Exhibit A

NOS. 14CI-0844
14CI-2143

JEFFERSON CIRCUIT COURT
DIVISION ONE (1)

GLENMARY HOMEOWNERS ASSOCIATION, INC. PLAINTIFF

V. **ORDER**

PAR GOLF, LLC DEFENDANTS
And
LOUISVILLE METRO PLANNING COMMISSION
And
BRYAN, LLC

* * * * * *

These cases have been submitted to the Court for resolution on the pleadings, following a liberal briefing and filing period and various hearings.

PROCEDURAL BACKGROUND

These proceedings commenced on February 17, 2014, when the Plaintiff filed a Complaint seeking a declaration of rights against each of the named Defendants.[1] In its Complaint, the Plaintiff, Glenmary Homeowners' Association, Inc. (hereafter "Glenmary HOA") alleged that the Defendant, Par Golf, LLC, had purchased Recreation Areas A-D in the Glenmary subdivision on April 15, 2005. Plaintiff alleged that the areas purchased were subject to specific restrictions, which were also applicable through various plat notations and declarations, which were incorporated into the sales contract. In spite of this, Glenmary HOA alleged that the Louisville Metro Planning Commission (hereafter "the Planning Commission") was in the process of considering an application by Par Golf, LLC (hereafter Par Golf").

[1] KRS 418.040 provides, "In any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked."

In its Complaint, the Glenmary HOA sought the following specific relief:

1. A judgment against the Defendant, Planning Commission, declaring that Land Development Code for Jefferson County is inapplicable to Glenmary Subdivision because Glenmary Subdivision predates the effective date of the Land Development Code;
2. A judgment against the Defendant, Planning Commission, declaring that any action by the Planning Commission which would authorize the Defendant, Par Golf, to construct homes or otherwise alter the dedicated Recreation Common Areas within Glenmary Subdivision would constitute an unauthorized exercise of authority and breach of the contract between the property owners in Glenmary Subdivision and in violation of the Kentucky Constitution.
3. A judgment against the Defendant, Par Golf, declaring that any attempt to develop or utilize the dedicated Recreation/Common Areas constitutes a violation of the applicable Declarations.

The HOA also specifically sought appropriate injunctive relief.

The Planning Commission was served with the Complaint on February 19, 2014 by delivery to its Chairman, Donnie Blake. The Planning Commission filed its Answer on March 7, 2014. In its Answer, the Planning Commission affirmatively stated in paragraph 5 that "the Planning Commission may go forward in acting on the applications with or without those Declarations and/or the required vote." As an Affirmative Defense, the Planning Commission averred, "The Complaint fails to state a claim against the Commission upon which relief may be granted since the Commission has yet to take final action on any of the applications stated in the Complaint."

Par Golf filed its Answer on March 10, 2014.

On March 17, 2014, Glenmary HOA filed a Notice of Lis Pendens. On April 23, 2014, Glenmary HOA filed a motion for temporary injunction. On December 18, 2014, Par Golf filed a motion to quash the Lis Pendens filed by Glenmary HOA. That motion was denied by Order dated March 9, 2015. On June 10, 2014, the Court entered an Order restraining Par Golf or anyone acting on its behalf "from taking any actions to sell, develop, and/or otherwise use the

real property identified in Exhibit A attached to this Order and located within Glenmary Subdivision here in Jefferson County, Kentucky for any purpose or use other than as a Recreational/Common Area until such time as the Court can rule upon the Motion for Temporary Injunction filed by Glenmary HOA on April 23, 2014."

Glenmary HOA then filed its Notice of Appeal on April 16, 2014.[2] The statutory authority for the appeal is KRS 100.347, which provides, in part,

> ...
> (2) Any person or entity claiming to be injured or aggrieved by any final action of the planning commission shall appeal from the final action to the Circuit Court of the county in which the property, which is the subject of the commission's action, lies. Such appeal shall be taken within thirty (30) days after such action. Such action shall not include the commission's recommendations made to other governmental bodies. All final actions which have not been appealed within thirty (30) days shall not be subject to judicial review. Provided, however, any appeal of a planning commission action granting or denying a variance or conditional use permit authorized by KRS 100.203(5) shall be taken pursuant to this subsection. In such case, the thirty (30) day period for taking an appeal begins to run at the time the legislative body grants or denies the map amendment for the same development. The planning commission shall be a party in any such appeal filed in the Circuit Court.
> ...
> (4) The owner of the subject property and applicants who initiated the proceeding shall be made parties to the appeal. Other persons speaking at the public hearing are not required to be made parties to such appeal.
> (5) For purposes of this chapter, final action shall be deemed to have occurred on the calendar date when the vote is taken to approve or disapprove the matter pending before the body.

