

Request for Legal Review of Declaration of Covenants, Conditions,
Restrictions and Easement with Regard to Budget.

Hi Mr. Neall,

Please let me know that you have received this request.

As per our conversation, we would like your firm to review the Declaration of Covenants, Conditions, Restrictions and Easement for the Shipley's Crossing Community with regard to how our budget is funded.

Below is a bit of the community history:

As we discussed, the community was started in 2008, and originally, the community was filed with the county as two totally separate subdivisions. Grayson Homes was building townhomes on the North side of Brightview Dr. (80 townhomes) and Koch Homes were building single family units on the South side of Brightview Dr. (59 single family homes). At some point, Grayson Homes went under and Koch Homes took over both sides. The townhomes in the North were intended to be a completely private community with various additional services built in to the assessments (lawn mowing and maintenance, and snow shoveling of their sidewalks, leadwalks and driveways, etc.). The community was given one set of covenants to abide by. As such, since the beginning of the budget process, there were three budgets completed; a budget for the North which funded everything on the North side, a budget for the South which funded everything on the South side and a Clubhouse Budget (where everything in this budget would be divided evenly among all 159 homeowners). Then there was a forth budget which was simply all three budgets combined. These original budgets were prepared by the original Board who were Koch members, and dictated the intention of how the budgets were to be prepared.

In May of 2013, a community Board was elected and was given the previous year's budget (2013) as a go by for preparation of the 2014 proposed budget (I was not on the Board at this time). The Board members along with Sentry Management (the community management company) completed the budget in the previous budget's format, and it was voted on and passed. Also in 2013, the South side was turned over to Anne Arundel County, and subsequently the roads, sidewalks, streetlights, retention ponds, etc., became the responsibility of the County for maintenance, and no longer the HOA. With this change, the South assessments became lower due to the reduced financial responsibilities.

In May of 2014, a new Board was elected and I was named President. We were given the previous two year's budgets as go bys and set out to prepare the 2015 budget. That budget was sent to the Community for review on November 20, 2014. Recently the question was brought to us as to whether we were funding the budget for some of the common area expenses correctly. Some in the North believe that because the South assessments have been lowered, that they are now not paying a "fair" share. Although it was explained that the North and South sides of the community were not intended to have equal (fair) assessments, the complaint persists.

The complaint seems to be that in the community covenants, there are definitions of Common Areas, and that funding for all of those Common Area items should be shared evenly between the North and South despite the location and use of the item. Here is a portion of an email that I received from one of the community members:

I believe we will be in violation of Article I.1.(c) in the Covenants which defines "Common Area". In part it says "Common Area" means all those areas of the Property and the improvements thereon, which are intended to be devoted to the common use and enjoyment of the Owners of the Lots, including any open spaces, storm water management facilities, entrance monuments or signs, parking courts, fencing, landscape buffers, recreational facilities, forest conservation areas, non-tidal wetlands, landscape buffer areas, steep slopes, street trees, sidewalks within common areas or lots along roadways, and any other real property or improvements owned by the Association or in which the Association acquires a right of use or easement for the benefit of the Association and its Members, saving and excepting, however, so much of the Property conveyed or to be conveyed to the County, provided, however, that the Association shall maintain any Property or the improvements thereon shown on the plats as to be conveyed or dedicated to public use until such time as the County, or any agency or unit thereof, shall accept the dedication or conveyance of such Property....."

This indicates that it is the writer's contention that all things defined as Common Area should be a shared expense of all (North and South) residents.

However, later in the Covenants, Article VII, #4 (page 27), it says in part;

The Association shall repair, replace, restore, maintain, manage, operate and insure the Common Area and the improvements thereon in good order, condition and repair and in a neat and attractive condition, including but not limited to periodically mowing all grass in the Common Area, maintaining any entrance monument, street trees and sidewalks adjacent to roadways (but excluding snow removal from Single-Family Lots), whether or not located on the Common Area, and maintaining all private storm water management facilities within the Common Area, keeping them clean and free of debris; and shall levy against each Member of the Association a proportionate share of the aggregate cost and expense required for the care, maintenance and improvement thereof, which proportionate share shall be determined based on the ratio which the number of Lots owned by the Member bears to the total number of Lots then laid out or established on the Property, provided, however, any item of maintenance or repair specifically and exclusively pertaining to the Townhouse Lots, or any other Common Area for the exclusive use and benefit of the Townhouse Lots shall be allocated proportionately only among the Townhouse Lots, and any item of maintenance or repair specifically and exclusively pertaining to the Single-Family Lots, or any other Common Area for the exclusive use and benefit of the Single-Family Lots shall be allocated proportionately only among the Single Family Lots.....

I interpret the underlined section above to mean if a Common Area amenity is for exclusive use and benefit to the North, the financial expense in the budget should be charged and divided evenly among the residents in the North, and if a Common Area amenity is for exclusive use and benefit to the South, the financial expense in the budget should be charged and divided evenly among the residents in the South.

