
MEMORANDUM



CONFIDENTIAL

ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

TO: THE RANCHES AT PINEHURST PROPERTY OWNERS’ ASSOCIATION

DATE: NOVEMBER 1, 2022

RE: SPECIAL ASSESSMENTS

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. May a Special Assessment be limited to those that benefit?

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 Special Assessments based on the Board's focus of attention.

Article III, Section 4 of the Declaration, which defines Special Assessments, provides that Special Assessments are "for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described improvement including the necessary fixtures and personal property related thereto, and/or the cost of installation, maintenance and operation of a roadway lighting system as provided under Section 6 of Article V. hereof, and/or for carrying out other purposes of the Association as stated in its Articles of Incorporation." Article III, Section 1 of the Declaration also generally references Special Assessments as being "for capital improvements," and Article III, Section 2 of the Declaration globally describes the purpose of all assessments levied by the Association as being "used exclusively for the purpose of promoting the comfort, health, safety, and welfare of the Owners of the Development, or any part thereof, and for carrying out the purposes of the Association as stated in its Articles of Incorporation."

Chapter 204 of the Texas Property Code is also informative in defining special assessments, speaking globally as to all Texas property owners associations, as "an assessment, charge, fee, or dues that each owner of property within a subdivision is required to pay to the property owners' association, after a vote of the membership, for the purpose of paying for the costs of capital improvements to the common areas that are incurred or will be incurred by the association during the fiscal year."


All of that to say, each of the Declaration, State law, and practice of property owners associations in general, provides that Special Assessments are to be levied against all owners within the Subdivision, and such Special Assessments are intended to be for the benefit of the Subdivision and/or the Association as a whole (which to be clear, is sometimes directly benefiting a particular area of a subdivision, but indirectly benefitting the whole due to subdivision scheme and design (e.g., the Subdivision's Privacy Tracts)). This interpretation aligns with the Declaration's provisions regarding establishing a Special Assessment levy, in that it requires "a majority vote of the total eligible votes of the membership of the Association," as general equity requires that a Special Assessment levied upon all Members be considered for vote by all Members.

As a final point, in response to the Board's particular reference to the supplemental annual assessment levied upon the Privacy Tracts under the First Amendment to the Declaration, such supplemental annual assessment was not couched as a Special Assessment in the First

Amendment. Rather, it was presented as a direct amendment to the Declaration's clause regarding annual assessments, which was (presumably) duly approved by the requisite number of Members' votes for amendment of the Declaration. Therefore, though similar in effect, there is a clear delineation between Special Assessments and the supplemental annual assessment established under the First Amendment.

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.

A handwritten signature in blue ink, consisting of a stylized 'B' followed by a horizontal line and a flourish.

BRIAN ALBERT