

Carlson, Dave

From: Mark Rockefeller [mark@tetonvalleyrealty.com]
Sent: Saturday, March 27, 2010 4:02 PM
To: 'Nancy Liebrecht'; Carlson, Dave
Cc: 'Brian Gibson'; 'Bob & Bonnie Lewis'; 'David & Lana Chapman'; 'David Kearsley, Mgr. Bank of Commerce'; 'Doug & Donna Niemi'; 'Eileen Pope'; 'Mary Pope'; 'Mike Rice, Bank of Commerce Foreclosure Dept'; 'Patrick & Patricia Leonard'
Subject: RE: Leigh Meadows POA - Change of Use and Transfer of Water Rights Requested.
Attachments: Leigh Meadows Irrigation H2O EXCERPT CCR'S.pdf

Nancy Liebrecht, Rocky Mountain Environmental
Dave Carlson, Idaho Department of Water Resources (IDWR):

This is addressed to the two of you, as I recognize need for cooperation and continuity.

Nancy Liebrecht:

This is reply to your below comments and to provide direction. Thanks for starting on the process. Note the attached Articles of Incorporation for correct POA, Inc. title, sent along with the recent letter from Dave Carlson of IDWR. It appears we will need a QC Deed prepared for transfer of water rights, to be signed by David Chapman, managing member of Leigh Meadows Development LLC (LM LLC), please allow me to see if Alliance Title can prepare a QC Deed, saving cost for legal fees otherwise due by the POA.

Dave Carlson:

As background, know that I acted as developing agent for Leigh Meadows Development LLC. By agreement with David Chapman, I recommended Bank of Commerce as lender for development improvement costs. After I called for organization of the POA, I have been appointed as pro bono Vice President and Secretary of Leigh Meadows POA.

Specific to today's endeavor, that is to complete applications for change of use and transfer of water rights, most of you (including POA members copied) are aware that I also obtained entitlement approval from Teton County, arranged for and supervised the installation of all improvements to the 66 acres of raw land, now known as Leigh Meadows. I prepared the CCR's and Design Guidelines for Leigh Meadows PUD, and with counsel from Lone Goose Environmental, drafted the specific language hi-lighted on pages 2 and three of the attached, so as to comply with regulations imposed by Teton County and IDWR.

David Chapman, as POA President and owner of LM LLC, remains with right of redemption for 18 lots foreclosed upon by Bank of Commerce, has been in full cooperation with the POA. David's desire has been to maintain the substantial improvements to the project, so as to avoid loss and degradation of property values.

Please note the attached and cooperate with Nancy in arranging for both change of use and transfer of water rights related to Leigh Meadows POA, noting the attached CCR excerpts which provide for water transfer from Leigh Meadows Development LLC and water management by the POA.

Mark S. Rockefeller, VP and Sec., LMPOA
Responsible Broker/Owner
Teton Valley Realty
U.S. Mail: P.O. Box 604

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From: Nancy Liebrecht [mailto:nancyl@rockymountainenvironmental.com]
Sent: Friday, March 26, 2010 6:00 PM
To: mark@tetonvalleyrealty.com
Subject: Leigh Meadows

Hi, Mark

I am working on a draft agreement to get that water right protest withdraw, and I have a quick question. The name of the entity that will enter into this agreement is the Leigh Meadows Homeowners Association, correct? Is the Homeowners Association a corporation?

The water right is listed in the name of Leigh Meadows Development, and the address in Oklahoma. If Mr. Chapman has been foreclosed, we may want to do something about this. First, however, I will work on getting the agreement done and getting an agreement from Fremont-Madison.

I will be sending a short letter to IDWR tomorrow and will copy you. This is just to let the agency know that we are working on this.

Nancy

_____ Information from ESET Smart Security, version of virus signature database 4978 (20100326)

The message was checked by ESET Smart Security.

<http://www.eset.com>

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Irrigation H²O Excerpt

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Instrument # 182652

DRIGGS, TETON, IDAHO

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No. of Pages: 14

Recorded for: A W ENGINEERING

NOLAN G. BOYLE

Ex-Officio Recorder Deputy

Index to: DECLARATION OF COVENANTS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Leigh Meadows P.U.D. Subdivision

Teton County, Idaho

FORT TETON CO., ID
CLERK RECORDER

THIS DECLARATION, made on the day hereinafter set forth by the Owner of Leigh Meadows P.U.D. Subdivision, hereinafter referred to as Declarant, County of Teton, State of Idaho, in accordance with the plat filed for record on November 17, 2006, in Teton County, Idaho as Plat Number _____, which shall hereinafter be referred to as the "properties."