Without reference to the opinions expressed above, please provide an interpretation of the Shipley's Crossing Covenants as it relates to funding the budget for the Common Area items listed below. Should each item continue to be funded as it has since 2009 and charged to the budget in which the Common Area resides and serves (North or South), or should any item be moved to the Clubhouse Budget (which would then share the expense among all residents on both sides (North and South). Below are the budget items that would be in question, the amounts that are currently proposed in each budget, and a brief explanation of the reasoning behind the funding.

For reference, I have attached both the Declaration of Covenants, Conditions, Restrictions and Easement and the Proposed 2015 Budget (the four budgets are on tabs at the bottom of the page).

If you need any additional information or have any questions, please contact me.

As we discussed, we have a community Board meeting scheduled for December 18, 2014. If possible it would be great to have your analysis prior to that date. If there are no recommended changes to the existing budgeting process, we can proceed with the originally planned vote. If there are recommended changes we will redistribute the new budget to the community for a thirty day review prior to calling for a vote.

I very much appreciate your assistance.

Best Regards,

Charlie

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Category #	Category Name	2015 North Budget	2015 South Budget	2015 Clubhouse Budget	Reasoning for funding in each budget
GROUNDS MAINTENANCE					
6161	Miscellaneous Repairs	\$2,000	\$1,600	\$,2100	These are the costs of removal of dead trees and repair of irrigation lines. The numbers applied to the North and South although different, are based on the “9 month actuals” of what has already been spent this year in each area. The Clubhouse cost is for trees removed on the clubhouse property and shared among all residents.
UTILITIES					
7910	Electric	\$4,200	\$0	\$8100	This expense is for the electric used by the Street Lights in the North. The Street Lights in the South became county responsibility when the South was turned over and there is no out of pocket expense for them. The Clubhouse expense is for electric used at the clubhouse and pool.
7923	Storm Water Drainage	\$595	\$0	\$500	This expense is precautionary for the possibility of a “Rain Tax”. Since the North streets are private, if this tax is imposed, the HOA would be responsible for the tax on the North streets. The South streets are County and the HOA would not be responsible for rain tax on these streets. The Clubhouse expense would be for the possible rain tax on the clubhouse parking lot.
7920	Water Sewer	\$4,000	\$1,000	\$2,300	This expense is for irrigation of the Common Areas. The numbers

					applied to the North and South although different, are based on the “9 month actuals” of what has already been spent this year in each area. The Clubhouse expense is for irrigation of clubhouse property.
RESERVES					
9136	Fencing	\$1,000	\$1,000	\$1,500	This expense is for maintenance of the fencing around the retention ponds (two in the North and one in the South). Although the Retention Pond in the South has been turned over to the county, we are still researching whether they will be responsible for the fencing in the South. If so, this expense will be removed from the South Budget next year. The Clubhouse expense is for maintenance of the fencing located on the clubhouse property.
9150	Roadways	\$6,200	\$0	\$0	This expense is for the maintenance and repair of the roads in the North only, as the South roads have been turned over to the County and maintenance is no longer the South’s responsibility.
9201	SWM Pond	\$1,000	\$1,004	\$0	Maintenance and re-mucking of the retention ponds. Although the Retention Pond in the South has been turned over to the county, we are still researching whether they will be totally responsible for the maintenance in the South. If so, this expense will be removed from the South Budget next year.
9223	Walking Path	\$1,500	\$0	\$0	This expense is for maintenance and replacement of the walking paths. The walking paths are located in the North (there

					are no paths in the South), Although a South resident could walk across the street and walk on these paths if they desired, so could anyone else who does not live in the community.
9267	Entry Monument	\$1,000	\$1004	\$0	This expense is for the maintenance, and repair of the monuments at the entry to the community. The numbers applied to the North and South although slightly different, are based on the “9 month actuals” of what has already been spent this year in each area.
9269	Concrete Side and Lead Walks	\$6,343	\$0	\$0	This expense is maintenance, repair and replacement of the sidewalks and leadwalks on the North side. The side and leadwalks for the South became county responsibility when the South was turned over and there is no out of pocket expense to maintain them.
9271	Retaining Walls	\$600	\$232	\$0	This expense is maintenance, repair and replacement of the Retaining Walls on the North side. These walls are generally found on homes that are adjacent to sidewalks and prevent a higher area in a yard from eroding and spilling onto the sidewalk. There are no retaining walls on the South side.
9296	Reserve Study	\$1,350	\$150	\$1,500	To calculate how to divide cost of the reserve study (\$3000) among the residents, we calculated what percentage of the community assets for which we are collecting assessments, and which side those assets benefitted. We found that 50% of the reserves were collected for

					assets that benefitted both sides and were found in the Clubhouse Budget (and divided evenly among all homeowners), 45% of the reserves were collected for assets that benefitted the North side and were found in the North Budget (and divided evenly among all North homeowners), and 5% of the reserves were collected for assets that benefitted the South side and were found in the South Budget (and divided evenly among all South homeowners).
		\$29,788 (divided evenly among North homeowners)	\$5,990 (divided evenly among South homeowners)	\$16,000 (divided evenly among all homeowners, North and South)	