

December 30, 2008

Mr. Robert K. Greenfield
Mr. Howard Feltman
Mr. David Jacaruso
1650 Landings Boulevard
Sarasota, Florida 34231

MY EHLITED

Re: The Landings Eagles' Nest Area

Gentlemen:

You have asked for our opinion on the extent to which the property commonly known as The Landings Eagles' Nest Area may be developed or used.

In rendering this opinion we have relied on the following facts:

A. The property which is the subject of this opinion is approximately 7.4 acres in size and is referred to herein as "Tract F." Tract F is legally described as follows:

Tract F, THE LANDINGS - UNIT ONE, as per plat thereof recorded in Plat Book 27, page 12, Public Records of Sarasota County, Florida.

B. Tract F is generally circular in shape with a radius of approximately 300 feet. A portion of Tract F abuts Landings Boulevard for approximately 100 feet along its northern boundary. The remainder of Tract F is abutted by single-family residential lots. Those lots are legally described as follows:

Lots 162, 163, 170, 171, 173 - 183, and 186 - 189, THE LANDINGS - UNIT ONE, as per plat thereof recorded in Plat book 27, page 12, Public Records of Sarasota County, Florida.

C. You purchased lots adjoining Tract F in 1987 and subsequent years and have resided on those lots as your homestead continually since the dates of purchase. At the time of your respective purchases, Tract F was undeveloped and remains undeveloped today. Tract F has never been used, during your ownership of your respective lots, for any purposes, including recreational purposes, other than as a nesting area for eagles.

D. The Landings - Unit One subdivision is part of a larger residential development known as "The Landings."

E. Pursuant to Resolution No. 78-202 adopted on October 10, 1978, the Board of County Commissioners of Sarasota County, Florida, approved Special Exception Petition No. 675 authorizing use of The Landings property for single family detached dwellings and cluster housing (the "Resolution"). A copy of the Resolution is attached as Exhibit "A."

F. The Resolution contains 16 stipulations to which use of The Landings property was made subject. Stipulation No. (9) reads as follows:

(9) That an undeveloped reserve area, 300' from all directions from the eagle nesting site, be provided.

G. Before development of The Landings, the property was acquired by C & M Associates, a Florida general partnership, by deed dated January 27, 1978, and recorded in Official Records Book 1217, page 849, Public Records of Sarasota County, Florida.

H. By deed dated June 4, 1979, and recorded in Official Records Book 1311, page 747, Public Records of Sarasota County, Florida, C & M Associates conveyed to The Landings Development Company, a Florida corporation, all of The Landings property other than Tracts A and B (the commercial parcels along US 41). This conveyance erroneously included Tract F.

I. By deed dated July 3, 1979, and recorded in Official Records Book 1319, page 46, Public Records of Sarasota County, Florida, The Landings Development Company quitclaimed Tract F back to C & M Associates.

J. The Landings - Unit One subdivision plat was recorded in 1980. As owners of the subdivision property, both C & M Associates and The Landings Development Company signed the plat. The plat establishes the boundaries of Tract F, but contains no provisions pertaining to the use of Tract F.

K. Contemporaneously with the recording of the plat, The Landings Development Company, as "Developer," and C & M Associates recorded in Official Records Book 1372, page 1217, a Declaration of Maintenance Covenants and Restrictions on The Commons for The Landings (the "Declaration").

L. Pursuant to Paragraph 1 of the Declaration, all The Landings property, other than Tract F, was made subject to the Declaration.

M. Pursuant to Paragraph 2(a) of the Declaration, "Developer" was defined to mean The Landings Development Company, its successors or assigns.

N. Pursuant to Paragraph 13 of the Declaration, The Landings Management Association, Inc., a Florida corporation not for profit (the "Association"), was organized "for the purpose of operating, maintaining, managing, and improving the common areas of The Landings and for the purpose of enforcing these covenants and restrictions as such rights of enforcement may be assigned to it from time to time by Developer." The Articles of Incorporation of the Association were attached as Exhibit "D" to the Declaration.

O. Pursuant to Paragraph 2(h) of the Declaration, "The Commons" or "Common Areas" was defined to mean "all real property (or interest therein) located in The Landings which may hereafter be specifically set aside by Developer for the common use and enjoyment of all owners in The Landings as members of Association."

P. Pursuant to Paragraph 7 of the Declaration, every owner of property within The Landings has "the non-exclusive right to use and enjoy The Commons as and when made available for general usage by Developer," subject to various provisions.

Q. By assignment dated July 19, 1995, and recorded in Official Records Book 2767, page 282, Public Records of Sarasota County, Florida, The Landings Development Company assigned to the Association all of its existing rights, title, interest, easements, powers, duties, obligations, and privileges under the Declaration.

