

---

---

**MEMORANDUM**



---

---

**CONFIDENTIAL**

**ATTORNEY/CLIENT PRIVILEGED COMMUNICATION**

**TO: THE RANCHES AT PINEHURST PROPERTY OWNERS’ ASSOCIATION**

**DATE: NOVEMBER 1, 2022**

**RE: CHANGES TO ASSESSMENT RATES**

---

---

**I. BACKGROUND**

The Ranches at Pinehurst Property Owners’ Association (the “Association”) is the property owners association for The Ranches at Pinehurst, Sections 1 and 2, and Ranchos Los Encinos, a subdivision in Montgomery County, Texas (the “Subdivision”). The Board of Directors (the “Board”) of the Association has inquired as to certain matters of interpretation concerning the Association’s governing documents, namely, that certain Declaration of Covenants, Conditions & Restrictions for the Ranches at Pinehurst, recorded under Montgomery County Clerk’s File No. 9153386 of the Real Property Records of Montgomery County, Texas, as amended and supplemented by that certain First Amendment to Declaration of Covenants, Conditions & Restrictions and Supplemental Declaration of Conditions and Restrictions for the Ranches at Pinehurst, recorded under Montgomery County Clerk’s File No. 9661252 of the Real Property Records of Montgomery County, Texas (collectively, the “Declaration”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Declaration and/or the Associations Bylaws (as amended).

The Strong Firm P.C. has prepared this memorandum of its findings with regard to the above-referenced inquiry based on its past knowledge and experience, legal research, and investigation of publicly available information. The information provided in this memorandum is prepared for the exclusive use of the Association, and no party other than the Association is entitled to rely on this memorandum. The contents of this memorandum are confidential and may not be

used by or disclosed to any person or entity, in whole or in part, without the express prior written consent of The Strong Firm P.C.

## II. SUMMARY OF FINDINGS

### A. Is there a limit to an assessment increase presented to the Members for their vote?

Article III of the Declaration generally governs the terms and conditions by which the Association may assess and collect assessments from the Owners, including annual assessments and special assessments. The analysis herein, however, is limited to annual assessments based on the Board's focus of attention. As to the rate of annual assessments, Article III, Section 3 of the Declaration provides that the original rate of annual assessments (for the year 1992) was "Two Hundred Forty and 00/100 Dollars (\$240.00) plus One and 00/100 Dollar (\$1.00) times the number of acres in that Tract as reflected on the recorded deed." Such Section goes on to provide that changes to such rate were to be governed as follows:

"The annual assessment may be increased from time to time by the Board of the Association in an annual amount as follows: The maximum annual assessment for fiscal years 1992 through 1994, both inclusive, may be increased by 10% over the maximum annual assessment imposed for the immediately preceding fiscal year by action of the Board, without approval of the Members. The maximum annual assessment for fiscal year 1995 and subsequent years may be increased over the maximum annual assessment imposed for the immediately preceding year by action of the Board, without approval of the Members, by an amount up to, but not more than, that percent of the annual assessment for the immediately preceding year which is equal to the percent of increase, if any, in the "Annual Average" of the Consumer Price Index - All Items, 1967 equals 100, as determined by the U. S. Department of Labor, Bureau of Labor Statistics during the immediately preceding year. If the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the Consumer Price Index - All Items, 1967 equals 100, the Board shall select such other indexes which in its judgment reflects the then broad range of economic factors represented in said Consumer Price Index - All Items, 1967 equals 100. The Board may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount." (emphasis added)

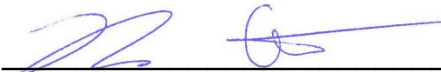
As emphasized above, this Section 3 was drafted with a limited scope of capping maximum increases to the annual assessment rate by action of the Board, without approval of the Members. Therefore, while it is arguably silent as to a maximum amount of increases by action of the Members, it clearly leaves the door open to Member action in lieu of Board action, which would be subject to such limitations. As such, we do not find that the Declaration limits increases to the annual assessment rates when presented to the Members for their vote. Further, the Bylaws are silent on such topic, and while technically outside the bounds of the question presented, Article VIII, Section 1 provides that the Declaration may be amended by the then owners of a majority of all the Tracts in the Subdivision, so a duly constituted majority vote of the Members would have superseding amendment authority to void any conflicting terms in any event.

B. Are there any requirements on what the Board must do prior to proposing an assessment increase for Members to vote?

As discussed above, the Declaration is silent as to a stated process or procedure for a Board-proposed assessment increase for vote by the Members, so if the Board so desires to propose an assessment increase for Members to vote, then it would be incumbent on the Board to make a determination that the projected costs for the Association to “promot[e] the comfort, health, safety, and welfare of the Owners of the Development” (see Art. III, Sec. 2 of the Declaration), exceeded the aggregate assessments to be collected at the current rates. Based on such determination, the Board would then determine a proposed rate of assessments, and such matter must be presented to the Members at a duly called and noticed regular or special meeting, and the vote must carry by a majority vote of a duly constitute quorum of the Members. Operations of the Association are governed by the Bylaws, and Article I thereof clearly outlines the requirements of the Association to call, notice, and hold a meeting of the Members. But for such procedural requirements, there is nothing else in the Declaration or Bylaws that dictates further requirements for the Board to propose an assessment increase for Members to vote.

We hope the above summary adequately addresses the questions presented. Please direct any additional questions or concerns regarding this matter to the undersigned.

**THE STRONG FIRM P.C.**

  
\_\_\_\_\_  
**BRIAN ALBERT**