

# Hankin, Persson, Davis, McClenathen & Darnell

Attorneys and Counselors At Law  
A Partnership of Professional Associations

1820 Ringling Boulevard  
Sarasota, Florida 34236  
Telephone (941) 365-4950  
Facsimile (941) 365-3259

Writer's Direct Line: (941) 926-7762  
Writer's Direct Fax: (941) 926-8291  
cmcclenathen@sarasotalawfirm.com

Lawrence M. Hankin  
David P. Persson  
David D. Davis  
Chad M. McClenathen\*  
Robert W. Darnell  
Andrew H. Cohen  
Michael T. Hankin

\* Board Certified Real Estate

September 2, 2008

Privileged Attorney/Client Communication

Argus Property Management  
Attn: George Niel, Manager  
2477 Stickney Point Road, Suite 118A  
Sarasota, Florida 34231

## Re: Landings Management/ Eagles' Nest Area/ Amendment

Dear George:

A requested, the purpose of this letter is to comment further on the referenced issues per our meeting of August 27, 2008.

### Eagles' Nest Area (Tract F)

My conclusions about this issue are different that discussed at the meeting. Upon careful reading of Section 29 of the Declaration, the purpose of including that provision in the Declaration was to (1) state that ownership was to remain in C & M Associates; (2) clarify that the property was not subject to the Declaration, and more specifically, negate any argument that there was an expectation or representation by the developer that the area was to be set aside or used for park purposes; (3) state a present intent to use the area for the preservation of an eagles' nest; and (4) reserve easements in favor of C & M Associates so it could access the property.

Tract F was not initially subject to the Declaration of Condominium based on the language of Section 29, but is now subject to the Declaration of Condominium since it is owned by the Association and hence "Common Area." See Section 6 of the Declaration and the deed of conveyance recorded in 1987.

The current use of the property by the Association is controlled by (1) applicable governmental restrictions; (2) the Declaration and other governing documents; and (3) any restrictions or limitations imposed by C & M Associates that remain in effect today.

The specific question was whether the Association could install a path and a viewing area on the property to allow residents to enter to view the eagles, which have apparently returned to the property on a seasonal basis. Let us examine the three areas of regulation to determine if the Association has the authority to proceed as planned.

The first area of regulation is the government. It was stated at the meeting that the County is aware of the recent installation of a swale on the property and would have no objection to the

planned viewing improvement. I recommend that the Association confirm that the County is agreeable.

The second area of regulation is the Declaration and other governing documents. There was a concern the statement in Section 29 that the property would not be used for park purposes could be used by owners to oppose the project on the basis that the planned improvements to the undeveloped land would in effect be creating a park contrary to the Declaration. I am no longer concerned with that argument.

Section 29 is not a permanent restriction on the use of the property as a park. As stated above, the language was intended to negate any argument that there was an expectation or representation by the developer that the area was to be set aside or used for park purposes. The Association, as the current owner of the property, can improve the property and make use of it subject to the general provisions of the Declaration. Sections 7(i) and 17(c) of the Declaration, and Article II(D) of the Articles, generally authorize the Association to improve Common Area in a manner the Board determines is in the best interests of the community.

The third area of regulation is restrictions or limitations imposed by the developer. See Sections 7(g) and 26 of the Declaration. It is significant to note that the developer did not specifically restrict the use of the property at the time of conveyance to the Association. The deed simply references the governing documents and requires the Association to comply with those documents. There does not appear to be any intent to limit improvement or restrict the property as a preserve.

In summary, it is my opinion the Association has the authority to install a path and a viewing area on the property to allow residents to enter to view the eagles.

#### **Amendment to Declaration**

Section 34 is the operative provision and requires any amendment to be supported by a recorded instrument signed by the president of every condominium and neighborhood association subject to the Declaration, and such owners of Class C property as may constitute Controlling Class C members. Section 2(n) defines Controlling Class C Members as the owners of Class C property responsible for payment of more than one-half of the total annual maintenance assessment levied against all of the Class C property.

#### **Summary**

Please contact me if there are questions or comments.

Very truly yours,



Chad M. McClenathen