

Dear Nancy:

Thank you for consulting with me on September 24, 2007, and retaining me as the attorney for the Board of Directors of Winslow Farm Community Association, Inc.

You asked me to review your bylaws, articles of incorporation, and covenants, and we discussed them in some depth. As you have requested, I will address several items specifically in this letter.

Size of Board. I have concluded that the maximum number of board members at this time is 5. That is specified in your Articles of Incorporation. The number of board members can only be increased if the limiting article of incorporation is amended. That is usually only a moderately cumbersome operation.

Amendment of Covenants. I have concluded that only Section 10 of the Covenants, Restrictions on Use of the Real Estate, cannot be changed for 20 years after its original adoption in 1992. These are the restrictions on parking, pets, clotheslines, etc. However, the other provisions of the covenants are not subject to this 20-year amendment restriction period. While the amendment process is quite cumbersome, other provisions could be changed at any time through that amendment process.

Ponds. You have told me that there are seven ponds associated with the subdivision and that their ownership has been transferred to the Association. (I have not verified this, but it seems consistent with the documents I have reviewed.) Associations such as yours have broad discretion as to how they assess and respond to risks. It is within the authority of the Association to deal with these ponds within a broad range of choices.

There are complex legal issues around any injury sustained in ponds to which the public has access. A recent case, *City of Indianapolis v. Johnson*, 736 N.E.2d 295, Ind.App.,2000, explored some of these issues and concluded that the City could be liable for the death of a child in one of its ponds. I tend to be cautious in my advice where such risks are clear. Aside from legal issues concerning defense of a claim and the availability of insurance, I like to look directly at the most important issue: Is there a substantial risk of someone being seriously injured? No one on the Board wants to expose homeowners, residents, their guests or even kids from Sherwood Oaks walking to the YMCA to such risks unnecessarily. Everyone will want to minimize those risks. As we discussed, within the last year a woman died when she drove off the road and into a pond associated

with a residential area on the east side of Bloomington. I don't know whether a claim has been made, but I know there was grave concern about lack of protection around the pond.

I understand that the Winslow Farm ponds are available to owners, residents and their visitors. I understand that they are not fenced. I have concluded that the ponds pose a substantial liability to the Association. I would recommend that the Association take reasonable precautions to minimize this risk. Obviously, draining the ponds might be a possibility. Alternatively, they could be fenced. Access to the pond areas could be prohibited except by Association agents engaged in their maintenance.

Of course, it is critically important to make sure that the Association carries adequate insurance to protect itself, in the event of an injury. Your insurance company might be willing to consult with the Board about appropriate steps to take to manage the risk inherent in pond ownership. An environmental consultant might shed light on appropriate management strategies for run off control, aesthetic considerations, mosquito control and public safety inherent in ownership of such facilities.

Retaining walls. I have concluded that the Association has no duty to maintain retaining walls that are not located on Association property. Such walls on individual lots are the responsibility of the lot owners.

I hope these perspectives will assist you and the Board in your deliberations.

Respectfully yours,

Guy R. Loftman

Attorney at Law

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