

MICHAEL S. NEALL
& ASSOCIATES, P.C.
ATTORNEYS AT LAW

Michael S. Neall
Jenifer E. McKinney
Saundra K. Canedo
Christine M. Schramek
Amanda B. Howell
Valerie J. Barnes

147 Old Solomons Island Road, Ste. 400
Annapolis, Maryland 21401
(410) 757-9454 *Annapolis*
(410) 757-8033 *Baltimore*
(410) 757-9660 *Facsimile*
www.michaelsneall.com

December 11, 2014

Shipley's Crossing Homeowners Association, Inc.
c/o Charles Kerrigan, Board President
507 Bingham Court
Millersville, MD 21108

Re: Shipley's Crossing Homeowners Association, Inc.
Governing Document Review
Common Area Assessments

Dear Mr. Kerrigan:

This letter is sent in response to your request for our firm to review the governing documents of the above referenced association and determine the proper allocation of the common area expenses among the Lot Owners within the community. You explained that Shipley's Crossing Homeowners Association includes single family lots and townhouse lots. You also told me that the Association is divided into a south side and north side. The south side is comprised solely of single family homes, while the north side is comprised solely of townhouses. Per the Association Plats, the single-family homes are located in Shipley's Crossing South (the "South") and the townhouse are located in Shipley's Crossing North (the "North"). Both areas (North and South) were originally designed as two separate subdivisions; however, both sides were ultimately joined under the Shipley's Crossing Homeowners Association. Although, the townhomes were originally intended to receive various additional services such as lawn maintenance and snow removal, the single family lots were not intended to receive these services. You further stated that as of 2013, the South is now primarily maintained by Anne Arundel County, including the maintenance of sidewalks, streetlights, retention pond, etc. However, the North is still responsible for its original common area maintenance. In addition, there are some common elements shared by both sides of the community, including a clubhouse used by the entire Association.

At present, budgets are prepared for the North and South side separately in order to account for the disparity in the services provided and associated costs owed by each side. These amounts are then added to the Lot Owners' share of the clubhouse budget to arrive at the total annual assessment amount owed by each Lot Owner. You have requested this opinion as some Lot Owners have suggested that regardless of the varying services provided, both sides of the community are intended to equally share the costs of all common area maintenance. These owners believe that all expenses related to common area maintenance, no matter where located or which section is exclusively served by, should be assessed uniformly to all owners. I have reviewed the governing documents, the budgets provided, as well as the North and South plats.

We shall begin our review of the governing documents by examining the definitions as outlined in Article I, Section 1 of the Declaration. The Common Area is defined under subsection (c) as:

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...

Any "property conveyed or to be conveyed to the County" is expressly excluded. This definition does properly categorize areas deemed as common elements and is provided for reference when reading other provisions in the Declaration. However, this definition should not be referred to out of context or used solely to determine responsibility for expenses. Two other definitions included in the Declaration are "Single-Family Lot" and "Townhouse Lot." Subsection (l) defines the Single-Family Lot as "Lots 1 through 59...as designated and shown on the South Plat." Subsection (n) defines the Townhouse Lot as "Lots 1 through 80...as designated and shown on the North Plat..." As we shall explain, this distinction is important in the analysis of this matter.

Article VII of the Declaration outlines in more detail the specific responsibilities as they relate to the common area and the maintenance of townhouse lots. Article VII, Section 4 (Maintenance of Common Areas), enumerates the common area elements to be maintained by the Association and the manner in which they are to be maintained. Section 4 goes on to provide that the Association "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 Members bears to the total number of Lots then laid out or established on the Property." However, an important exception is included here, which states as follows:

[A]ny 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.

The above passage makes clear that the expenses exclusively relative to one side of the community are to be segregated from the Association's total annual assessment and allocated as an expense upon those Lots benefitting from the maintenance or repair. Specifically, there is a clear distinction made between the maintenance/repair provided to the Townhouse Lots and the maintenance/repair provided to the Single-Family Lots.

In addition, Article VII, Section 9 (Association Maintenance of Townhouse Lots), again acknowledges the differing maintenance requirements between the North and South side of the community. This provision outlines the various additional services to be performed only for the Townhouse Lots. Furthermore, this section provides, "[t]he fees for the landscaping, lawn maintenance, snow and trash removal shall be included as part of the Annual Assessments for the Townhouse Lots." Here again, the drafters of the governing documents are making a distinction in the assessments to be paid based on whether the lot is a Townhouse or Single-Family Lot.

Article IX (Assessments) provides additional support that there are differing assessment amounts within the Association depending upon which type of Lot is owned. Section 3 (Maximum Annual Assessment) explains that "until the end of the fiscal year during which the first Lot was conveyed to an Owner other than the Declarant..., the Annual Assessment shall not exceed \$972.00 for such year for each Single-Family Lot and \$1,680.00 for such year for each Townhouse Lot." Upon conception of the Association, each side of the community was paying a different assessment amount as evident in Section 3 above. In addition, Article IX, Section 4 (Special Assessments) provides further proof of the segregation of expenses within the community. This provision describes the process used to approve a special assessment. However, this section again makes a distinction between the payment of assessments in relation to the type of lot owned and states as follows:

[H]owever, that if the Special Assessment pertains solely to Townhouse Lots, it shall require only the approval of two-thirds (2/3) of the votes of the Owners of the Townhouse Lots and shall be payable only by the Owners of the Townhouse Lots, and if the Special Assessment pertains only to the Single-Family Lots, it shall require only the approval of two-thirds (2/3) of the Owners of the Single-Family Lots and shall be payable only by the Owners of the Single-Family Lots.

The above passage makes clear that the Townhouse Lots and the Single-Family Lots shall pay differing amounts depending upon whether an expense is incurred solely for the benefit of North or South side of the community. This is true whether the expense is a regular assessment or a special assessment.

Based on the pertinent portions of the governing documents cited above, it is our opinion that the annual assessment amount for the Townhouse Lots and the Single-Family Lots shall not be the same. Each owner will be responsible to pay their proportionate share of the common area

December 11, 2014

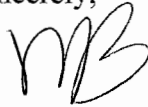
Charles Kerrigan

Page 4

maintenance items shared by the entire Association. In addition, each owner will be responsible to pay their proportionate share of the common area expenses respective of their location within the community; specifically, based upon whether their lot is located within Shipley's Crossing South or Shipley's Crossing North. For these reasons, the Association shall create an annual assessment for the entire Association, but shall charge two different assessments amounts based on the location of the owner's lot within the community. It is our opinion that the current procedure properly takes into account the requirements set forth in the Declaration. The Association should continue to prepare the budget in this same manner going forward.

Should you have any additional questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'VJB' with a stylized flourish at the end.

Valerie J. Barnes

VJB/s