

From: Ruenger, Jeffrey
Sent: Monday, March 12, 2018 3:00 PM
To: Murillo, Jesus; Barton, Wayland; Perone, Steve
Subject: FW: On the Green at Troon North – Development of Tract V
Attachments: Ltr to COS 180312.pdf

Should this be added to 10-PP-2015?

From: Christina Planalp [mailto:Christina.Planalp@vf-law.com]
Sent: Monday, March 12, 2018 2:23 PM
To: Phillips, Guy <GPhillips@Scottsdaleaz.gov>
Cc: Development Review Board <DevelopmentReviewBoard@Scottsdaleaz.gov>; Jessica J. Maceyko <JJM@vf-law.com>
Subject: On the Green at Troon North – Development of Tract V

Dear Mr. Phillips,

On behalf of attorney Jessica Maceyko, attached is a letter regarding On the Green at Troon North.

Sincerely,



Christina Planalp
Paralegal
Vial Fotheringham, LLP
1900 W. Broadway Road
Tempe, Arizona 85282
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Admitted to practice in:
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March 12, 2018

Via Email (gphillips@scottsdaleaz.gov) and U.S. Mail

City of Scottsdale – Mayor and City Council
Attn: Guy Phillips
3939 N. Drinkwater Blvd.
Scottsdale, AZ 85251

Re: On the Green at Troon North – Development of Tract V

Dear Mr. Phillips:

This firm represents On the Green at Troon North Homeowners Association, Inc. (“OTG”). I am contacting you in regards to the proposed subdivision of Tract V (APN 216-72-584) located adjacent to, but not currently within, OTG.

It is our understanding that the City is currently reviewing plans to subdivide Tract V and that these plans may be discussed at an upcoming Development Review Board meeting.

The purpose of this letter is to advise the City that E. Whitefeather Lane, which is the proposed access to Tract V, is private property owned and maintained by OTG for the benefit of its members and their invitees. The owner of Tract V does not have any express or implied easement rights to use E. Whitefeather Lane for ingress or egress for construction or residential purposes. Lastly, OTG does not consent to the use of its private property without either the annexation of Tract V into OTG or a written easement and maintenance contribution agreement with the owner of Tract V.

Background

OTG is an Arizona nonprofit corporation of owners that was created pursuant to a declaration to own and operate portions of the planned community known as On The Green at Troon North in accordance with A.R.S. § 33-1801 *et seq.* OTG consists of 82 residences. OTG owns and operates the private roadway known as E. White Feather Lane (Tract B), which serves as the only access to the residences within OTG. Each owner in OTG is a member of the corporation and required to pay assessments to cover the costs and expenses incurred by OTG in owning and maintaining its common area, including E. Whitefeather Lane (Tract B).

Development of the OTG subdivision began in the mid-1990s. Tract V¹ is an undeveloped parcel located adjacent to the OTG development.² Tract V is identified on the Plat for OTG as reserved “for future development” by the original Declarant. Tract V was not included in the original Declaration

¹ Tract V is legally described as follows: Tract V, ON THE GREEN AT TROON NORTH REPLAT, according to the plat recorded in Book 398 of Maps, Page 05, Records of Maricopa County, Arizona Recorder; APN 216-72-584.

² Tract V was platted as part of OTG, but is not subject to the current OTG Declaration, as discussed herein.

for OTG³, and Tract V is *not* a part of OTG or subject to the current Amended and Restated Declaration governing OTG.⁴

The owner of Tract V is seeking to subdivide the property into four (4) residential lots, comprised of two (2) buildings of two (2) attached dwellings. This plan includes using E. White Feather Lane (Tract B) for all ingress and egress.

Use of E. White Feather Lane (Tract B) for Access

E. White Feather Lane (Tract B) is private property owned by OTG. The owners of Lots within OTG are required to pay assessments for maintenance, repair and replacement of Tract B.

The Tract V Owner does not have a right to use Tract B for access. There is no express easement over Tract B in favor of Tract V, and any easements in the OTG Declaration would not apply to Tract V since such property is not included in the OTG Declaration.

The Plat provides that Tract B is dedicated as an easement for "ingress and egress as well as public utilities," and that Tract B "shall be dedicated to the On the Green at Troon North Homeowners Association. . . for the *use and enjoyment of the homeowners and their invited guests*" (emphasis added). Therefore, unless Tract V is annexed into OTG, future owners of residences on Tract V would not be "homeowners," and thus, would not have the right under the Plat to use Tract B.

Furthermore, even if the owner of Tract V had an access easement at some point in the past, it has long since been extinguished by prescription. Concrete barriers installed on Tract B have blocked any vehicular access to or from Tract V for well over a decade.

Accordingly, the City cannot assume that the Tract V Owner has any right of access over Tract B for purposes of design review. Please be advised also that OTG intends to install an access gate at the entrance to the OTG community (101st Way) and exit only gate at the north end of Tract B. This would preclude any access onto Tract B by vehicles (except emergency vehicles) that are not owned by residents within OTG.

Lastly, it is our understanding that the City has stipulated that the subdivision requires the modification of a median island located on E. Whitefeather Lane and the installation of a sidewalk extension and that the owner of Tract V requested the removal of these stipulations. OTG has no objection to the removal of these stipulations, provided that Tract V is either annexed into OTG or OTG and the owner of Tract V enter into a mutually agreeable easement and maintenance contribution agreement for the use of OTG's private road.

³ Recording No. 1995-0099794

⁴ Recording No. 2001-0989277

Guy Phillips
March 12, 2018
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It is my hope that this letter has provided a helpful summary of the items that need to be addressed prior to development of Tract V.

If you have any questions or if I can provide further information, please do not hesitate to contact me.

Thank you.

Sincerely,



Jessica J. Maceyko

cc: City of Scottsdale Development Review Board (developmentreviewboard@scottsdaleaz.gov)