

EAGLE BEND WEST COMMUNITY ASSOCIATION, INC.

August 12, 2024, 4:00 p.m.

SPECIAL SESSION

The Board at EBWCA was asked by Dave McIntyre for the membership to have a special meeting with attorney Paul Sandry regarding transferring common property to individual owners who have adjoining property lines.

Paul Sandry, the attorney for the Association agreed to come and answer questions that the Members had regarding the ability to transfer common area. Mr. Sandry called the meeting to order a 4:05 p.m. He began by setting the ground rules for the meeting; no arguing of “Not transferring or transferring”. Mr. Sandry is coming to discuss the advice he gave the Board. Kevin Kleckner had written a list of question that he presented to Mr. Sandry and with Members of the Community. Mr. Sandry was prepared to answer the questions in the document, Mr. Sandry also asked the Members to be respectful to one another and introduce yourself. Mr. Sandry said that if he does not have the answers to the question, he will so state.

Question #1: Do the existing EBWCA CCR provide authority to transfer property. Mr. Sandry responded; in the CC&Rs and Bylaws there is not provision to allow the Board to transfer common property. This does not mean the community cannot do this. Montana Law says that you can transfer property as an HOA

Question #2: Voting participation and the requirements. Mr. Sandry said that the Board had voted in the July 16, 2024, meeting to allow the transfer of common property to an individual through a variance, however the vote was 2 in favor and 1 opposed. The Board then consulted with Paul Sandry; he advised them to have the Community vote on the issue. EBWCA CC&Rs requires 67% to implement a decision. This is the same in Montana Law, which also requires 67% approval before a change can be made. There is a provision for this in the CC&Rs Article 12 Section 4 which speaks of the “Transfer of Property”. There is also a provision in Montana State Law that says you can transfer property upon Board approval and 2/3 Membership.

Question #3: Should EBWCA consider updating the CC&R’s. Mr. Sandry had no opinion on this issue. He explained that amending Covenants is a pain and requires a heavy majority to make the changes. But if the Committee wants to update the CC&R’s that is a community decision.

Question #4: Shouldn’t Mortgagees be allowed to vote on the transfer: Mr. Sandry answered that Mortgagees are not members of the Association and only homeowners are Members.

Question#5: Would transferring of common property affect the Zoning Density? Mr. Sandry said No. To transfer a small sliver of land would not affect the zoning density, or even the plat. Transfer of the common property into sole ownership would not affect Members tax base as the new owner of the common area would incur a new tax base based on the increase of land. Flathead County would be responsible for doing this, not the HOA.

Question #6: Timing of variance: Mr. Sandry could not answer the question as there are variables. Architectural Review Committee, and the Board would need to vote so he could not answer

Question #7: Kevin-Kleckner felt that the Official Written Ballot the Board had supplied for voting had errors and omissions. He questioned the survey as described in the ballot. Mr. Sandry did not feel the language in the Ballot was misleading, and he had no further opinion on this.

Correspondence: Mr. Sandry has not had any conversation with Mr. Steven Sanders and Mr. Sanders, being in the audience acknowledged that he had never spoken to Mr. Paul Sandry before the meeting. The EBWCA Board has the letters Mr. Sandry wrote regarding the requirements for the votes necessary and the propriety of his view. The scope of Mr. Sandry's involvement was securing a Quiet Title to the property. Errors in the past years in obtaining a Quiet Title have been made and now EBWCA is the recorded owner of their roads and common property.

The voting is still taking place, and results will not be known until after September 6, 2024.

If the voting is not in favor of Mr. Sander's, will he need to return the property to its original condition. Mr. Paul Sandry said that was beyond his knowledge and he is not involved in that area. But he stressed that litigation is never good as it pits neighbors against neighbors.

One member asked if the owners would be paying less taxes on property as some have been transferred to an individual owner. Mr. Sandry said yes.

David McIntyre asked Mr. Sandry what the pros and cons of the transfer of the common area to a private individual are, and are there other ways to transfer property to an individual? Mr. Sandry said there is no case law in the State of Montana. Mr. McIntyre asked if Adverse Possession would be one. A permanent easement, Mr. Sandry said, is no different than an outright conveyance. If you have an exclusive easement, it is the same as owning the land, but no money is exchange. It would show as a cloud on your title as you do not own the property. The Board could draft an easement, but Mr. Sandry thinks it would still require 2/3 of the vote of the Members before they could grant this. An easement could follow the land, but once again it shows as a cloud.

Dave McIntyre recommended that the Board consider forming a committee to figure out how we got to this point and a solution so we can fix it for the future. The Community needs to heal and get over the fighting and harshness that continues to plague us. He also would recommend getting more people on the DRC Board to have more people involved in the community.

Dawn Underwood had been told by her legal counsel that the transfer would hamper the selling of her property. The Mortgagee could look unfavorably on this and affect the purchasing of insurance. Mr. Sandry did not agree with this but said that was his opinion and some may have a different viewpoint.

Paul Sandry closed the meeting at 4:30 p.m.