13191309-102-2-2*

Gayle A. Kern, Esq.

Reply to: Reno

February 17, 2023

Re: *Dayton Valley Community Association*
NRED Claims 2021-696 and 2021-761

Dear homeowner:

Beginning in July 2021, the Association was the subject of ten complaints by a prior Owner[1] within the community. These complaints were filed with the Nevada Real Estate Division ("NRED") as Ombudsman Intervention Affidavits. To respond and provide information in connection with these various investigations, the Association's insurance company appointed Leach Kern Gruchow Anderson Song ("LKG"). LKG is general counsel, so the history and knowledge of the Association was invaluable in successfully defending the Association. Unfortunately, even with this advantage, the time spent on these various matters was tremendous and also involved your community manager and current and former members of the Board. Fortunately, all the complaints were resolved with the NRED finding that there had been no violations of NRS 116. The remaining issue, identified in Cases No. 2021-761 and 2021-696 involved the assertion that Mr. Kepler, a long-time member of the community and duly elected Board member, was not qualified to serve on the Board.

The basis of this assertion was an argument that because the Association maintains Palmer Drive and the Palmer Gate, Mr. Kepler receives a personal profit or compensation from such maintenance. From our standpoint, this argument was nonsensical. The Association is legally required to maintain all of the private roads and private gates within the community, including Palmer Drive and Palmer Gate. In addition, the Association is required to properly fund its reserve account to include all of the streets and gates, including Palmer Drive and Palmer Gate. How could meeting the obligations of the CC&Rs result in some personal profit or compensation to any Owner?

Despite providing hundreds of pages of Association records, including all the maps, the CC&Rs, the Reserve Studies and other documents, the NRED continued to claim that Mr. Kepler was receiving personal profit and compensation because even though all the roads had to be taken care of by the Association, the roads were not owned by the Association. In fact, there are very few portions of the roads owned by the Association. Therefore, ownership is completely irrelevant

[1] Since the complaints were filed, this owner sold his home and is not longer a member of the Association.

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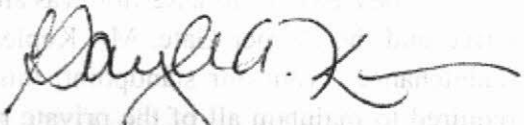
to the obligation of the Association. Despite the obligation to maintain the roads, the NRED then took the unusual step of ordering the Board remove Mr. Kepler as a Board member. This meant the Association was faced with a letter of instruction that was unlawful, as only members of the community may vote to remove a Board member. Board members do not have the right to remove any other Board member. The Board was faced with an unlawful conclusion by the NRED that Mr. Kepler received personal profit or compensation because of the Association taking care of the roads and an unlawful instruction for Board members to remove one of their own.

A complaint was filed by the NRED, and a hearing was held over two days, on December 6 and 7, 2022. Joe Hughes and Lisa Miller-Hobbs testified as witnessed for the NRED and made the same accusations against the Association. Mr. Drury and Mr. Kepler testified on behalf of the Association and carefully explained to the Commission that the Association was simply meeting its obligations to take care of all of the private roads and gates. LKG presented nearly a thousand pages of records to the Commission and argued that the NRED and its witnesses, Mr. Hughes and Ms. Miller-Hobbs were wrong. LKG argued there is no personal profit or compensation to any Owner and the Board did not have the authority to disqualify Mr. Kepler and remove him from the Board.

After considering the evidence and the testimony, the Commission ruled for the Association and concluded that all of the arguments made by LKG were correct. In voting to dismiss the case, Chairman Burke stated the case should never have been brought, just as we had argued before the complaint was filed. The members of the Commission agreed that not only could there be no personal profit or compensation to Mr. Kepler as a result of the Association maintaining the private roads and gates, but the Board also lacks the authority to remove a Board member. In sum, a complete victory for the Association.

Sincerely,



Gayle A. Kern, Esq./electronically signed