



LINDSAY S. SMITH  
[lsmith@wlpplaw.com](mailto:lsmith@wlpplaw.com)  
[www.cohoalaw.com](http://www.cohoalaw.com)

June 23, 2010

*via e-mail to: Lacie Pachas, Don Slavin*

Watkins Farm Homeowners Association  
Lacie Pachas

*Re: Negotiation with Watkins Farm Involved*

Dear Members of the Board:

Thank you for joining me and members of Watkins Farm Involved, together with their counsel Don Slavin, at our offices to discuss the disputes Watkins Farm Involved has had with the Association. This letter is designed to outline the issues brought up during the negotiation, as well as to create a plan of action to resolve the issues in a manner that recognizes the concerns of members of Watkins Farm Involved, while permitting the Association's Board of Directors to act in a manner appropriate for a non-profit corporation's board of directors.

### ***Education***

It was evident at the meeting that the Association's Board of Directors and its membership would benefit from additional education regarding each party's roles, rights, and duties. Under the Colorado Common Interest Ownership Act ("CCIOA"), Associations are obligated to provide annual member education, and have the ability to provide education to the members of their boards of directors.

This education can take a variety of forms, including educational presentations at meetings, dissemination of pamphlets regarding the rights and responsibilities of owners, the association, and board members, and other actions. As an initial matter, I've attached to this e-mail several pamphlets issued by the Community Associations Institute, which is an industry organization that advocates for community associations like Watkins Farm. These pamphlets can provide some guidelines for both Board members and members of Watkins Farm Involved. Once the Association website is back up and running, I suggest linking to these pamphlets.

Beyond the dissemination of these types of pamphlets, it is our experience that

*Focused on Communities*

1660 Lincoln Street  
Suite 1550  
Denver, Colorado 80264  
303.863.1870  
303.863.1872 Fax

regular community newsletters are an effective method of providing owner education and fostering community harmony. This helps to make owners are aware of their obligations and responsibilities as well as the Association's obligations and responsibilities. In addition, the Association can mail out "Covenant Violation" forms with the newsletters to allow residents a form for complaints.

### ***Website***

Watkins Farm Involved has agreed to remove the portions of its webpage providing for covenant complaints, once the Association obtains the proper permissions for the official Watkins Farm Community webpage, and updates the webpage with documentation and covenant enforcement complaint information. The Association has obtained the information necessary to access the official webpage, and will discuss how to update the page at its board meeting on Wednesday, June 23, 2010.

The use of the Watkins Farm Involved website could be viewed as an unauthorized assumption of corporate powers, and this could lead the Watkins Farm Involved members to have personal liability under the Colorado Non-Profit Act. With this in mind, we are anxious to fix the Association's website to prevent any sort of confusion.

### ***Rules and Regulations***

It was clear at the meeting that the Association's governing documents, including its procedures for covenant enforcement and even the terms of its covenants, need revision. I propose the adoption of Rules and Regulations providing for the following:

- **Covenant Enforcement.** The Covenant Enforcement rules and regulations would probably be a revision to the Association's current policy, which is difficult to work with on a day-to-day basis. The new rules would provide a specific procedure
- **Covenant Clarification.** To be able to properly enforce covenants, the Association should adopt rules and regulations clarifying provisions that have historically caused confusion. These include clear definitions of outbuildings, accessory vehicles, and landscaping requirements.
- **Water Reporting.** We did not address the Association's water reporting obligations at the meeting, but I am aware there have historically been issues with water reporting in Watkins Farm.

With the Board's approval, I will commence drafting Rules and Regulations regarding these matters, as well as other matters the Board determines need clarification or specific procedure. While the Board is the entity authorized to adopt Rules and Regulations, I think it is appropriate under CCIOA to post the draft Rules and Regulations on the revamped Association website for review and comment before the Board adopts anything.

### ***Enforcement***

A central theme in the discussion was the need to enforce covenants in Watkins Farm. I anticipate that most of the enforcement questions will be resolved by clear Rules and Regulations governing enforcement, together with education for owners and board members specifying procedures and obligations.

Given the history in Watkins Farm of relaxed covenant enforcement, it is my opinion that prior to commencing any significant covenant enforcement campaign, the Association provide education as discussed earlier, as well as notice of its intent to review covenant complaints thoroughly, and enforce the covenants where appropriate. The Association must review covenant complaints, and make a decision regarding the action it will take (or not take) on the complaint.

Notwithstanding the Board's obligation to review covenant complaints, it must be permitted to make decisions regarding covenant enforcement, including the decision to *not* enforce a covenant. Boards may decide not to enforce covenants for a variety of reasons, including the likelihood that the Association will not prevail on an action; the costs associated with a covenant enforcement action; the determination of non-violation; the desire to not enforce covenants unevenly; and similar exercise of their judgment.

In the Rules and Regulations I would suggest that all covenant complaints – regardless of outcome – be noted in the Board's meeting minutes, with some indication of the result.

### ***Past Actions***

Many actions and decisions of the Board, and past Boards of Directors, were questioned at the meeting. While the past actions and decisions helped to give rise to the complaints facing the Board today, the presumption is that such actions were taken in good faith and within the corporation's powers. These past actions did not violate the Colorado Non-Profit Act or the Common Interest Ownership Act, and while they caused some discord in the community, the goal now is to resolve the issues while maintaining the Board's ability to act on behalf of the community.

### ***Future Actions***

I will commence drafting the Rules and Regulations. I welcome input from Board members as well as Mr. Slavin for this initial draft. As we have prior versions of rules and the proposed Declaration clarification from the previous Board, we should be able to put together an initial draft in time to post it on the website before the next Board meeting.

After the initial draft is posted on the website, the Board should solicit input from the community, incorporate the comments where appropriate, and adopt the Rules and

Watkins Farm

June 23, 2010

Page 4

Regulations. This community solicitation and input is an ideal time during which the Association can provide educational information to members, and notify them that covenants will be subject to stricter enforcement in the future.

The current Board of Directors, as well as previous Boards, have not always acted ideally, but it must be remembered that they are homeowners volunteering for a position that is often thankless and difficult. Please let me know if you have any additional questions or comments regarding this matter. I will commence drafting the Rules and Regulations once I hear from Lacie after today's Board meeting.

Very truly yours,

WINZENBURG, LEFF, PURVIS & PAYNE, LLP

*Lindsay S. Smith*

LINDSAY S. SMITH

LSS