R. Paragraph 29 of the Declaration addresses Tract F and reads in its entirety:

29. EAGLES' NEST AREA. The property described as "Tract F" in Exhibit "A" attached hereto is not subject to the provisions of this Declaration. This property, approximately 7.4 acres in size, is owned by C & M Associates and is not intended for development. An eagles' nest is located on this property, and it is the intent of C & M Associates to preserve the site as a nesting area for eagles. The site may be completely or partially fenced or otherwise barricaded to deter human intrusion. An observation stand, however, may be constructed on the site to permit viewing of the eagles and their habitat. The site is not intended as a park for the use of property owners in The Landings. The site is private property, and C & M Associates expressly reserves the right to restrict or prohibit access to the property and to impose and enforce such other restrictions as it may deem necessary to preserve the site. An easement appurtenant to the site for ingress and egress, utilities, and drainage is hereby granted to and reserved by C & M Associates over and under all private roads in The Landings. All rights granted to or reserved by C & M Associates hereunder and all other rights it may have pursuant to law may be assigned to and enforced by any other person, association, corporation, or entity.

S. By deed dated March 17, 1987, and recorded in Official Records Book 1936, page 2549, Public Records of Sarasota County, Florida, C & M Associates quitclaimed to the Association all of its right, title, and interest in Tract F. A copy of the deed is attached as Exhibit "B." The deed includes the following provisions:

Grantee, by the acceptance of this conveyance, hereby expressly assumes the obligation of and agrees to be bound by and to comply with all of the covenants, terms, provisions and conditions contained in the Declaration of Maintenance, Covenants and Restrictions on the Commons for The Landings recorded in Official Records Book 1372, page 1217, as amended, of the Public Records of Sarasota County, Florida.

The property is conveyed to Grantee in its capacity as the management association for The Landings and is to be held and used by Grantee in accordance with its Charter and Bylaws and the Declaration of Maintenance, Covenants and Restrictions on the Commons for The Landings.

You have specifically inquired whether, under Florida law, the Association may construct improvements on Tract F or permit access to, or use of, Tract F for any purpose.

The opinion hereinafter expressed in response to your inquiry is subject to the following qualifications:

(i) We are licensed to practice law in the State of Florida, and we express no opinion concerning any matter that may be governed by the laws of any jurisdiction other than the State of Florida and laws of the United States of general application to transactions in the State of Florida.

(ii) This opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated.

(iii) Except for the Resolution, we express no opinion on the effect of any existing or future governmental ordinance or regulation on the use of Tract F.

(iv) We express no opinion on the effect, if any, of bankruptcy, insolvency, and similar laws affecting the enforcement of creditors' rights generally and of equitable principles or requirements as to commercial reasonableness, conscionability, or good faith.

(v) The assumptions set forth in Section II.K of the Report on Standards for Florida Opinions dated April 8, 1991, issued by the Business Law Section of The Florida Bar are incorporated by reference into this opinion.

(vi) This opinion is provided by us as your counsel, is solely for your benefit, and is to be limited in its use to reliance by you in evaluating your rights with respect to the improvement and use of Tract F. No other person or entity may rely or claim reliance upon this opinion.

I. TRACT F NOT PART OF COMMON AREAS.

As set forth in Paragraph 13 of the Declaration, the purpose of the Association is to operate, maintain, manage, and improve the common areas and to enforce the provisions of the Declaration. Article II of the Association's Articles of Incorporation elaborates upon the general nature, objects, and purposes of the Association. Among these are (emphasis added):

D. To provide, purchase, acquire, replace, improve, maintain and/or repair all improvements of the *common areas* including, without limitation, buildings, structures, streets, sidewalks, street lighting, landscaping, equipment, furniture and furnishings, both real and personal, related to the promotion of the health, safety and social welfare of the members of the Association as the Board of Directors in its discretion may determine necessary or appropriate.

Paragraph 17 of the Declaration authorizes the Association's board of directors to adopt annual budgets and assessments to enable the Association to carry out its purposes, including (emphasis added):

(c) To pay all expenses required for the operation, management, repair, maintenance, improvement and replacement of roads and other *common areas* in The Landings, including without limitation, expenditures for lakes, ponds, lighting, landscaping, horticultural improvements, irrigation, drainage, and aquatic plant control.

Paragraph 7 of the Declaration authorizes use of the common areas by the owners of property within The Landings "as and when made available for general usage by *Developer*" (emphasis added), subject to various stated provisions. Among those provisions, subparagraph (g) provides that the