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MARK R. SHAPIRO

October 11, 2004

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John C. Clark, Esq.
Folkstead & Fazekas, P.C.
316 Wilcox Street
Castle Rock, CO 80104-2441

RE: Northridge Subdivision
Town of Erie, Colorado

Dear Mr. Clark:

I am in receipt of your letter of August 30, 2004 and its enclosures.

I represent the Town of Erie, and in that capacity I advise the Town regarding legal matters and matters to which I have been directed by the Board of Trustees.

Please be advised that I do not represent the residents of the Northridge Subdivision, nor have I been authorized or directed to provide legal services to the residents of Northridge Subdivision.

Your letter of August 30, 2004 presents an argument addressed to the memorandum I prepared for the Town of Erie Board of Trustees, at the Board's request. Initially, it is important to put into context the reason the memorandum was requested by the Board, and what the memorandum addressed. The inquiry of the Board of Trustees was in response to allegations raised by some residents of the Northridge Subdivision that no homeowner association had been formed or provided for by the Northridge developers. The memorandum I presented to the Board was intended to address that inquiry.

In your letter, you set forth two arguments:

The first argument is that there are three separate associations rather than a single association. This is not so much a disagreement with the memorandum as a different parsing of the recorded Declarations. Essentially, you are in agreement that the recorded Declarations create an association of some sort. What you disagree with is what association, exactly, was formed. You agree that there is, at the very least, a homeowners association formed for your client's filing as you state that "your client has no objection to the enforcement of the Filing No. 3 Declaration as written..."

You go on to argue that while the Declaration recorded on April 18, 1997 did refer to "All Lots in Accordance with the Recorded Plat of Northridge Subdivision," that this language, plain and straight forward in its directness, is "generic" and "cannot be relied upon as support" that all the lots are in a single association. Your statement, made without further support or legal basis, hardly provides "ample evidence" that the intent of the Declaration was different from the plain meaning of the language. In addition, your analysis ignores the plain-meaning rule which states that if the language appears to be unambiguous, then the meaning should be derived from the document itself.

In fact, the evidence seems to support the formation of a single association.

When the language you cite is read in context with the prior two recorded Declarations (which do not differentiate filings, but which similarly refer to "all the lots in the Northridge Subdivision"), with the content of the Declarations (which are all identical), with the definitions contained within the Declarations, and with the recording order of the initial Declaration, I believe a strong case can be made that the Declarations all refer to, and are intended to refer to, a single association.

The Annexation Agreement was recorded on November 15, 1994. The initial Declaration was recorded December 13, 1994 at Reception No. 2418863, and is entitled "Declaration of Covenants Conditions and Restrictions for Northridge Subdivision Town of Erie – State of Colorado." The sole Whereas clause states: "Whereas, Declarant is the owner of certain real property in the town of Erie, state of Colorado (hereinafter sometimes referred to as Northridge), which is legally described as follows: All Lots in Accordance with the Recorded Plat of Northridge Subdivision." At the time the initial Declaration was recorded, there were no subdivision plats or individual filings recorded. Northridge filing No. 1 was recorded at Reception No. 2418864, after the initial Declaration was already in place. The initial Declaration was intended, by its own clear and unambiguous language, to apply to the entire Northridge Subdivision.

Within the initial Declaration itself, the definitions are clear and unambiguous: "‘Properties’ shall mean and refer to that certain real property hereinabove described to as the Northridge Subdivision." (Emphasis added). "‘Lot’ shall mean and refer to any plot of land above upon any recorded subdivision map of the properties, excluding roads, streets, etc. or a property survey furnished to the Owner at time of closing." (Emphasis added).

This language is more than "generic." It is intentionally, specifically inclusive of all the lots in the Northridge Subdivision. In fact, the definitions in the Declaration recorded on April 18, 1997 are exactly the same, and refer to "any plot of land above upon any recorded subdivision map of the properties" while the "properties" are still defined as "...the Northridge Subdivision." To make your argument cogent, the definitions in the Declaration recorded on April 18, 1997 would have had to define the properties as the Northridge Subdivision Filing 3. This was not the case, however, as "properties" is defined clearly therein as the Northridge Subdivision.

You go on to dismiss the concept of a "master homeowners association," as in three smaller associations with a master association over all three, and I would concur in this. I believe the correct reading of the Declarations is that a single association was formed once the initial Declaration was recorded prior to any further subdivision filings. Further, all the references in all the Declarations are exactly the same in their definitions and reference to all lots in any subdivision plat, and all definitions and references are to the "Northridge Subdivision." No distinction is drawn based upon phases or filings.

