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May 4, 2023

George Nowack  
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One Alliance Center, Suite 1650  
3500 Lenox Rd., NE  
Atlanta, GA 30326

Re: Tolomato Island Property Owners' Association, Inc.

Dear George:

I am writing on behalf of my client, [REDACTED] who is acquiring lots located in Tolomato Island Property Owners' Association, Inc., with regard to your memo to the board of directors dated April 5, 2023. I am using this letter to set out some apparent differences of opinion on the Association's documents as they affect my client's desire to construct a home on the lots he is acquiring. While not directly disagreeing with the language in your memo, it is my view that, as your advice is being applied, the Association may be improperly restricting my client's ability to construct his intended home.

I have reviewed the Association's recorded declaration, and I have reviewed the plats for The Thicket as recorded in Book PC1 on the McIntosh County records. I also have reviewed your April 5 memo, and I have reviewed the ARB Addendum of March 21, 2023. I further understand that the board president has now fired the ARB members because of her disagreement with their Addendum, particularly on the issue of combining or subdividing lots. The issues related to my review are relevant to my client's intent to construct his home on two adjacent lots in a location that would cross the line separating the two lots, a proposal the recently fired ARB members had endorsed. The board president apparently has taken the position, in reliance on your memo, that such a house placement cannot be done under current conditions.

To start, I think it is productive to address the portions of your memo for which I have no disagreement. First, the failure of the Declarant to have assigned the authority to change boundary lines for lots is problematic for the Association. An amendment to the Declaration would certainly be beneficial for the Association if it wanted to approve changes in lot boundaries. I agree with your conclusion that the portion of the ARB Addendum that purported to allow changes in lot lines is beyond the authority of the ARB without an amendment to the covenants. However, I do not believe that agreement on that point is determinative of my client's rights to use his lots as intended.

The Association and the owners of lots in Tolomato are entitled to rely on the recorded plat

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and the covenants governing the property to know how many lots are to contribute to Association finances and to know how many votes lot owners would have in the Association. Without an amendment to the Declaration that allows reducing or subdividing lots with reallocation of expenses and voting rights, an attempt by the ARB to approve such changes would not be proper. On this I believe we agree. My client is not suggesting a reduction in his financial obligations to the Association or any change in voting rights allocated to his lots.

I do believe that my client's intent is to use his lots in a way that is consistent with the Declaration based on a close reading of the provisions. The original recorded plat indicates that it shows "Setbacks according to McIntosh County Zoning Regulations," and "Building Setback Lines (Typical)". The language suggests it is intended to show how local zoning ordinances affect the lots and not to impose restrictions not required by zoning. You may have noted that in section 9.5(b)(v) you will find the only mention in articles 9 or 10 of "setbacks." That language addresses accessory buildings and setbacks "within side and rear setback lines as may be required by the ARB or by applicable zoning law." Again, local zoning restrictions are reflected. There is no other mention of setbacks that I could find in the restrictive covenants. Thus, I believe the only authority the ARB or the Association has with regard to setbacks is to ensure that zoning requirements are complied with.

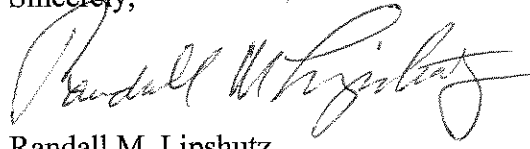
Again, I am not suggesting that the ARB and the Association cannot enforce setback restrictions imposed by zoning. However, since there is no specific setback requirement contained in the restrictive covenants, I see no authority for the ARB or the Association to restrict location of a home if it meets McIntosh County zoning requirements. What my client intends to do is to apply to McIntosh County for a replat, for zoning purposes, of two of his lots in order to combine them into one lot with new setback requirements. As McIntosh County is the entity that approved the currently filed plat, it has the authority to approve a change to that plat to reset the lot boundaries for two adjacent lots and establish new setbacks consistent with zoning laws. Once the County does so and the revision is recorded, my client will submit a plan to the ARB for approval based on the new plat of his lots and the new setbacks required by zoning. At that point, the ARB can enforce the zoning setback lines then currently in force, but it would not have any authority to enforce the setback lines shown on a superceded plat.

To go back to a previous point, my client does not contend that, for operation of the Association, his two re-platted lots will become one lot for purposes of the Declaration. He understands he will still owe assessments for two lots, and he will be entitled to one vote for each of his two lots, lots based on the original plat on file when the Declaration took effect. I do believe there are other homes in this community with the same situation. I believe that your interpretation was correct that the lots could not be "re-platted" for purposes of Association operations without an amendment to the Declaration, but the Declaration does not establish specific setbacks for any property. The current references to McIntosh County Zoning requirements would remain in effect, but they would apply to any changes McIntosh County makes to those zoning requirements.

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My client has no intent to construct a home in violation of the covenants or zoning restrictions, and he intends to go through the prescribed approval process with the ARB. If the ARB stays within its authority to insist on compliance with currently applicable zoning restrictions and does not try to impose superceded zoning restrictions, then there should be no issues at the time of application. After you have reviewed this letter, I am happy to speak with you to make sure we are agreed on how my client can proceed.

Sincerely,



Randall M. Lipshutz

RML/jrb

cc: [REDACTED]