



County of Jefferson

State of Missouri

Administration Center
729 Maple Street · PO Box 100
Hillsboro, Missouri 63050

Board of Executives

Chuck Banks
Edward L. Kemp
Patrick J. Lamping

Telephone 636-797-5400 Fax 636-797-5506
Web Address: www.jeffcomo.org

January 26, 2009

Ms. Joyce A. Baldauf, President
Bayberry Farms Home Owners Association
P. O. Box 266
Barnhart, MO 63012

Dear Ms. Baldauf,

Thank you for your letter regarding the recording of the final plat of Springbrook Farms.

The County is limited and bound by State statute and by County regulation to follow the law and treat all property owners equally. The decision by the court of appeals ended all efforts to prevent the re-platting of Lot B of Bayberry Farms 3B by determining the right of the current owner to include it in the plat of Springbrook Farms.

In the opinion of staff, the owner of Springbrook Farms met all of the requirements under our subdivision rules and regulations and, therefore, it had to be approved by the Planning and Zoning Commission. The Planning and Zoning Commission had no discretion. The owner must now file the necessary bond and surety to guarantee completion of the subdivision improvements before he can record the final plat.

The passage of the Jefferson County Charter has no impact on the regulations or on the execution of those regulations.

The question remains open as to whether or not the recorded deed restrictions that were recorded with the Bayberry Farms Subdivision remain attached to Lot B of Bayberry Farms 3B and if they are enforceable. Those can only be enforced by action of the Bayberry Farms Home Owners Association, and not by Jefferson County.

Regretfully, there is nothing that the County can do to satisfy the Bayberry Farms Home Owners Association wish to negate the loss of Lot B of Bayberry Farms 3B.

Thank you again for your letter.

Sincerely,

Chuck Banks,
County Executive

BAYBERRY FARMS HOME OWNERS ASSOCIATION

P. O. Box 266
Barnhart MO 63012

County Council Board of Executives
P. O. Box 100
Hillsboro MO 63050

Dear County Council Executives,

It is our understanding that due to the vote that approved charter government in Jefferson County, the County Commission no longer meets. Instead, you, the three former commissioners, are now our first three county council members. With so many changes occurring, I write to you today on behalf of the Bayberry Farms Home Owners Association board of trustees about an ongoing situation about which we are concerned.

E&M Development continues to develop its new subdivision, Springbrook Farms, located off Stahl Road in Barnhart. Lot B of Bayberry Farms Plat 3B, that is adjacent to the new subdivision and that is owned by E&M Development, appears to be included as a part of this progressing development. As trustees, we want to be sure that this situation is not overlooked. The preliminary plat for Springbrook Farms was approved by the former County Commission; what county government entity will approve the final plat?

Our inquiry into where this issue stands currently is very viable especially since there has been no approval of a final plat. The future of Lot B of Bayberry Farms Lot 3B—the case for which has been in and out of the courts—needs to be considered before any final plat is approved. The County Commission acted on this matter yet, until a final plat is recorded, we understand, the plat on file has no legal significance. How can E&M Development move ahead with development of its subdivision with only county approval of a preliminary plat and with no consultation with the Bayberry Farms Home Owners Association? Lot B is inside the boundary of our subdivision.

We write today to ask your response to our concerns. Our main concern is that the county has apparently authorized this development activity under some misinterpreted opinion of the Eastern District Appellate Court decision filed on June 26, 2007. Secondly, we wish to re-emphasize that vacation of Lot B from Bayberry Farms was denied. Therefore, the lot remains in the Bayberry Farms subdivision and is subject to the indentures of the Bayberry Farms Home Owners Association.

Respectfully,



Joyce A. Baldauf

President

Bayberry Farms Home Owners Association

**WEGMANN, STEWART, TESREAU,
SHERMAN, EDEN & MIKALE, P.C.**

LAWYERS

-SINCE 1947-

**P.O. Box 740
Court House Square
Hillsboro, MO
63050-0740**

(636) 797-2665

(636) 296-5769

Fax (636) 797-3505

Of Counsel: Nicholas G. Gasaway

A. W. Dieffenbach

Will B. Dearing (1902-1975)

Samuel Richeson (1904-1976)

J. Richard Roberts (1929-1975)

John A. Schneider (1942-1992)

E-MAIL ADDRESS:

rwegmann@wegmannlaw.com

Roland A. (Ray) Wegmann

Jack C. Stewart

Dennis H. Tesreau

Randall D. Sherman

Bianca L. Eden

Jessica A. Mikale

Mark T. Bishop

Jason L. Cordes

Gina M. McWilliams

March 19, 2009

The Honorable Executives
Chuck Banks, Edward L. Kemp and
Patrick J. Lamping, County of Jefferson
P.O. Box 100
Hillsboro, MO 63050

COPY

Re: **Bayberry Farms Subdivision/Lot B**

Greetings To Executives Banks, Kemp and Lamping:

Obviously, all of you will recognize my familiarity with the matter captioned.

I have read the letter of Executive Banks dated January 26, 2009, and posted to Mrs. Joyce A. Baldauf, President of the Bayberry Farms Homeowners Association.

