

From: Albert R. Cook <arcpa@mpinet.net>

To: Karen Swingle <ksswingle@aol.com>

Subject: North Shore Courtyard Villas - Tennis Court

Date: Mon, Dec 6, 2010 12:51 pm

Karen,

You have told me that few residents use the area that is set aside as a tennis court. The cost to maintain the court is prohibitive, given its current usage, but that it has been there since the Developer installed it, years ago. The Board would like to know if they are free to cease maintaining it as a tennis court (and to possibly use this property for another common purpose).

Please allow me to answer in this informal manner, in order to expedite the answer to your inquiry. I have reviewed the Declaration and By-Laws of NSCV as well as the Florida Statutes (Chapter 720 and 617). In my opinion, the Board has the authority to make a decision to change the use of the common area now used as a tennis court to some other use. I do not understand that the Association is going to sell or transfer it, only (possibly) change it's use.

In such an inquiry, we look to specific prohibitions or mentions of the power questioned. There is no prohibition in the Declaration, the By-Laws, or the Statutes. In such a case, you look to see if the Board has the inherent power to do the act contemplated. The Non-Profit Statute, Chapter 617, in Section 617.0302 gives the Board of a non-profit corporation the inherent power to deal with it's property. Our Declaration says that the Board acts in the general best interests of the Members, and if the Board decides that maintaining a tennis court, when few, if any Members use it, they can decide to do something else with the property.

I also looked to the Plat of the property to see if the Developer somehow "locked us into" one particular use. They did not. This area only says it is a "recreation area" and isn't specific. It may be that the Developer featured the tennis court in advertisements or fliers, but this can't be construed as a binding commitment for the Association to continue the tennis court, even when it makes no sense to do so.

If the Board wants to conduct an "opinion poll" as to what to do (to assist them in their decision) that would be OK, but it wouldn't be binding nor is such an opinion poll required. I believe that the Board can make this decision on their own, without a Special Meeting or a Member Vote, of any percentage.

I won't address the issue of another use of this property, until you have a plan for it, but the use should be for the Members, in a manner consistent with the fact that it is common area property.

Sincerely,

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