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March 13, 2020

Roosevelt Ridge Homeowners Association  
1630A 30th Street #442  
Boulder, CO 80301

*Re: Cistern*

Dear Owners,

The Board of Directors for the Roosevelt Ridge Homeowners Association (“Association”) has requested that I analyze a few issues related to the proposed construction of a water cistern for fire suppression. The following events are especially relevant to this issue:

1. On August 23, 2005, the Gilpin County Commissioners required Lone Pine Real Estate LLC “to petition for annexation into a fire protection district” and to “complete any code improvements required by the district” as a condition to approving its plat. Resolution, SBE 05-01, Recorded at Reception 127419 on September 15, 2005.
2. In late 2005, Lone Pine Real Estate LLC and the owners of lots 8, 9, 10, 11, 12, 14, 15 filed a Petition for Inclusion of Real Property with the Board of Directors of the Colorado Sierra Fire Protection District, which petitioned for the property’s inclusion Colorado Sierra Fire Protection District (“Petition”). The Board of Directors of the Colorado Sierra Fire Protection District granted the Petition.
3. On February 8, 2006, Gilpin County Court ordered that the property described in the Order be included in the Sierra Fire Protection District (“Order”). This Order was recorded in the records of the Gilpin County Clerk and Recorder on February 21, 2006 at Reception No. 129088 and described the property subject to the terms of the Order (“Subject Property”).

By recording the Order with the Gilpin County Clerk and Recorder, the Order binds the Subject Property and the owners of the Subject Property. The Order does not condition the application of its terms based upon whether the owners are members of the Association or whether these lots are annexed into the Association. The Order applies to the current owners of the property described in the Order by virtue of their ownership of a property included in the Order.

This Order requires the construction of a cistern “prior to the completion of 25% of the homes on the Property.” The date that a Certificate of Occupancy was issued by the County is often cited as the date when a home is considered “complete.” I am not aware of any circumstances that

March 13, 2020

Page 2

would make using the date that the Certificate of Occupancy issued as the date of completion unreasonable or inaccurate in this case. The Subject Property now includes a total of 25 lots, and it is reasonable to conclude that the Order requires the construction of a cistern after the construction of the 6th home and before the completion of construction of the 7th home, which occurred in 2018 based upon the dates Certificates of Occupancy were issued. As a result, Gilpin County and the Fire District have the ability to require the owners of the Subject Property to construct the cistern.

The Association is constructing the cistern to benefit its members, which is permitted under the Declaration. *See* Declaration, Section 7.16: “Power to Acquire Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners, including improvements and personal property. The Association may construct improvements on the property and may demolish improvements owned by the Association.”

The Order does not provide the Association with standing to enforce the Order against Lone Pine Real Estate, LLC—the Declarant—or previous owners of the properties. The Order does not name the Association nor grant the Association specific any rights against the owners or the declarant.


However, the Declaration includes a term relieving the Declarant from any obligation to construct additional improvements. Declaration, Section 3.3: “No Duty Created. Neither the Declarant nor the Association shall have any duty or obligation to build, create or establish any improvements on the Project Area, including but not limited to Trails and Recreational Areas contemplated by this Declaration.”

The question of whether owners can make a title insurance claim is ultimately between each owner and their title insurance company under the terms of each issued title insurance policy. Additionally, owners may have a claim against the individual that they purchased their property from based upon the terms of their purchase contract and the circumstances of their unique transaction (e.g. the extent of the disclosures required, the substance of the disclosures provided, terms of waivers of liability, etc...). The Association is not a party to either the title insurance policies or the purchase contracts and, therefore, it cannot make a claim on behalf of the owners on this basis.

The Board is scheduling a meeting to move this process forward. Thank you in advance for your attention to this matter.

Regards,

THE LAW FIRM OF JESSICA H. MILLER, LLC

  
Jessica H. Miller