NOW, THEREFORE, Declarants hereby declare that all of the properties described shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions (CCR's), which are for the purpose of protecting the value, enjoyment and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. Association shall mean and refer to a non-profit Idaho Corporation, to be known as the Leigh Meadows Property Owners Association, Inc., or such other name as the owners shall decide in accordance with the provisions of this Declaration.

Section 2. Declarants shall mean and refer to Leigh Meadows Development, LLC, an Idaho Limited Liability Company, for Leigh Meadows P.U.D. Subdivision, its successors, heirs and assigns;

Section 3. Parcel or lot shall mean and refer to Parcels or Lots 1-through 23 of Leigh Meadows P.U.D. Subdivision, as set forth in the record subdivision plat thereof.

Section 4. Owner shall mean and refer to the recorded owner, whether one or more persons or entities, of a fee simple title to any parcel or lot, including contract buyers and owners of a beneficial interest, but excluding those having such interest merely as security for the performance of an obligation.

Section 5. Developer shall mean and refer to Mark S. Rockefeller, dba Rockefeller & Associates, Inc. who designed and developed Leigh Meadows P.U.D. Subdivision. Rockefeller shall perform services on behalf of the Owner and the Association, as described below.

Section 6. Properties shall mean and refer to that certain real property known as Leigh Meadows P.U.D., in accordance with the Plats filed for record on _____, 2006, in Teton County, Idaho, as Plat Numbers _____ and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 7. Leigh Meadows P.U.D. Subdivision (otherwise referred to as LMS) shall mean and refer to the subdivision or development known as Leigh Meadows P.U.D. Subdivision.

ARTICLE II

ASSOCIATION MEMBERSHIP, VOTING RIGHTS & ORGANIZATION

_____, 2006, except on the prior affirmative vote of a majority of the owners of parcels or lots within the properties, the maximum monthly assessment shall not exceed Forty-five Dollars (\$45.00) per month per lot. All parcels or lots sold by the Declarants, or by others, shall be subject to assessment beginning the first day of the next month following the closing of purchase and sale of each lot. The foregoing notwithstanding, commencing January 1, 2007, the Board of Directors of the Association shall have the right to increase from time to time the maximum monthly assessment upon written notice to the members to keep up with inflation proportionate to increases in a Consumer Price Index or similar index selected by the Board of Directors.

Section 4. DATE OF COMMENCEMENT OF MONTHLY ASSESSMENTS AND DUE DATES: The monthly assessments provided for herein shall commence as to all lots subject to assessment on the first day of the month following the conveyance of each parcel or lot. The Board of Directors shall fix the amount of the monthly assessment against each parcel or lot at least thirty (30) days in advance of each monthly, quarterly or annual billing period and written notice of the monthly assessment shall be sent to every owner subject thereto. The due dates and the frequency of billing shall be established by the Board of Directors or elected Officers. The Association shall, upon demand furnish a receipt signed by the Clerk, Secretary or Treasurer of the Association setting forth whether the assessments on a specified parcel or lot have been paid to a closing agent or lender.

Section 5. EFFECT OF NONPAYMENT OF ASSESSMENT: Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum rate of interest provided by Idaho law. The Association may file a lien of record, bring an action a law against the owner personally obligated to pay the same, or foreclose the lien against the applicable parcel or lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-payment, non-use, or abandonment of his parcel or lot.

Section 6. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinated to the lien of Declarants first mortgage or purchase contract. Sale or transfer of any parcel or lot shall not operate to discharge the assessment lien, unless said lien is paid, satisfied or discharged by the lien holder, upon said sale or transfer of the parcel or lot. It is the intent that all liens shall be paid in full by the closing agent of any sale of any parcel or lot and the Secretary/Treasurer shall provide said closing agent with a statement of assessments due, plus accrued interest, so as to facilitate payment and collection. It is recommended that the Association provide each acting title company with current information as to assessment rates and a contact person for assessment communication purposes, so as to avoid sales of parcels or lots that may otherwise have delinquent or unpaid assessments that may not show a lien of record.

Section 7. OPEN SPACE MANAGEMENT. LMS is required by Teton County to have an open space management agreement, which may be attached to this document for the performance of maintenance of the open space areas. Maintenance performance of open area shall be the responsibility of the Association. The Association shall be responsible for maintaining the open area as a wooded and natural grass lands environment, to not be farmed or hayed without consent of the Association, to also include reasonable control of noxious weeds that may take root upon the premises. The costs of maintenance for open space shall be paid for from assessments collected by the Association. The Declarants shall bear all responsibility and costs for maintenance of the open area, roadsides, road surfaces, and community systems of LMS, until the Association is formally organized and funded by collected assessments. Upon formal organization of the Association, the Association shall bear full responsibility for all maintenance procedures related to LMS. The open space depicted on the plat of record shall remain as open space in perpetuity and shall not be further divided or sold. The opens space shall be conveyed by the owner and to the Association by Quit Claim Deed, upon formal organization of the Association and the Association shall then be responsible for maintenance, taxation assessed, insurance and the government of the open space.

