

MOUNTAIN SHADOWS BOD EXECUTIVE SESSION MEETING SUMMARY

Date/Time: January 16, 2020, 10:00-12:00

Location: Don Thompson's home

Meeting called by: Don Thompson

Members present:

Don Thompson, President

Alan Seeger, BOD Vice-President

Ellen Bush, BOD Secretary

Cherry VanCour, BOD Treasurer

Thor Oden, BOD

NEW BUSINESS

1. Email received from Dr. Koenig regarding Lot 1 and MSHOA:

The Board discussed at length all the aspects of an email received from Dr. Koenig on 1/3/2020. The items addressed by Dr. Koenig included payment of MSHOA Dues, payment of taxes for Lot 1, designation of Common Area, road access to Lot 1, easement for MSHOA on Lot 1.

The Board's prior understanding (see 2/27/19 Executive Summary) was Lot 1 could have road access only from Banks/Lowman Rd. After further review, the Board found the CC&Rs do not prevent road access for Lot 1 from Blue Shadow or Fairmeadow. Article 2.2(f) identifies lots with limited road access and Lot 1 is not included.

The Grant of Easement and No-Build Covenant (signed 3/13/07, instrument 212864) states "Grantor covenants not to build any structures on the area covered by the easement granted herein without written consent of Grantee.". This prevents the owner of Lot 1 from building a structure yet does not prevent the owner to have road access to Lot 1 from Blue Shadow Dr.

In addition, the Board posed 2 questions to Steve Millemann (MSHOA Attorney) regarding this issue via email on 4/16/19. Steve's response:

1. **Does the Association have the authority under the CC&R's to exempt a Lot from payment of Regular Assessments?** I do not believe so. To exempt a Lot from regular assessments would require an amendment to the CC&R's.
2. **What, if anything, should the Association do to address the potential inequity of having the Owner of Lot 1 "paying the taxes on the common area"?** This question raises a number of issues. Article 4.5 (c) of the CC&R's obligates the Association to pay all taxes levied against common areas. Although I have not been provided the Plat, my understanding is that the common area on Lot 1 is created by an easement, not by ownership. Thus, the concern is that the owner of Lot 1 is paying the taxes on the common area. While that is probably accurate, it is difficult to determine how much incremental tax liability is created by including the common area in Lot 1. It obviously increases the size of the Lot. However, the Boise County Parcel Map does not distinguish the taxes assessed on the land versus the improvements on Lot 1. What also makes this

question and the language of Art. 4.5(c) curious is that the practice of the County Assessors in Idaho is to NOT tax platted subdivision common areas because it is assumed that the value of such areas is reflected in the lot values which are assessed.

3. **My recommendation:** Absent an amendment to the CC&R's, I think the Association is obligated to henceforth levy regular assessments on Lot 1, regardless of whether the Lot is served by a Subdivision Road. I think it would be appropriate for the Association to not retroactively assess the parcel, because the owner was arguably entitled to rely on the agreement with the Board to not levy regular assessments on the Lot. If the concern is that levying regular assessments on the Lot is inequitable because the Lot includes common area, then I would recommend that the Association pursue with the owner the concept of splitting the Lot and conveying the common area to the Association. I do not think that this will result in any tax liability to the Association, provided that the portion of the Lot deeded to the Association is designated as Common Area. If it is not, then this could be accomplished through a surgical Plat amendment. The result of this action would be that the owner of Lot 1 would no longer be "paying taxes on the common area" and the equitable issue is, thus, addressed.

Don moved and Alan seconded that Lot 1 be assessed no differently than all other Lots within the Mountain Shadows subdivision and the full dues be paid by Dr. Koenig going forward, starting with 2020. Motion carried. Ellen abstained.

2. **Proposal regarding Declaration of Amendment to Revised Declaration of Covenants, Conditions and Restrictions for Mountain Shadows Subdivision No. 1, 2, 3, and 4(future):**

There was insufficient time to discuss this Agenda item. Another Executive Meeting was scheduled for 1/22/20 to discuss this Agenda item.