Finally, you state that the corporation formed on August 21, 2002 (Northridge Homeowners Association, Inc.) does not apply to Filing 3. I would agree with this conclusion. The attorney for the Northridge developers, for some unknown reason, incorporated Northridge Homeowners Association, Inc. with a reference in the Articles only to the Declaration recorded on May 6, 1996. In any event, the incorporation was accomplished 8 years following the recording of the initial Declarations, and nearly 6 years following the recording of the same Declaration filed on May 6, 1996. This is an action of some mystery (probably motivated by the finalization of the Settlement Agreement reached between the Town and the Northridge developers two months prior to the recording of the Articles of Incorporation).

The fact that the Northridge Homeowners Association, Inc. was filed in August of 2002, however, does not affect the existence, legality and validity of the association (or, to follow your theory - the associations) formed earlier by the filing of the Declarations. At most this would afford some additional legal rights (lien and foreclosure privileges). If the theory of a single association is correct, then the filing of the Articles in August of 2002 would have very little significance beyond the ability to save a few dollars by amending the Articles to clarify that the corporation refers to the entire Northridge Subdivision. The option would be to form a new corporation to take advantage of the same additional legal rights afforded by incorporation.

The second "collateral matter" argument is a new item to my knowledge, not addressed in the memorandum prepared for the Board, but based upon your reading of a single definition contained in the Declarations (a definition which does not directly address the issue of legal responsibility for maintenance costs, but simply addresses the meaning, for the purposes of the Declarations, of the term "Trails and Parks"). Your argument appears to be that the homeowners association has no maintenance responsibility because the definition of "Trails and Parks" as contained in the Declarations addresses "real property owned by the Town of Erie for the common use and enjoyment of the Northridge Subdivision homeowners."

Your argument stretches from that definition by stating that since Trails and Parks are defined in the Declarations as real property for the common use and enjoyment of the Northridge Subdivision homeowners (and not exclusively for the Northridge homeowners), and that since the Subdivision agreement states that the Town takes ownership of the real property following final acceptance of the public improvements thereon, that, ergo, the maintenance is the Town's responsibility.

First, as you are aware, the Town is not a party to the Declarations. The Declarations are a private contractual obligation and arrangement between the property owners within the Northridge Subdivision, privately entered into and privately enforceable. Therefore, the definition contained in the Declarations which you cite as the key language upon which you base your argument may be germane to the residents of the Northridge Subdivision (and privately enforceable therein), but it is not binding upon the Town. Not only is it not binding upon the Town, but the Town had no part in creating the definition. The definition was created by the developers for internal use within the private Declarations. The definition is found in no other document.

The legal obligations of the various parties with regard to maintenance are, however, clearly and unequivocally set forth in the Annexation Agreement, which is a contractual agreement between the Town and the owners of the Northridge Subdivision (and the "... purchasers, and subsequent owners of any lots or parcels within the Property." See the Annexation Agreement, paragraph 14., set forth herein in pertinent part).

The maintenance responsibilities of the homeowners association are set forth as follows:

3A. Any open space, parks landscaped right-of-ways, or trails dedicated to the Town shall be maintained the homeowners association, by covenant, until such time as the Town agrees to financially sustain the cost of maintaining those areas. This does not include public land dedications for the purpose of new town facilities or other public facilities. (Original emphasis).

3G. TRAILS AND SIDEWALKS. Subject to warranties contained herein, all dedicated trails and sidewalks will be maintained by the immediate adjacent property owners or the homeowners association. All repairs, after the expiration of the warranty periods will be done by the Town. (Original emphasis).

Real property dedications and public improvements are accepted by the Town following the two year warranty period for the capital improvements required to be constructed by the developer pursuant to the Subdivision Agreement. Repair or replacement of the improvements, after such acceptance, is the responsibility of the Town. However, day to day maintenance, as addressed in the Annexation Agreement, remains the responsibility as agreed upon by the parties – namely, in this case – the homeowners association. This same arrangement is found in other subdivisions within the Town, and was apparently standard language used by the Town in some annexation agreements and subdivision improvement agreements entered into in the same time period.

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Prior to receiving your letter, no question has been raised regarding the Annexation Agreement language. This issue was not addressed in the memorandum to the Board as, 1) the Board was not aware that there was any misunderstanding regarding the Annexation Agreement language, and 2) the Board did not request this information.

