



HindmanSanchez

May 13, 2014

Via Electronic and U.S. Mail

Board of Directors
Stagecoach Property Owners' Association
c/o Steamboat Association Mgmt
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**CONFIDENTIAL COMMUNICATION
ATTORNEY CLIENT PRIVILEGED**

Re: *Stagecoach Property Owners' Association / Maximum Assessment
Our File No. 8246.0002*

Dear Members of the Board:

HindmanSanchez, P.C. has been retained by the Stagecoach Property Owners' Association ("Association") to provide an opinion regarding the maximum amount of assessments the Association may impose without the approval of the Owners. This letter is in response to that inquiry.

QUESTION: *What is the maximum annual assessment the Association can impose without the approval of the Owners?*

RESPONSE: We believe the provision in the Stagecoach Declaration of Covenants, Conditions and Restrictions ("Declaration") that provides for increases in the allowable maximum annual assessment increases automatically by 3%, without any action by the Board necessary.

Based on our calculations, we estimate the 2015 allowable maximum annual assessment to be \$100.80. Therefore, the Association could increase the annual assessments up to \$100.80 without the approval of the Owners. Any increase above that amount would require the requisite approval of the Owners. The Association should be advised, however, that because of ambiguities in the wording of the Declaration and how the increase is to be calculated, an increase up to the maximum of \$100.80 could cause political problems in the community resulting in a challenge from some owners.

RECOMMENDATIONS:

1. It is our opinion that the Declaration can be reasonably interpreted to allow the maximum annual assessment to increase automatically each year without any action by the Board. Therefore, the Board may increase the annual assessments for 2015 up to \$100.80. However, the Board should be advised that this increase may be subject to challenge because of apparent ambiguities of the Declaration provision related to the maximum annual assessment increases.
2. We recommend the Board adopt a resolution clarifying that the maximum annual assessment allowed increases automatically per year by 3%, without any action by the Board to increase the assessments necessary. We can draft such a resolution for the Association for a fee of \$495.00.
3. Because the provision in the Declaration regarding the increase in the maximum annual assessment is cumbersome and confusing, we recommend the Declaration be amended to delete this provision in its entirety to allow the Board greater flexibility in setting the rate of assessments in the future and also to allow the members protection from future assessment increases.

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FACTS: To meet the Association's ongoing financial obligations, the Association's Board of Directors has determined that an increase in the Association's annual assessment may be appropriate. The Association's 2014 annual assessments are \$54.10. The Board is questioning whether it has the authority to make any increase without the approval of the Owners and if so, how much can the Board increase the annual assessment without Owner approval.

DISCUSSION: Article IV, Section 1(c) of the Declaration provides:

Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be thirty dollars (\$30.00) per Lot.

1. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 3% above the maximum assessment for the previous year without a vote of the membership.
2. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 3% by a vote of two-thirds (2/3) of each class of members voting in person or by proxy at a meeting duly called for this purpose.
3. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

The above provisions present several problems in calculating the maximum annual assessment the Association may impose without the approval of the Owners.

First, subsection (1) of the above provision states that the maximum annual assessment *may* be increased each year by not more than 3% above the maximum assessment for the previous year. It is unclear whether the maximum annual assessment will only be increased if the Board chooses to increase it or if the maximum annual assessment automatically increases and accumulates without any action by the Board.

However, when the provisions [subsections (1), (2), and (3)] are read as a whole, the implication is that the maximum annual assessment allowed without the approval of the members increases automatically each year by 3%, without specific action of the Board necessary to effectuate the increase. In that case, the maximum annual assessment the Association could impose would increase each year by 3%.

If the provision is interpreted to automatically increase we estimate the maximum annual assessment for 2015 would be \$100.80. We conclude that the Board could increase the annual assessments up to that amount without the approval of the Owners. Any increase above that amount would require the requisite approval of the Owners. Note that any such increase does not require the approval of 2/3 of all of the Owners. Rather, the provision quoted above only requires the assent of 2/3 of the Owners who are voting on the matter, either in person or by proxy, at a duly called meeting.

Taking a more conservative approach and assuming that the maximum annual increase is not automatic, the Board would only be able to increase the annual assessments for 2015 from its current level of \$54.10. Under this scenario, to increase the monthly assessment above \$55.72, the Association would have to obtain the approval of 2/3 of the votes of each class of members who are voting in person or by proxy at a meeting duly called for the purpose of increasing the assessments.

Because the intent of the Declaration appears to be for the maximum annual assessment to increase annually, it is our opinion the Board may increase the annual assessments for 2015 up to a maximum amount of \$100.80 without a vote of the Owners. If the Board chooses to so increase the assessments, we

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recommend the Board adopt a resolution clarifying that the maximum annual assessment increases automatically by 3% each year. Additionally, because the maximum annual assessment provision is ambiguous and confusing, we recommend the Declaration be amended to eliminate this provision going forward.

Finally, if the above course of action is pursued, we recommend the board try to communicate the need for the increase to your Community through which the Board may seek to build consensus for its decision to increase the assessment based on automatic increases. Assessment increases are frequently looked upon by Owners with concern and so, without attempts to build consensus to support the Board's determinations, political upheaval may result. To discourage that adverse outcome, we recommend outreach and consensus building be utilized before any determinations to increase the assessment have been made.

Despite the above recommendations, the Board should be advised that because of the ambiguities in this provision of the Declaration outlined above, such an increase may be subject to challenge. Therefore, a conservative option for the Board to consider would be to obtain the approval of the members, as required by subsection (2) of the above provisions to increase the assessments as contemplated. If that approach is taken, we still recommend the Board adopt the above-mentioned resolution to clarify those provisions going forward and that ultimately the Declaration be amended to delete the provisions entirely.

CONCLUSION: The Declaration ties increases in the maximum annual assessment to 3% above the maximum assessment for the previous year. It is not entirely clear whether this increase is automatic. However, based on a reading of the entire provision, it is our opinion that the maximum annual assessment increases automatically each year. As such, based on certain assumptions outlined above, we have estimated that the Association may impose an annual assessment of \$100.80 in 2015 without the approval of the Owners. Because of the ambiguities in the Declaration, however, this increase may be subject to challenge. Therefore, the Board may choose to take a more conservative approach and obtain the approval of the requisite number of Owners to increase the assessments as contemplated.

Regardless of which approach the Board takes, we recommend the Board adopt a resolution clarifying that the maximum annual assessment increases automatically. Also, we recommend that the Declaration ultimately be amended to delete this provision in its entirety to give the Board more flexibility in setting the rate of assessments in the future. Our recommendations and opinions are based on the facts stated or assumed and known to us as of the date of this letter, but are not a guarantee of results or a specific outcome.

We hope this letter satisfactorily addresses the question presented to us. Should you have any further questions or comments or desire further clarification, please do not hesitate to contact us.

Sincerely,



David A. Firmin, Esq.
HindmanSanchez P.C.