

MOUNTAIN SHADOWS BOD SPECIAL MEETING – PHASE 4 STEERING COMMITTEE SUMMARY

Date/Time: Jan. 07, 2020 / 1:00-2:30 PM

Location: Don Thompson's home

Meeting called by: Ellen Bush

Members present:

Don Thompson, BOD President, Steering Committee

Alan Seeger, BOD Vice-President

Ellen Bush, BOD Secretary

Cherry VanCour, BOD Treasurer

Thor Oden, BOD

Jim Sipple, Steering Committee

Bob Hammond, Steering Committee

NEW BUSINESS

1. Discuss Steve Milleman's (MSHOA's attorney) input and Committee members submissions pertaining to documents received from Mountain Shadows Development (MSD) attorney November 2019 regarding Phase 4. Committee to determine if and how to respond.

The Committee reviewed and discussed the three documents signed by MSD:

- Easement and License Agreement:
It has been identified in past meetings that the Association has always had access to the wells located on the 5 acres and MSD cannot take this access away. Moreover, it has been noted that a 'Prescriptive Easement' would be granted in the event of any legal or judicial proceedings.
- Water System Bill of Sale:
According to Article 3.3(a) of the Revised CC&Rs signed 8/31/2015, it states under Ownership and Operation of Public Water System "The Association owns the Public Water System and all of its components, and any water rights appurtenant to the Development".

The Water System Bill of Sale states in Article 2 ‘Acceptance. MSHOA accepts the transfer of the Public Water System “as is” and “where is,” without warranty except as to title.’ Article 3 states ‘Indemnification. MSHOA agrees to defend, indemnify and hold harmless MSD and its successors and assigns, from any and all claims, demands, liabilities, cause of action, cost or expenses (including reasonable attorneys’ fees which shall be paid as incurred) related to the Water System.

Steve Millemann (MSHOA attorney) identifies two potential downsides to executing and recording the Bill of Sale. The first is that it provides that MSHOA is accepting the water system as “AS IS” and without warranty. This and the indemnification language in the Bill of Sale would preclude the pursuit of any claim against MSD for defects in or repairs or upgrades of the System. The second potential downside is that the indemnification language of the Bill of Sale would oblige the MSHOA to defend or cover the costs of MSD’s defense of a lawsuit filed by an individual Mountain Shadows owner regarding the water system.

The consensus of the Steering Committee is there would be no benefit to the Association to sign the Water System Bill of Sale since the CC&Rs clearly state the Association owns the Public Water System.

Cherry moved and Alan seconded a motion to not sign the Easement and License agreement and Water System Bill of Sale. Motion approved unanimously.

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

This document which amends Article 6 of the Revised CC&Rs, has been signed by MSD and recorded with Boise County (instrument #265685).

There were several items of concern brought up, such as, the relationship of the Association to the owners of Phase 4 due to the Amendment and Amendment rights for MSD or its successors as applicable to Phase 4. However, the conversation centered around a section of Article 3 of the Amendment, which states: “The remaining nine (9) connections available for the MSD Public Water System shall remain dedicated to Phase 4, unless and until released by the owner of Phase 4.”

The Committee identified that MSHOA, as the owner of the MSHOA Public Water System (PWS, ID 4080100), operates the PWS under a Water Right License issued by the Idaho Department of Water Resources. MSHOA’s license (65-13800) limits the public water system to 87 service connections, which correlate to the 87 lots within the existing Phases 1, 2, and 3, and does not cover the additional area-of-use for Phase 4. Therefore, MSHOA is not legally in a position to provide any additional connections for Phase 4.

Alan moved and Don seconded a motion to draft a letter to the buyer of Phase 4, the Catholic Diocese of Boise, outlining the limits of the Water Right License of the MSHOA. Motion approved unanimously.