I now understand that the Planning and Zoning Commission has approved a final plat of Springbrook Farms Subdivision Plat 2. It has been apparently recorded as I understand a Lot in the Springbrook Subdivision has been sold off. Obviously, what we have is now two subdivisions, both containing Lot B, although in Springbrook the Lot is partitioned in such a fashion so as to cause three Springbrook Lots to abut the boundary line of the Bayberry Wiehagen Lot.

There is no question in my mind that a further appeal of the action of Planning and Zoning to the Circuit Court certainly would be successful in that the ruling made could only be consistent with Judge Kramer's previous ruling relevant to the basic issue which is the legality of overplating without a prior vacation.

Obviously, an appeal, even to the Circuit, would not appear fruitful to the relevant Lot B claimants and their residency in Bayberry. A successful appeal would only result in putting in Bayberry what is already in Bayberry, but this time it is not the scenic green vista that once existed to the benefit of the Bayberry property owners.

The tragedy in this case, aside from the unusual action of an appeal by a County government, is the damage which has been done and will now perpetually exist against the Bayberry people.

I am sure you know that all of those along Hillcrest Court in Bayberry paid monetary premiums for the Lots which they purchased and they were sold by the then developer that Lot B was there for their comfort and value in that it was, again, the green vista which would complement their Lots in the Subdivision. Well, as you know, that developer apparently had financial difficulties and Lot B found its way into the Courthouse and on a sale on the Courthouse steps grounded upon a purchase of the adverse Judgment and a failure thereafter to pay three

Wegmann, Stewart, Tesreau, Sherman, Eden & Mikale, P.C.

Page 2

years' worth of real estate taxes. As you know, the Bayberry people actually purchased Lot B at the tax sale only to have it taken away from them by a redemption of the initial Judgment purchaser.

Of course, the sale of Lot B to the Springbrook developers followed and with the development of the Springbrook Subdivision, Lot B was again, a second time, taken away from the Bayberry residents who, as aforesaid, paid a premium to have adjoin their Lots in Bayberry.

As aforesaid, the tragedy is that these people who were sold on the value of Lot B and who paid a premium for that value have now had that value taken away on two separate occasions and now, of course, sit in permanent loss of value to their land and to their homes.

Hopefully, this sort of thing will never happen again in the future. Quite possibly, a Charter form of government will give more strength in a District scenario to the Bayberry representatives.

In my judgment, the conclusion in this matter is such that government for the people has failed.

Respectfully,

A handwritten signature in black ink, appearing to read 'R. A. Wegmann', with a stylized flourish at the end.

R. A. Wegmann

RAW/zg

**WEGMANN, STEWART, DIEFFENBACH, TESREAU,
SHERMAN & EDEN, P.C.**

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E-MAIL ADDRESS:

rwegmann@wegmannlaw.com

January 15, 2009

Mr./Madam Chairman and Members of the
Jefferson County Planning and Zoning Commission

Honorable Chuck Banks, Patrick J. Lamping
and Edward L. Kemp, sitting in transition, unanimously
and without dissent, as the Council and Executive
of the County of Jefferson, State of Missouri
P.O. Box 100
Hillsboro, MO 63050

*A = Total
1115*


Greetings:

On Thursday, January 22nd, the Planning and Zoning Commission will vote, presumably to approve or reject, the plat "Springbrook Farm, Plat Two". Approval will open the way for formal recording of the plat and the marketing of residential lots in the then platted subdivision "Springbrook Farm, Plat Two". Indications to the writer are such that no "public hearing" on the matter will precede the P & Z Commission vote which will be for approval of the Plat. Additionally, the matter of approval or rejection will not be presented to the Council or County Executive in transition to a Charter form of government.

The undersigned, former counsel to the Bayberry Farms Homeowners Association, intimately familiar with the background in the residential subdivision matter, believes it obligatory to put forth the following which, in the writer's judgment, materially impacts the law of Real Property in Missouri.

Factually, it is true and well known that the relevant Springbrook Plat¹ includes a part of the real property lands of the long platted adjoining Bayberry Farms Residential Subdivision. Aside from all powers and duties of Planning and Zoning and Council/Executive ("C & E"), a pivotal fact, indeed a question of real property law exists, to-wit: Under (Springbrook) Missouri Real Property law can a platted Subdivision (Bayberry) be invaded by an adjoining Subdivision. In other terms: Can a tract or

¹ The writer has seen and examined the Springbrook Farm, Plat Two.

parcel of land be in more than one Subdivision at the same time? Is it not necessary to vacate² one subdivision of the parcel or tract before a different or "new" Subdivision encompasses it?

After the P & Z refused on the preliminary Springbrook Plat 2 to delete the relevant tract ("B") in Bayberry Farms, the Bayberry Trustees went before Judge Kramer in the Jefferson County Circuit Court and he, after a hearing, sided with the Bayberry people and voided the filed preliminary Springbrook Plat tract that was before the Planning and Zoning Commission.

