
MEMORANDUM



CONFIDENTIAL

ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

TO: THE RANCHES AT PINEHURST PROPERTY OWNERS’ ASSOCIATION

DATE: FEBRUARY 27, 2023

RE: MEMBER PROPOSALS FOR ASSOCIATION GOVERNANCE

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. Are proposals from the Members binding on the Board?

As a matter of State corporate law governing nonprofit corporations (which the Association is), and in accordance with the Declaration and Bylaws, the Association is generally governed by the Board (see Art. II, Sec. 2 of the Declaration and Art. II, Sec. 9 of the Bylaws). Said another way, procedurally and as a matter of law, the Association can only act at the direction of the Board. Therefore, proposals from a Member, alone, are not binding on the Board.

However, Members are given broad rights, both direct and indirect, to vote upon certain decisions of the Association, and those rights cannot be withdrawn from the Members (see Art. II, Sec. 10 of the Bylaws). For example, Article III, Sections 3 (regular assessments) and 5 (Special Assessments), and Article VII, Section 3.b (common properties) reserve decision-making authority to the Members. Further, the chief reserved right of the Members is the election and removal authority of the directors of the Board (see Art. II, Secs. 1 and 5 of the Bylaws). This right, in effect, is an indirect right to control the Association, as any majority cohort of the Members could, in theory, remove directors from the Board that it found to be in non-compliance with a proposal by such majority. Again though, that's an indirect right, and however constituted the Board may be, the Board is the acting party of the Association, so Member proposals are not binding.

B. Can Members require the Board to hear and act on a proposal?

As noted above, proposals from a Member, alone, are not binding on the Board, and the Board is not obligated to place a Member proposal on the Board's meeting agenda. However, there are certain actions of the Association that do require Member consideration and vote, as detailed above, but those actions arise out of meetings of the Members called for those purposes. If those specifically enumerated matters are voted upon by the Members at a duly called meeting, they are binding on the Association, but the Members do not have authority beyond those expressly addressed matters.

In the event a Member or cohort of Members desires for the Board to consider and/or act on a proposal presented by such Member(s), there is nothing that stops them from making that request. However, the Board has broad discretion to accept or reject any such proposals, and the Members do not have a right to force the Board to call a meeting for any particular purpose. Article II, Section 4 of the Bylaws only provides for regular annual meetings of the Board and special meetings called by the President or a majority of the Board (i.e., without Member discretion). Also, to be clear, once a meeting of the Board is in session, the only participating parties to such meeting are the directors and, as necessary for reporting or procedural purposes, the officers specifically called to act at such meeting. There is no requisite "floor" from which additional comments or proposals must be heard, and Members are only given the benefit of attending the meeting (pursuant to applicable law), not participating in it.

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