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October 5, 2007

SENT VIA ELECTRONIC MAILJennifer Harris
Hope Valley Green Homeowners Association, Inc.
4430 Sun Valley Drive
Durham, North Carolina 27707**RE: Issues/Concerns Regarding Fence Bordering NC Highway 751**

Dear Mrs. Harris:

I have been requested to provide an opinion regarding certain legal issues pertaining to a fence dividing the Hope Valley Green subdivision from North Carolina Highway 751. It is my understanding that the fence is situated within the boundaries of several homeowners's lots for the majority of its length. The questions provided to me concerned the legal rights and responsibilities of the HOA and the individual owners regarding maintenance and upkeep of the fence, as well as other pertinent issues.

The HOA does not own the property on which the fence is erected and it is not responsible for its maintenance. However, the individual owners did not elect to have the fence placed upon their respective lots so they cannot be compelled to maintain their portions of same. Currently, then, maintenance of the fence is at the discretion of the individual owner(s) with respect to the portion of the fence within their property line and those owners would bear liability for their portion of the fence as they would any other property they own.

Should it be decided that the HOA is to maintain the fence, the HOA would need written permission from each individual owner(s) to enter onto their property and make repairs, alterations, etc.. The HOA or its representatives/agents cannot unilaterally enter onto an owner's property.

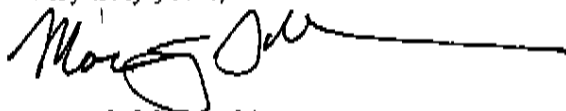
For the HOA to assume control of and responsibility for the fence, I would suggest the following steps to be taken concurrently. First, amending the Restrictive Covenants to expressly state that the HOA is responsible for the maintenance and upkeep of the fence or whatever other landscaping option is designated for that area. My reading of the covenants is that this would require a two-thirds (2/3) majority of the HOA members. Second, each and every owner whose lot contains a portion of the fence grant a narrow easement to the HOA for the location of the fence as well as a more general easement to the HOA for ingress, egress, and regress so that the HOA can enter onto each lot to make repairs or alterations as needed. The location of the easement for the fence would need to be specifically identified (surveyed, platted, and recorded with the Durham County Register of Deeds).

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Admittedly, obtaining the necessary votes and signatures required for the easement will likely prove difficult from an administrative standpoint. Moreover, there are the additional expenses of surveyor and legal fees. However, if it is decided by the members of the HOA that they want the fence to be maintained by the HOA in perpetuity and with a high degree of uniformity, I feel this is the best way to accomplish that goal.

If I can be of further assistance in these matters, please do not hesitate to contact me.

Very truly yours,



Marty S. McConchie

MSM