary and blew the whistle on this, please digest and let us know if you have any comments. I think we are somewhat aligned with your recommendations. Also, please review the justification for annexation for lots 23-24 - the stuff we found at Gilpin County. I think we are ok there....

I propose the following plan

1. Launch the status letter ASAP with nothing regarding dues. Just get that out. (Ted)
2. Invoice lots 1-17 & 23-25 for Q1 2019 dues (\$300) (Mike / Karen). Q2 and beyond will be at the new rate (\$375 / quarter)
3. Have Jessica draft up Supplemental Declarations for each owner (I presume the Parcel D template handles a lot of the work), I don't think this is a significant cost driver and a separate Plat (per Chris Hartman) is not required (additional expense avoided). We can discuss live in more detail. Mike / Jeff - look at Jessica's schedule and see if you can call in during any of those times. I am free all day Wednesday and Thursday.
4. Lots 18-22, we need to have a discussion with each owner. I put suggested points of contact. Let me know what you think. I will draft a separate email to provide some ideas for how best to address this "administrative oversight".

- Lot 18 - Aucoin (Mike)
- Lot 19 - Wilson (Ted)
- Lot 20 - Twining (Ted)
- Lot 21 - Harris (Ted)
- Lot 22 - Kennedy (Mike)

5. Based on the response of each owner, we will address the issues that come up.

I feel like this is the only way to get back on track.

Thanks

Ted

----- Forwarded message -----

From: **Jessica H. Miller** <jessica@jhmillierlaw.com>
Date: Tue, Feb 5, 2019 at 12:59 PM
Subject: Re: Annexation of Parcel A (lots 18-22)
To: Ted Bertele <director.ted@rooseveltridghehoa.com>

Dear Ted,

Teresa Kerrigan has provided me with some information, but nothing helpful. I agree that it is time to pivot.

I am free tomorrow from 10 am until noon and then 1:30-3pm (Wednesday, 2/6/2018) (I have given the Wednesday times out to one other client). Would any time in that range be convenient for you? I have a fair amount of availability before 3pm on Thursday. If not, please let me know what would work for you.

Sincerely,

Jessica H. Miller
Attorney at Law
The Law Firm of Jessica H. Miller, LLC
Canyon Professional Building
595 Canyon Boulevard
Boulder, Colorado 80302
Tel: (303) 443-0568
jessica@jhmillierlaw.com

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On 2/4/2019 10:59 AM, Ted Bertele wrote:

Hi Jessica
Looking for any updates you may have.
It seems to me that Step 1 has not found any compelling evidence.

- The 200+ documents I downloaded from the Gilpin County have (in my opinion) come up short.
- Chris Hartman (Surveyor) told me that he did not record any lot Plats (like the lot 18 plat I sent earlier).
- The annexation by Plat (phase II plat with note 6) is in question, is it legitimate?

I feel like we are spinning our wheels and maybe its time to draft supplemental declarations for lots 18-22 and take them to the owners (Step 2). How that process is addressed (voluntary, administrative oversight, whatever) is something the board needs to discuss. This is in the realm of risk management. If an owner fails to execute a supplemental declaration, then the HOA has a right to bill for services provided (i.e., road maintenance, plowing, gate repairs, etc). One interesting fact, the HOA spent a lot of money on repairs this past summer, so those invoices could be substantially larger than HOA fees..

I also believe that we can invoice current annexed owners for dues and move forward with HOA business (lots 1-17, 23-25).

I am available to discuss before 1:00 and after 3:30 today.

Thanks
Ted

On Wed, Jan 30, 2019 at 11:47 AM Jessica H. Miller <jessica@jhmillierlaw.com> wrote:

Dear Ted,

I will follow up about the retainer balance. At this stage in the month, it is more accurate to do it when I am working on end-of-the month bills.

I agree with the steps that you have detailed. We are currently on step 1: we are looking to see that, when Parcel A was annexed into the Roosevelt Ridge HOA as lots 18-22, were they were validly annexed. In addition to the work that you have been doing to forward step 1, I am in communication with Teresa Kerrigan.

Any amendment effectuating an annexation as a declarant development right must reallocate the allocated interests among all units or it is invalid. So I am looking for anything that was recorded when Parcel A became lots 18-22 that reallocates allocated interests among the units in the HOA.

C.R.S. § 38-33.3-103(14): Annexation by the declarant is a development right.

C.R.S. § 38-33.3-210(1): “To exercise any development right the declarant shall prepare, execute, and record an amendment to the declaration and, in a condominium or planned community, comply with the provisions of section 38-33.3-209. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created and, except in the case of subdivision or conversion of units described in subsection (3) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 38-33.3-208.” I would be interested in any plats, maps, deeds, declaration amendments, etc...that reallocate allocated interested in the HOA among the owners.

