



October 21, 2020

Board of Directors
Chateau Chaparral Owners Association
c/o Treasurer
PO Box 5177
Buena Vista, CO 81211

Denver Office
David A. Firmin
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Re: *Opinion as to the Validity of the Electric System Abandonment Agreement*
Our File No. 1059.0010

Dear Members of the Board:

Altitude Community Law P.C. has been retained to provide an opinion regarding concerns raised by an Owner as to the validity of the Electric System Abandonment Agreement ("Abandonment Agreement") between the Chateau Chaparral Owners Association ("Association") and Sangre De Cristo Electric Association ("SDCEA").

We understand an Owner in the Chateau Chaparral Community believes the Abandonment Agreement is invalid and asserts that it is an unlawful partition of the General Common Elements and/or determination of obsolescence. The Owner claims member approval was required to amend the Condominium Declaration for Chateau Chaparral ("Declaration") to allow for the partition and/or to determine that the electrical system was obsolete prior to entering into the Abandonment Agreement. This is not accurate.

First, as to the claim that the abandonment of the electrical system is an unlawful partition of the General Common Elements, Article VII of the Declaration provides that General Common Elements shall remain undivided and no Owner shall bring any action for partition or division thereof. The electrical system reasonably falls within the definition of General Common Elements as provided in the Declaration however, the Abandonment Agreement does not seek to partition the General Common Elements or otherwise convey the existing electrical system. The Abandonment Agreement does not transfer title of the electrical system to SDCEA or any other entity, nor does it otherwise sever the electrical system from the other General Common Elements. The electrical system remains in place and is still considered part of the General Common Elements held in common by the Owners. As such, there has been no violation of Article VII of the Declaration.

As you are aware, one of the main reasons for the Abandonment Agreement is that SDCEA will cease providing electricity to the community due to the unsafe condition and fire hazard of the existing electrical system. As such, the Association, through its Board, is agreeing to abandon the existing electrical system improvements in exchange for a new electrical system and continued service by SDCEA. The management, maintenance, repair or replacement of the General Common Elements, which includes the electrical system, is considered part of the common expenses shared among the Owners. The Association, through its Board, is responsible for such administration and management of the General Common Elements and is not required under the Declaration to obtain Owner approval prior to exercising its duties. Furthermore, as this is being done without cost to the Owners, no approval is needed.

That being said, each director must carry out its management duties in a manner that the director believes to be in the best interest of the Association and consistent with the power and duties provided in the Association's governing documents. The Board's authority to act on behalf of the Association as to the maintenance and management of the General Common Elements includes the authority to enter into contracts for such maintenance and management. A decision to determine the existing electrical

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improvements as abandoned is a management decision, i.e. the costs to bring the existing electrical improvements into compliance with SDCEA in order to continue receiving utility service was cost prohibitive and it was in the Association's best interest to have a new electrical system installed in its stead. The decision to abandon the existing improvements does not have the legal effect of partitioning the General Common Elements, conveying title or amending the Declaration.

As such, we are of the opinion that Owner approval was not required to determine the existing improvements abandoned and move forward with an agreement to install a new electrical system within the General Common Elements. This decision is consistent with the Board's duty to manage, maintain, repair and replace the General Common Elements.

As to the concern raised by the Owner regarding Owner approval in the event of obsolescence, we understand the Owner is relying on Article XX of the Declaration which addresses Owner approval for any revocation or amendment to the Declaration. A determination of abandonment or obsolescence does not amend or revoke the Declaration and therefore, Owner approval is not required.

The term obsolescence is used to describe a process by which a component has become outdated or is no longer used. In this case, due to the current disrepair of the electrical system and potential fire hazard, the Association has chosen to replace the entire electrical system with new wiring rather than repairing and updating the existing system. As such, this work will require the abandonment of the existing wiring. The Abandonment Agreement provides notice of the Association's intent to abandon the electrical system for both members of the community, as well as SDCEA, so it may move forward with the project. The fact that the electrical system is outdated (i.e., is obsolete) and cannot be used without a significant safety risk to the residents are reasons for the abandonment.

Nevertheless, even to the extent the electrical system is determined obsolete under the Declaration, Article XXXI of the Declaration provides that, "All of the owners, irrevocably constitute and appoint Chateau Chaparral Owners Association, a Colorado corporation, not for profit, their true and lawful attorney-in-fact to act in their name, place and stead for the purpose of dealing with the property upon its destruction or obsolescence as is hereinafter provided. As attorney-in-fact the Association by its president and secretary shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a condominium campsite owner which is necessary and appropriate to exercise the powers herein granted." As such, in the event of obsolescence, the Association is automatically appointed as the attorney-in-fact under Article XXXI to act on behalf of the Owners. Consequently, the Association has the power to make decisions as to how to deal with any obsolete component in the community without having to seek an amendment to the Declaration or Owner approval.

In conclusion, the Board, on behalf the Association, is authorized to make decisions regarding the management and maintenance of the General Common Elements. This includes the obligation to repair and replace the Common Elements. Under the circumstances, the Board has determined that it is in the Association's best interest to install a new electrical system which consequently requires abandonment of the existing electrical system. The decision of the Board is consistent with its powers and duties over the General Common Elements and does not seek to amend the Declaration or partition the General Common Elements. There is nothing in the Declaration or any applicable statute which prohibits the Association from moving forward with the SDCEA work or which would require an Owner vote. As such, we are of the opinion the Abandonment Agreement is valid and enforceable.

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We hope this letter satisfactorily addresses the question presented to us.

Should you have any further questions or comments or desire further clarification, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to be 'D. Firmin', with a large, sweeping flourish extending upwards and to the right.

David A. Firmin
Altitude Community Law P.C.