The Jefferson County Planning and Zoning Commission (the County) appealed the decision of Judge Kramer to the Missouri Court of Appeals in St. Louis and that three Judge Appeals Court, in a two to one Opinion, reversed Judge Kramer and accordingly now, for final plat approval, is the presumably reinstated Springdale Farm, Plat Two, which contains the existing Bayberry Farm platted tract.

Apparently there is a feeling or belief that the Appeals Court decided this invasion matter favorable to Planning and Zoning. Such is not the case!

The Appeals case is published in the Missouri Cases, Volume 227-230, Southwestern 3rd. The case was decided by two of the three-Judge panel. Perhaps overlooked, but the Court did not decide the Subdivision invasion question. At page 12 of Volume 230:

"The County Commission's decision not to vacate Lot B leaves open the question of whether the preliminary plat that is the subject of this appeal can be approved absent the vacation."

Hence two of the three Appeals Judges did not decide the precise question raised by Bayberry Trustees. In actuality, the case before the Court did not address this pivotal fact issue. Moreover, the Appeals Court's Opinion or ruling, as noted above was not agreed to by the third Appeals Judge Mooney who dissented or one might say disagreed. His dissent is set forth in full in foot notes:³ It specifically

² The old County Commission and now presumably the C & E has under the, then in place, Regulations the power to vacate all or part of any platted Subdivision. On January 24, 2007, the County Commission refused to vacate the land (now in Springbrook Plat Two) upon the application of the Springbrook developer (See Order 01-24-2007 B). Perhaps, the Springbrook Farms developer understands the legal need to vacate from Bayberry Farms the over-platted parcel.

³ III. CONCLUSION

We find that the trial court erred in reversing the Commission's preliminary approval and imposing the requirement that Lot B must be vacated prior to preliminary plat approval. Accordingly, we reverse.

LAWRENCE E. MOONEY, J., dissents.

KENNETH M. ROMINES, J., concurs with J. NORTON

LAWRENCE E. MOONEY, Judge, dissenting.

"To the extent that the majority holds that a single parcel may be finally included within two distinct subdivisions, I dissent. The developer of a new subdivision has sought to have a parcel within an existing subdivision preliminarily platted as part of its new subdivision. The Subdivision Regulations at issue allow for partial or complete vacation of a subdivision, but the developer did not seek a partial vacation of the lot from the existing subdivision prior to its inclusion in the preliminary plat of the new subdivision. The Planning and Zoning Commission has argued that a single parcel may be finally included within two or more subdivisions with conflicting indentures.

The majority claims that it appears that partial vacation of a lot from a subdivision is at the discretion of the landowner. Not so. The Subdivision Regulations unequivocally provide that such partial vacation may be opposed and that the County Commission shall decide the issue.

Whenever any person or corporation may desire to vacate any subdivision or part thereof in which he shall be the legal owner of all lots, such person or corporation may petition the County Commission giving a distinct description of the property to be vacated and the names of the persons to be affected thereby; which petition shall be filed together with the appropriate filing fee with the Planning Department, who shall give notice of the hearing of the petition in a public newspaper.

Footnote continued on next page

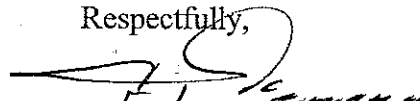
addresses the pivotal question here repeated: Can a new platted residential subdivision of land include a lot or parcel that is included in a preexisting plat. One may additionally describe it as an "overplating".

Summarizing, before P & Z's final approval of Springbrook Farm, Plat Two, (It is the position of P&Z that approval automatically follows from the County Council and/or County Executive [Replacement of the County Commission] as its or their function is purely ministerial) of which one might say is a certainty and the agenda does not provide for nor will allow a prior public participation.

In the writer's view, approval will play havoc with real property law. Residential subdivision burdens the land with all sorts of partitions, dedications, and servitudes, to say nothing of assessments, and, as the dissent points out, conflicting indentures. Neighbor will contest with neighbor and Subdivision Trustees and Boards will ever be confronted with disputes. This case will set the stage so to speak. Only a formal vacation of subdivision lots or parcels will solve the problem present herein. That power is available in our law, but only a legislative body may exercise it.

Again, this letter is not intended to be adversarial and it is requested that it be placed in the meeting Record.

Respectfully,



R.A. Wegmann

RAW/zg

cc: Wes Wagner, County Clerk

cc: Dennis Kehm, County Counselor

If no opposition be made to said petition, the County Commission may vacate the same by order with such restrictions they may deem necessary for the public good. No vacation shall take place unless a recommendation of the Planning Department has been provided, which shall be filed with said petition.

Jefferson County, Mo., Subdivision Regulations sec. 4.8 (Aug.29,2005).

And this is with good reason. An indenture agreement among subdivision-lot owners is a contract. *Maryland Estates Homeowners' Ass'n v. Puckett*, 936 S.W.2d 218, 219 (Mo.App. E.D.1996). As a lot owner in the existing subdivision, the developer may owe certain contractual obligations to his fellow lot-owners. Before the developer is allowed to escape any indenture obligations he undertook, the other lot-owners have a right to oppose his secession and that decision rightly rests with the County Commission."