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within thirty (30) feet of building structures. Fencing on the perimeter of the subdivision is allowed and recommended, as neighboring livestock may damage landscape and water features within LMS, so long as all fences are of a design common to all lots and open space, to be established and approved by the Design Committee.

(e) Utilities shall be installed underground. No antenna shall be installed on any structure or lot so that it is visible from any other parcel or lot. Satellite dishes shall be not to exceed 3 feet in diameter, shall be installed on the side of the residence and shall not be installed on the roof or roof fascia. Exterior lighting fixtures shall be subdued and shall not exceed one hundred (100) watts and the bulb shall be shrouded, so as to project light only down and not horizontally or upward.

(f) Landscaping Requirements shall include: (A) An irrigated, sodded lawn area surrounding 100% of perimeter of the residence and extend a minimum of twenty feet (30') out from the house perimeter; (B) A minimum of five eight (8") foot tall evergreen trees situated in at least two groups; (C) Two three (3") caliper or base trunk diameter canopy trees; and (D) Three six to eight (6'-8') tall multi-stem trees or large shrubs. Drip irrigation systems are required to be installed at time of planting of trees and shrubs, to sustain said required landscaping, above, unless sodded lawn areas are provided for with automatically controlled timer type sprinkle irrigation systems which regularly irrigate all landscape vegetation. A Landscape plan is required to be submitted to the Design Committee, with all plans for residential construction. Said plan shall list the landscape components proposed by the owner. In view of LMS desire to allow for individual expression, deviation from these requirements will be considered by the DC with properly presented plans submitted by the applicant and approved by the DC.

The gross acreage of LMS has an established irrigation water right, though substantial, not sufficient to run continuously through the Spring, Summer and Fall seasons. All irrigation water rights are owned by the State of Idaho. The Association shall arrange and pay costs for transfer of water rights upon formal organization of the Association and owner shall cooperate with same. Water not used by the owner or Association shall pass through to adjacent property in the manner customary to neighboring irrigation water users. The use of water shall be in accordance with State law.

So as to allow for water development and distribution, subject to Idaho Department of Water Resources (IDWR) regulations, all lots shall be limited to a maximum of 1/3 acre of irrigated landscape, and not the Idaho State limitation of 1/2 acre, so as to preserve water sufficient to offset evapo-transpiration of water from fire containment and other water ponds, as well as to supplement the irrigation of common area landscaping and sustain common water features. The water difference, as calculated from the above 1/3 acre volume, compared to the Idaho State maximum of 1/2 acre (or 13,000 gallons per day maximum per single family residence) shall be deemed in this Declaration as the water surplus. At the election of the developer or the Association, the sum total of water allowed by the IDWR may be utilized by the Association which shall have the right to apply for, install and maintain water source and distribution systems, utilizing the surplus water not consumed by individual lot water systems and the collected lots shall cooperate with such water development and distribution upon common areas, for the purposes described above.

ARTICLE VI LAND USES AND RESTRICTIVE COVENANTS

Section 1. GENERAL RESTRICTIONS. The following general restrictions shall apply to all residential lots within Leigh Meadows P.U.D. Subdivision.

(a) No building, structure, sign, fence, refinishing or improvement of any kind shall be erected, placed or permitted to remain on any structure, parcel or lot, and no excavation or other work which in any way alters any parcel or lot from its natural or improved state existing on the date such parcel or lot was first conveyed in fee by any Declarants to an owner shall be erected, placed, done or permitted to remain on any structure, parcel or lot until the plans, specifications and exterior material samples and color specifications therefore have been approved in writing and a building permit has been issued by the Design Committee. Plans for buildings or the refinishing or improvement of the same,

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March 8, 2010

LEIGH MEADOWS DEVELOPMENT LLC
PO Box 604
DRIGGS, ID 83422

RE: Application for Transfer 74354

Dear Applicant(s):

You filed a transfer of water right in 2007, to create a number of ponds on your property. Your transfer was protested and not approved. Based on the enclosed air photo, you have constructed the ponds without a water right and now are in violation of your water right.

You need to stop diverting water into the ponds and resolve the protested application. We need to know within the next 30 days what you intend to do to resolve this matter.

You can review the documents here:

http://www.idwr.idaho.gov/apps/ExtSearch/DocslImages/by6w01__.pdf

Please feel free to contact this office if you have any questions.

Sincerely,

Dave Carlson
IDWR-Eastern Region