It cannot have been done in the original Declaration by a formula according to a 2016 Colorado

Supreme Court case. “[W]e reject the Association’s argument that the CCR’s formula obviated the need for the amendment to reallocate the allocated interests itself... The unambiguous language of that provision states that any amendment effectuating a development right must reallocate the allocated interests among all units; since neither the Ryland-Ochsner deed nor the Filing 2 Plat did so, they failed to comply with the statute.” Ryan Ranch Community Association, Inc. v. Kelley, 380 P.3d 137 (Colo. 2016).

I am especially interested if this reallocation was done as part of the process of annexing Parcel A into the HOA, especially before they were transferred to 3rd parties.

Sincerely,

Jessica H. Miller
Attorney at Law
The Law Firm of Jessica H. Miller, LLC
Canyon Professional Building
595 Canyon Boulevard
Boulder, Colorado 80302
Tel: (303) 443-0568
jessica@jhmillerlaw.com

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On 1/29/2019 10:29 AM, Ted Bertele wrote:

Hi Jessica

I wanted to touch base and make sure the board is up to date on where we are.

Over the past few weeks, you have been tasked with looking into annexation of parcel A lots (lots 18-22). This task has been broken down into two steps.

Step 1 - see if annexation has already taken place. This process could be done via plat or supplemental declaration or other notes in the deeds or other recorded documents. To support this phase, We have been doing a ton of research, digging up old documents and connecting with old contacts.

Step 1 Status

- RR Phase 2 Plat note 6 seems like a reasonable start. This document lays out all the lots created from Parcel A, but the note does not properly

reference the CCR's reception number (its blank). Is this sufficient for annexation? 6.) *THE LOTS SHOWN HEREON ARE SUBJECT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ROOSEVELT RIDGE RECORDED BY SEPARATE INSTRUMENT AT RECEPTION NO. _____ OF THE RECORDS OF GILPIN COUNTY, COLORADO.*

- Charlie Nolan and I went to Gilpin County and downloaded every recorded document associated with Phase I and Phase II RR subdivisions and provided access via google drive. I don't think we found any smoking guns. We have the deeds, deeds of trust, SBEs, ect. You have access to them all and can review them.
- We did not realize that the Plats are recorded separately. Gilpin has a book with names and map numbers and some guy has to run downstairs and find them. Its pretty archaic and there is a chance we could find one...? Attached is the Lot 18 survey (not recorded) with additional notes covering annexation. I have no idea (at this point) if this document has been recorded for lot 18, or any additional lots. Its the same note as what is on RR Phase 2 Plate note 6. 4.) *THE LOT SHOWN HEREON IS SUBJECT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ROOSEVELT RIDGE RECORDED BY SEPARATE INSTRUMENT AT RECEPTION NO. 127233 OF THE RECORDS OF GILPIN COUNTY, COLORADO.* This may require another trip or at least a call. I am going to email and call Chris Hartman to see if he created and recorded anything like this. He is difficult to get in touch with...

Step 2A - Forced Annexation

- There is strong language in the CCRs that allow the declarant to force annexation without owner or HOA approval.
- There are arguments out there that state that nobody can force annexation upon a lot after sale. "You require the owner's consent..." This argument is above my pay grade.
- Delcarant files paperwork (supplementary declaration), not sure who pays for this effort...

Step 2B - Convince owners to annex

- Discuss the current state with un-annexed owners to include a grey-area annexation argument and that the paperwork was not done correctly. Aka Administrative error.
- HOA to provide supplementary declaration paperwork to un-annexed owners, have it executed and recorded at the county. Not sure the cost associated with this, since this includes a plat for each lot (as done with parcel D / lot 25).

Addition notes

Lot 23 - Bramante was subdivided from Parcel E and I believe its annexed (will send documentation for review)

Lot 24 - Lurie was subdivided from Parcel F and I believe its annexed (will send documentation for review)

Lot 25 - Burnstein was recently approved for a TDR and closed yesterday (1/28). This closing included a supplementary delcaration

Easement Stuff - No going to allocate any resources on this, Parcel D / Lot 25 closed.

Lastly

I just wanted to make sure we are working within our cost constraints. I have been doing a significant amount of grunt work to keep you operating at a higher level. Could you provide a rough estimate on our costs to date (+/- 20% range)? I think we are still below \$2,000.

Thanks

Ted

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Ted Bertele

Director

Roosevelt Ridge HOA

303 618 8200

director.ted@rooseveltridgehoa.com

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Ted Bertele

Director

Roosevelt Ridge HOA

303 618 8200

director.ted@rooseveltridgehoa.com

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Ted Bertele

Director

Roosevelt Ridge HOA

303 618 8200

director.ted@rooseveltridgehoa.com