



Eric J. Wittenberg, Esq.  
Jennifer L. Routte, Esq.  
C. Christopher Alley, Esq.

6895 East Main Street  
Reynoldsburg, OH 43068

P: 614.834.9650  
F: 614.328.0576

[www.ewittenberglaw.com](http://www.ewittenberglaw.com)

June 27, 2014

VIA EMAIL ONLY

Gloria Humes, Secretary/Treasurer  
Wynstone Subdivision HOA  
P.O. Box 160  
Lewis Center, OH 43035

*Re: Erin Street landscape entrance*

Dear Ms. Humes:

You asked me to look into the preparation of twin landscape easements over lots 202 and 267 of the Wynstone Subdivision. It appears that the developers intended to execute the appropriate easement at the time that the property was developed, but it similarly appears that this was overlooked.

My investigation indicates that it is possible to correct this by preparing and having willing homeowners execute the necessary easements now. However, you indicated that the HOA does not have legal descriptions for the proposed easements and that the cost of having surveys conducted to prepare those legal descriptions is cost prohibitive. Without them, no easements can be prepared.

There is a second issue as well. The City of Columbus has indicated that because there are existing 15 foot easements on each parcel for utilities, it likely would not approve landscape easements over the same ground. The problem is that these utility easements are in the precise portions of the subject properties where the landscape easements would have to go. Hence, even if we did have the necessary legal descriptions, we still would not be able to perfect the easements.

Without easements, there is no way to bind future homeowners and to ensure that the obligation to allow access to maintain the landscaping runs with the land. We discussed other potential solutions to this problem, such as getting the present homeowners to sign agreements permitting access. That solution is fine as far as it goes, but is only binding upon the current homeowners. It does not run with the land, and if a future homeowner does not wish to execute a similar agreement, he or she is not bound to do so and could deny access, meaning that any subsequent attempt to access or maintain the landscaping would constitute trespassing.

Finally, we discussed the fact that while Special Warranty Deed Section 3 gives the power to “construct, repair, reconstruct and maintain an entry feature and associated landscaping, fencing,

Gloria Humes  
June 27, 2014  
Page Two

sprinkler system, and lawn (hereinafter referred to as the 'Entry Easement Area'). The easement shall constitute a restrictive covenant, shall run with the land, and shall be binding on all future owners of lots 1 and 59." There are two major problems with relying upon this statement. First, and foremost, it refers to the wrong lot numbers and does not create the restrictive covenant on the pertinent lots, which are 202 and 267. That statement has no binding affect whatsoever on lots 202 and 267. Second, the actual easement document was never prepared or recorded.


In short, in the absence of easements, there is simply no way to accomplish the stated goal of having something binding upon future landowners that runs with the land.

The fault for all of this lies with the developers of the subdivision. At the bare minimum, they should have to pay for the surveys to be completed. I also believe that they should have to bear the effort and expense of getting easements recorded since doing so was their responsibility in the first place.

I regret that I am unable to accomplish the task for the reasons set forth above. However, should you have questions or comments about any of the foregoing, please feel free to contact me.

Very truly yours,

WITTENBERG LAW GROUP



Eric J. Wittenberg  
[eric@wittenberglawgroup.com](mailto:eric@wittenberglawgroup.com)

EJW/me