

TakosLawGroup ^{Ltd.}

Utah • Florida • Nevada

October 7, 2020

Lot Owners
Dixie Springs Subdivision
Hurricane, UT 84737

Re: *The ACC's October 2nd Response Letter to Proposed CC&R Amendment*

Dear Dixie Springs Lot Owners,

Please be advised that this firm represents a growing number of your neighbors and fellow lot owners. We were retained by members of your community to assist in drafting an amendment to the Dixie Springs Declaration of Covenants, Conditions, and Restrictions (CC&Rs). As you may be aware, the CC&Rs have been amended four times since their inception and the proposed amendment would be the fifth (the Amendment).

The process for amending the CC&Rs is clearly outlined in the CC&Rs themselves. Having an express amendment process allows the CC&Rs to be dynamic and adapt to meet the needs of the community. The CC&R amendment process does not require the Amendment be reviewed or approved by an attorney, however, your neighbors felt it was important to do so. Our firm has worked closely with your community over the past month to ensure the proposed Amendment complies with federal, state, and local laws, as well as the provisions of the CC&Rs.

The proposed Amendment would (1) abolish the Dixie Springs Architectural Control Committee (ACC), (2) change the CC&Rs to mirror city and county regulations regarding firepits, (3) remove the requirement that all members of a household be related through blood or marriage, (4) remove the restriction on solar panels to align with state law, and (5) remove the easement which currently allows ACC personnel to freely enter any property. The full text is available for review at www.dixiesprings.online/a5. Our clients felt that such an Amendment was necessary in response to the ACC's complete abandonment of its assigned purpose and its continued overreach of power.

Tellingly, because the Amendment proposes to abolish the ACC, it has engaged its own legal counsel to disseminate falsehoods regarding the Amendment. Sadly, the lengths to which the ACC will go to attack any challenge to its power knows no bounds. Specifically, in its zealous defense of its own supreme authority, the ACC is willing to attempt to mislead the members of your community in the following ways:

1. The ACC begins its letter dated October 2, 2020, in response to the proposed Amendment (the ACC Letter) by suggesting that “eliminating the ACC would hurt Dixie Springs” and that there is legal precedent suggesting that having an ACC “guarantees” property values can be maintained. Not only is this untrue, but—as the ACC well knows—using “legal precedent” in this manner is completely misleading. No court has, nor will they ever, reach a legal conclusion that having a community association, like the ACC, helps maintain property values. Such an issue is not a question of law. The cases cited in the ACC Letter are improperly generalized beyond the specific facts of the cases to which they relate. Complex questions regarding the factors influencing home values are investigated through scientific study and driven by data specific to individual communities. Judges simply will not opine in this area. This is a reality understood by the ACC.¹
2. The ACC continues its letter by alluding to the idea that it has always had the authority to enforce the CC&Rs. This is completely untrue. Enforcement of the CC&Rs was a power solely conferred to the lot owners until 2014 (see Original CC&Rs at Art. V, Sect. 1). In 2014, by the very same amendment process it now decries, the ACC seized the power to enforce the CC&Rs (see Amendment 3 to CC&Rs at Art. V Sect. 6). It is worth noting that the ACC ultimately enforces the CC&Rs by the exact same methods a group of lot owners would use for enforcement, i.e. bringing suit in the appropriate court. The ACC funds its enforcement with monies collected from lot owners.

Additionally, the ACC Letter suggests that without the ACC, enforcing the CC&Rs would only be possible through long and expensive litigation funded by individual lot owners. The ACC fails to mention the possibility of group funded enforcement and that the vast majority of disputes that would be resolved informally. The ACC Letter is also silent with regards to alternative dispute

¹ See review of a recent study by Yale University researcher, Leon S. Robertson, PhD, is a sociologist/epidemiologist by visiting <https://independentamericancommunities.com/2019/06/18/new-research-busts-myth-that-woas-protect-property-values/>

resolution methods such as mediation. In fact, because the CC&Rs were drafted in accordance with city and county codes, many violations could be resolved by simply alerting the appropriate local agency. In sum, the CC&Rs were effectively enforced by the community, as a community, from 1998 until 2014, and the possibility of giving that control back to the community has caused the ACC—expending money collected from lot owners—to push the narrative that such an idea is extreme. But this idea is not extreme, it is a return to normal for Dixie Springs.

3. Next, the ACC Letter incorrectly states that the Amendment would require future amendments to be passed by an 80% vote. This is also not true. The Amendment does nothing to change the current amendment process or the 60% affirmative vote requirement outlined in the CC&Rs.
4. Finally, the ACC makes the bald accusation that if the Amendment were to pass it would be the result of fraud or the falsifying of signatures. Unlike the ACC, those pursuing this Amendment believe in transparency. All signatures recorded shall be kept by this office and maintained for presentation upon request to the appropriate state and local bodies including the Office of the Recorder of Washington County, Utah. All provisions of the CC&Rs relating to the Amendment will be strictly followed.

These and other fear-based mistruths pushed by the ACC are nothing more than thinly veiled attempts to frighten members of this community into foregoing their best interests in favor of a power-hungry organization. The strength of the Dixie Springs community is its beautiful location, its shared sense of community, and its people—not the ACC.

Sincerely,



Steven R. Hart, Esq.
1980 Festival Plaza Drive, Suite 300
Las Vegas, Nevada 89135
O: 702.856.4629
C: 801.380.8950

/s/ Zachary P. Takos

Zachary P. Takos, Esq.(Utah Bar #13102)
1980 Festival Plaza Drive, #300
Las Vegas, Nevada 89135
O: 702.856.4629
C: 702.521.3799