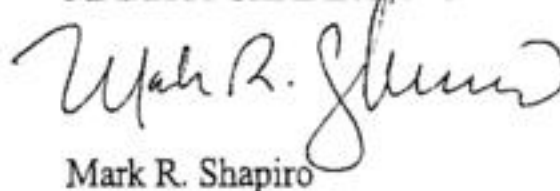
In closing, I would like to address an issue that requires some clarification. The memorandum was legal advice to my client, the Town of Erie, with regard to the Board's specific questions. No more and no less. The memorandum was not intended to advocate for or against the existence of an association in the Northridge Subdivision. Despite my repetition of this fact, and despite my urging that the residents concerned with this issue obtain their own legal counsel, the memorandum has become a focus of the attention of at least a few people in the Northridge Subdivision, including some opposed to the association (witness the fact that you have addressed your arguments advocating three separate associations to me as the Town's Attorney rather than to the residents of the Northridge Subdivision or an attorney representing the residents).

The final resolution of this issue, whether the Declarations created a single homeowners association for the entire Northridge Subdivision or whether the Declarations created three different associations, is not a Town issue, nor should it be a Town issue. Interpretation of the Declarations is a private issue which should be, and will ultimately be, determined by the residents of the Northridge Subdivision.

I understand that residents of the neighborhood have contacted Mr. Clark Edwards, Hutchinson, Black & Cook, LLC, in order to obtain legal advice regarding the position you have advocated in your letter. I would encourage you to correspond directly with Mr. Edwards as I believe that the issue which you have raised regarding the interpretation of the private Declarations is an issue to be resolved privately among the Northridge Subdivision homeowners.

Very truly yours,

MARK R. SHAPIRO, P.C.

A handwritten signature in dark ink, appearing to read "Mark R. Shapiro", written over the printed name.

Mark R. Shapiro

/lg

cc: Mike N. Acimovic, Town Administrator
Clark G. Edwards, Esq.

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Hutchinson, Black & Cook, LLC
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RE: Northridge Homeowners Association

Dear Clark:

I understand that you represent the Northridge Homeowners Association, or at least a number of persons interested in pursuing the establishment and clarification of the Association. For that reason, and for your information, I have enclosed a copy of a letter I have recently sent to Mr. John C. Clark, an attorney engaged by Mr. Tim Kelley, a resident of the Northridge Subdivision.

Although I believe the homeowner association issues are of a private nature and do not directly involve the Town, Mr. Clark's letter was addressed to me, in my capacity as the Town Attorney.

Before addressing Mr. Clark's letter and my response, I think it is important to clarify the initial Town action which has given rise to Mr. Clark's letter. The Board of Trustees directed that I prepare a memorandum addressing the question of whether a homeowner association had been formed or provided for by the Northridge Subdivision developers. The memorandum I presented to the Board was legal advice to the Board addressing that question. The memorandum was not intended to, and does not, advocate for one legal position over another, and was prepared solely for the use of the Town of Erie.

Mr. Clark, in his letter, takes exception to the conclusion of the memorandum. The only serious disagreement between Mr. Clark's position and the conclusion of the memorandum is that Mr. Clark believes the Declarations create three separate associations rather than a single association. This was somewhat of a surprise since the last position I understood from those residents opposing the formation of an association was a blanket denial of the existence of any association whatsoever.

Mr. Clark also raised a second issue, not addressed in the memorandum. The new issue addressed the "homeowners association" maintenance requirement with regard to the parks in the Northridge Subdivision. His argument is based upon a definition (not

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directly addressing the maintenance issue) contained in the private Declarations. He uses the definition found in the Declarations to form a conclusion that the Town is responsible for the maintenance. As you know, however, the Town is not a party to the private Declarations, and therefore is not bound by any definitions (or implications of the definitions, no matter what the reading) contained within the Declarations. In contrast, the Annexation Agreement, which is contractual agreement with the Town, clearly and plainly addresses the homeowners association maintenance requirement.

I welcome your involvement and representation of the homeowners association. Your experience and legal advice will be most valuable to the residents of the Northridge Subdivision and helpful in resolving the intent of the Declarations. At this point, I believe that the Town may withdraw itself from this private discussion, and that the discussion may go forward between the residents of the Northridge Subdivision neighborhood with your guidance.

I hope the enclosed letter will be helpful to your evaluation of the Northridge Subdivision Declaration issue. I understand you have already received a copy of Mr. Clark's letter.

If you have any question, please call me.

Very truly yours,

MARK R. SHAPIRO, P.C.



Mark R. Shapiro

/lg

cc: Mike N. Acimovic, Town Administrator
John C. Clark, Esq.