

LAW OFFICE OF
Tracy J. Cross
835 East 2nd Avenue, Suite 240
Durango, Colorado 81301
(970) 385-0600
FAX (970) 385-0604
tcross@mydurango.net

March 12, 2014

Board of Directors
San Juan River Resort POA
Pagosa Springs, CO 81147

Re: Riverbank Property

Dear Board:

As we have discussed, the Metro District has been working on title issues regarding river bank property within the San Juan River Resort Subdivision for some time. Some members of the POA believe that it would be more appropriate for the POA to be the owner of the riverbank than the Metro District.

It is my legal opinion that the Metro District would be the proper owner of the property for the following reasons:

- 1) Legal Costs. It is my understanding that the record owner(s) of the riverbank property are working with the Metro District to transfer the property to the Metro District. It is not clear to me whether that deed will complete the transaction, or whether a Quiet Title Action will be required, as well. From my past discussions with Dirk Nelson, attorney for the Metro District, the chain of title for the property is unclear – which he believed would require a legal action to clear any clouds in the title. Due to the amount of work already completed by the Metro District and lack of a budget by the POA, it seems appropriate for the Metro District to continue with the work to transfer title.

Quiet Title actions are expensive, and include fees of title examiners to research the chain of title, the cost of a litigation guaranty policy from a title company, and legal fees for the Quiet Title action - which costs could easily exceed \$15,000. Unless the common ownership of the riverbank is established, it is reasonable to anticipate that lot owners along the river will claim ownership of the river bank – to the detriment of the other members of the POA.

The Metro District has agreed in principal to include restrictive language on the riverbank deed that would prevent the Metro District from constructing amenities on the property without POA participation, which would protect POA member interests.

If the Metro District did not pursue ownership of the riverbank, the POA would be in a serious disadvantage. In addition to legal work to obtain title of the property and proceed with a Quiet Title Action, the POA would need to amend their governing documents to include the riverbank as a common element. That work would require a new map of the subdivision to be prepared, which would need to be prepared by a surveyor at a considerable cost, amendments to be made to the recorded Declarations, followed by work by the Board to have the amended map and declarations approved by 67% of the members of the POA. The Metro District would not have to go through these extra steps.

Ownership of the riverbank by the Metro District would establish inclusion of this property as a common element, which would enhance the property within the San Juan River Resort Subdivision.

- 2) Liability. While the proximity to the subdivision to the San Juan River contributes to the beauty and value of the properties within the subdivision, there are obvious dangers associated with the river. If the POA were the owner of the riverbank as a common element, I would advise the POA to carry a liability insurance policy with at least \$5 million in coverage for a single accident. I don't have an estimate of the cost of that insurance – but would assume the purchase of that kind of insurance would require the POA to increase member dues to pay for the coverage.

The risks associated with the river include slip and fall accidents and drowning accidents. The Metro District is a governmental entity, and as such is afforded certain legal protections, including sovereign immunity. It would not have the same liability exposure as the POA for this property.

- 3) Course of conduct. The POA transferred the property designated as common elements within the subdivision to the Metro District decades ago. The Metro District manages the common elements – including roads, water and sewer – which is essential to protect the property values within the subdivision. There does not seem to be a reason to treat the riverbank differently from the other common amenities within the subdivision.
- 4) Resources. The POA has a limited budget and is managed by a Board of Directors – who serve as volunteers. The POA does not have the resources to manage the riverbank property, which carries with it obvious risks and liabilities.

In my opinion, the benefits of ownership of this amenity are outweighed by the cost the POA would incur to obtain ownership and the POA's liability exposure if it obtained ownership. For these reasons, it is my legal opinion that the preferred entity to have ownership of the riverbank property is the Metro District.

Sincerely,



Tracy J. Cross