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Via Email & U.S. Mail

March 3, 2022

Lake Meadows Subdivision Playground Committee
Attn: Rachael Tocci

Re: New Playground

Dear Gentlepersons:

As requested by Rachael Tocci, Lake Meadows Subdivision Playground Committee Chair, this correspondence will attempt to summarize the most pertinent points discussed in our meeting on February 24, 2022, here in our law offices.

A.

The threshold question posed to the undersigned was whether the Board of Directors is empowered to build a new playground, or must the homeowners themselves vote to approve the same. The 2020 Restated and Amended By-Laws of Lake Meadows Homeowners Association, Inc. (herein "By-Laws")¹ state that:

All of the powers and duties of the Association² shall be exercised by the Board of Directors, including those existing under the common law and statutes, the Articles of the Incorporation of the Association and these By-Laws. Such powers and duties shall be exercised in accordance with said Articles of Incorporation, these By-Laws and the common law and statutes

(By-Laws art. V, § I (emphasis added)). Thus, it is clear that the Board of Directors is vested with the Association's full power and authority, subject only to the law, the incorporating documents and all the other Association By-Laws.

¹ The undersigned has only an unsigned copy of the same.

² The Association was "organized for the purpose of acquiring, owning and administering the operation and management of recreational and other common facilities . . ." (By-Laws art. I, prmb.). A neighborhood playground certainly seems to fall well within the parameters of such facilities.

The same section of Article V of the By-Laws further states that the Board's powers:

. . . shall include, without limiting the generality of the foregoing, the following

. . . .

3. To cause the . . . further improvement of the property, real and personal;

(*Id.* art. V, § I (3) (emphasis added)). That certainly would appear to encompass a playground.

B.

The next question addressed was what percentage of votes is needed by the Board and/or the homeowners themselves to approve the new playground. As noted above, the homeowners' approval is not required for the same.

As to the Board, the By-Laws provide that the "acts of the Board approved by the majority of the votes present at meeting at which a quorum is present shall constitute the acts of the Board of Directors, except as specifically otherwise providing in the Articles of Incorporation or the By-Laws." (*Id.* art. V, § F). The By-Laws do not provide otherwise on this issue. Thus, unless the Articles of Incorporation provide differently, a simple majority vote of the Board is all which is necessary, as long as a quorum is present.³ A super majority of 60% Board approval required for amending the By-Laws,⁴ or 75% homeowner approval to amend the restrictive covenants are not applicable here.⁵

³ The By-Laws define a quorum of the Board as "the Directors entitled to cast a majority of the votes of the entire Board." (By-Laws art. V § F). Since the entire Board has 5 members, that obviously means 3 constitute a quorum.

⁴ (*See* By-Laws art. X, § B).

⁵ (*See* Restrictive Covenants recorded in Miscellaneous Book 105, Page 557 at 560, in the Register's Office for Washington County, Tennessee).

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C.

Another matter discussed by Ms. Tocci and the undersigned at the same meeting was the possible need for approval by one or more arms the County. More specifically, the undersigned has suggested contacting the County's building inspection office and to see what may be required of it or any other County offices. Finally, the undersigned would also highly recommend notifying the Association's insurance agent about this before any part of building the playground commences.

Thank you for your attention to these matters. Please feel free to let me know if you have any further questions.

With best wishes, I remain,

Yours very truly,

MASSENGILL, CALDWELL & COUGHLIN, P.C.

By:



Daniel D. Coughlin⁶

DDC/sml

⁶ As discussed with Ms. Tocci, and as noted on our letterhead above, please note that the undersigned is a civil trial and litigation attorney, not a corporate or business lawyer.