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May 12, 1987

Ms. Patti Butcher  
Cottage Park Homeowners' Assoc.  
4376 Cottage Park Road  
White Bear Lake, MN 55110

Re: Articles of Incorporation and By-Laws

Dear Ms. Butcher:

This is to acknowledge and thank you for copies of the Articles of Incorporation of Cottage Park Homeowners' Association and By-Laws. A very brief summary of these documents is as follows:

The Cottage Park Homeowners' Association was incorporated as a non-profit corporation on January 20, 1981, and filed for record with the Secretary of State on February 2, 1981. The original incorporators were Dennis J. Trooien and Susan L. Ahlcrona. The name of the corporation is "Cottage Park Homeowners' Association" and its registered office is located in Cottage Park, without giving a street address. Its designated purpose is to provide for the maintenance, preservation and control of common areas owned by the association for the benefit of the private owners of property in the Cottage Park area. The corporation is given the power to levy and collect payment of charges and assessments. To qualify as a non-profit corporation no part of the associations earnings may benefit the members, although the expenses of the officers and directors are authorized to be reimbursed in the By-Laws. No capitol stock is to be issued by the corporation.

The actual operation of the corporation is governed by the By-Laws, which are 12 in number and cover 15 typed pages. Members of the association are lot owners within Cottage Park, and include contract for deed purchasers. To remain a member of the association, a lot owner must keep current in his dues and assessments. The rights of a lot owner to be and remain a member of the association would pass to the subsequent owner if the lot were sold. There is no provision in the By-Laws to cover the situation if a lot owner loses his qualifications to be a member by reason of non-payment of dues or assessments, and thereafter sells his lot. Must the subsequent owner pay up delinquent charges and assessments before he may qualify for ownership?

Ms. Patti Butcher  
page 2  
May 12, 1987

The By-Laws contain comparatively standard provisions for meetings of the members, election of directors, and in turn election of officers. A comparatively small number of members, 1/10th of the votes of the membership, constitutes a quorum for the transaction of business, except amendment of the Articles requires a vote of 75% of the members. Article IV, Section 4, relates to the "Articles of Incorporation, the Declaration, or these By-Laws". The use of the word "Declaration" apparently refers to a condominium type of organization which is not relevant here. Voting may be either in person or by proxy, that is an authorization in writing signed by a lot owner authorizing another person to vote on his behalf. I am somewhat confused by Section 4 of Article IV, which provides that 1/10th of the votes of the membership is a quorum, but Section 5 provides that all elections and all questions shall be decided by a majority of the voting power of the association. Article IV relates to meetings of the members.

Article V of the By-Laws provide for a Board of 5 Directors, but someone has crossed out the arabic (5) and interlined the numeral "6", although leaving in the word "five" in Section 1. The original Articles provided for two (2) Directors, but authorized the number in terms of the Directors to be established by the By-Laws. Apparently the intent was to make the Board consist of six (6) Directors as Section 2 provides for three (3) Directors be elected each year for a term of two (2) years. Directors are elected by a secret ballot, and cumulative voting is not permitted. "Cumulative" voting is when a member is permitted to double or triple his votes for a single individual. For example, if three (3) Directors were to be elected, and cumulative voting were allowed, a member could cast three (3) votes for one individual, and lose his right to vote for two others. A majority of the Directors constitutes a quorum, which in this case would mean four (4) in number. The right to establish rules and regulations governing the use of the common areas and to make and establish dues and assessments is vested in the Board of Directors. The Board is also given the power to establish penalties for infractions, including the right to deny voting privileges and the enjoyment of common areas. Suspensions are limited to a maximum of 60 days. The real burr under the saddle is, how does the Board of Directors enforce its suspension? If we are to assume that the White Bear Police Department are not going to become involved in enforcing internal regulations of the association, as is most likely, how is the enforcement machinery going to work?

The officers to be elected by the Directors are the President, who must be a member of the Board, and a Secretary and a Treasurer, the later two offices may be combined in a single individual. Checks and promissory notes must be co-signed by the President and Treasurer and the President presides at meetings of both the Directors and the association members.

Ms. Patti Butcher  
page 3  
May 12, 1987

There are two types of charges that may be made against a lot, neither of which would have the force and validity of a tax, but only be enforceable by threat of suspension from membership rights. The charges are broken down into annual assessments and special assessments. The special assessments are for a one time charge for a particular capitol improvement whereas the annual charges are similar to dues in a fraternal organization. Annual assessments are levied by a majority (four) votes of the Board of Directors and special assessments require 2/3rds of the members voting, in person or by proxy, at a meeting called for that purpose.

If the easement is granted to the association we have a corporate body which is designated as having perpetual existence that would own and control the easement. The crucial question is, how do they exercise that control?

The second alternative is to have the easement vested in the individual property owners in a manner that would pass with the ownership of each lot within the benefited area. Under this proposal there would be no organized control over the use and enjoyment of the easement, except for peer pressure. The third alternative is a combination of one and two. If the third alternative were adopted a policy question would arise as to whether or not the association would have strict control or loose control over the easement "rights".

Assuming ownership of the easement by the association and strict control, how would the association enforce its regulations against a strong willed member who simply refused to comply or to recognize any sanctions imposed. I would presume that the White Bear Police Department would enforce the terms of the easement to the extent of preventing beer parties or other unauthorized use of the easement areas, but would not be willing to intervene to enforce internal regulations of the association. Here, again, peer pressure would be of some value. A loose form of control would mean that the association would hold title to the easement and that all lot owners would become and remain members of the association whether or not they paid dues (annual charges) or assessments (charges for particular one time improvements). Rules and regulations under this loose form of control would be established by the Board of Directors but they would rely solely on peer pressure for enforcement.

If the loose form of control were to be adopted many lot owners in Cottage Park who would rebel against controls, sanctions and enforcement procedures might well be willing to go along with association ownership of the easement. Disqualification of a lot owner for non-payment of dues or assessments would probably create more problems than it solves. It is my feeling that a lot owner

Ms. Patti Butcher  
page 4  
May 12, 1987

who showed up at an association meeting without having paid his dues or assessments would face sufficient peer pressure to effectively disqualify him from participation.

There is no question in my mind that the association, even as a toothless tiger, is the most effective way of exerting peer pressure. It also provides an excellent means of socializing and to establish a common bond among inhabitants of Cottage Park and given them a oneness of being, a sort of city within a city.

The policy questions to be decided by the lot owners in Cottage Park are two-fold:

1. Is it the wish of the people residing in Cottage Park to have the easement vest in the individual owners or in the association?

2. If it is the wish of the owners to have the easement vested in the association, do the members want a strict control or loose control over the easement rights by the association as a body?

If you wish to have association ownership and strict control then the present Articles and By-Laws could be used. If you adopt the principal of association ownership of the easement and loose controls, then substantial revisions should be made in the By-Laws.

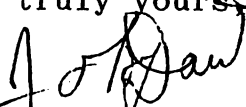
As I mentioned at the meeting at First Minnesota that there is a potential economic benefit to individual ownership of the easement rights although it is primarily psychological. A prospective buyer would know from abstract entries that he had certain rights in the common areas, or the so-called easement rights. If the easement rights were transferred to the association, this would also appear in the abstract but the prospective buyer might have some reservations about joining an organization that had both dues and assessments. In my opinion a non-profit corporation is highly unlikely to be subjected to any type of a corporate income tax even though some elective representatives are pushing for a tax on all for-profit corporations even though they may have years when in fact they suffer a loss. Since I am not a resident of Cottage Park it is not my purpose to make any recommendation as to which course to follow but only to try and inform you, and through you the other owners in Cottage Park of the issues to be answered. If you wish to distribute copies of this letter to all of the owners in Cottage Park you may do so. To furnish each of them with copies of the Articles and By-Laws prepared by Dennis Trooien in 1981, would, in my opinion, establish so many side issues and debates that you might well lose the big picture. The toughest question to answer is:

Ms. Patti Butcher  
page 5  
May 12, 1987

If you vote for sanctions and strict controls, how will  
you enforce them?

I would be happy to appear again at a meeting with residents of Cottage Park and discuss with them the contents of this letter as well as the contents of the Articles and By-Laws to better enable them to make an intelligent final decision. Once that decision is made we should be able to go in and close out the registration proceeding as I am sure the City of White Bear will go along with any decision made by the owners of Cottage Park as the City will undoubtedly regard this as an internal matter to be determined by the Cottage Park homeowners themselves. I greatly admire the spirit of cooperation and community interest that all of the residents of Cottage Park that I have spoken to have shown with regard to this matter.

Very truly yours,



JOHN E. DAUBNEY  
Attorney at Law

JED:lg

cc. Mark Arth  
Councilman Robert D. Peterson  
Dennis J. Trooien