According to the Notice of Appeal, Par Golf had filed applications with the Planning Commission to amend plats for certain portions of the property it had purchased in the Recreation/Common Areas. Those applications first came before the Planning Commission for approval on February 20, 2014. After hearing from Glenmary HOA and Par Golf, the Commission decided to pass any decision on the applications until a later date. According to the

[2] While the Notice of Appeal was originally filed in Division Eleven, it was transferred to this Division by Order entered June 10, 2014.

Notice of Appeal and a copy of the minutes included as an exhibit, five of the ten members of the Planning Commission[3] voted to approve Cases 19173, 19174 on March 20, 2014.[4] According to those minutes, the five members present also voted to pass Case 13SUBDIV1000 [Conservation Subdivision and Amendment to a Record Plat] "to a date set by the Planning Commission or will be re-noticed for an uncertain date." On the very next day, March 21, 2014, Par Golf entered into a sale of one of the lots created by reason of the March 20, 2014 plat amendments, according to the Notice of Appeal and a copy of the Special Warranty Deed appended to the Notice.

HISTORY RELEVANT TO AFFECTED PROPERTY

Glenmary HOA outlines the general history of the Glenmary Subdivision in paragraphs 5 – 22 of its statement of appeal, along with supporting exhibits. The Planning Commission admits the allegations in paragraphs 5 – 16 and 21 – 24 to the extent they are supported by the documents themselves. In similar manner, the Planning Commission admits the allegations in paragraphs 17 -19 to the extent they are supported by the cited Articles of Incorporation. The Planning Commission denies the allegation in paragraph 20, taking the position that it is a legal conclusion and requires no response.

Par Golf admits the allegations in paragraphs 5 – 7. Claiming insufficient knowledge to admit or deny the allegations in paragraphs 8 – 22, Par Golf acknowledges that public records speak for themselves.

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[3] According to the minutes, five of the ten Planning Commission members were absent for the vote on these matters. KRS 100.171(1) provides, in part, "...a planning unit created pursuant to KRS 100.137 may specify in its planning agreement that five (5) members of the planning commission shall constitute a quorum."

[4] These actions were taken by the Planning Commission after it had been served with and had responded to the Complaint for a Declaration of Rights on these matters.

Having reviewed the record and the parties' positions, the Court finds the following facts relevant to the history and development of the properties in question,

Jefferson County approved the general plan for Glenmary Subdivision in 1988, noting it was an innovative subdivision. The original developer of Glenmary Subdivision was HFH, Inc. (hereafter "HFH").

On July 12, 1989, HFH caused a Declaration of Covenants, Conditions and Restrictions (hereafter "Declarations") to be filed with the Office of Jefferson County Clerk[5]. Those Declarations[6] include the following terms:

> WHEREAS, Developer is the owner of certain real property in Jefferson County, Kentucky, which is to be developed as a residential subdivision.
> Now, THEREFORE, Developer hereby declares that all of the property described in this instrument, and such additional property as may be hereafter made subject to this Declaration, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the real property. *The easements, restrictions, covenants and conditions shall run with the real property and be binding on all parties having any right, title or interest in it, their heirs, successors and assigns, and shall inure to the benefit of each owner.*
> ...
> **Additions to Existing Property**. Additional lands may become subject to this Declaration in any of the following manners:
>
> (a) **Additions in Accordance with a General Plan of Development**. Developer intends to make this section containing 231 lots a part of a larger community being developed in accordance with current plans and known as Glemnary Subdivision.
> ...The common area initially covered by this Declaration shall inure to the benefit of the owners of any new lots within Glenmary which may become subjected to *this Declaration or a similar set of deed restrictions* and common area allocable to the owners of all such lots within Glenmary shall inure to the benefit the owners of lots recorded earlier, each to enjoy the common areas of the other and to have and to hold the same as if each new lot had been developed and subjected to this Declaration simultaneously.

[5] The Declaration was executed on July 12, 1989, the day it was filed.
[6] The original lots addressed in these Declarations were Lots 15-245, inclusive. However, the Declarations expressly provided for additions to the existing property by means specified in the Declarations.

All additions shall be made by filing with the Office of the Clerk of Jefferson County, Kentucky, a Supplementary Declaration of Covenants, Conditions and Restrictions with respect of the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property. The Supplementary Declarations may contain additions and modifications of the covenants and restrictions contained in this Declaration may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

(b) **Other Additions**. Additional residential property and common area which are not presently a part of the general plan of development of Glenmary may be annexed to Glenmary by Developer.[7]

....

(20) **Restrictions Run With Land.**

Unless cancelled, altered or amended under the provisions of this paragraph, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of thirty (30) years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten (10) years. These restrictions may be cancelled, altered or amended at any time by the affirmative action of 75% of those persons entitled to vote pursuant to the Articles of Incorporation of the Glenmary Homeowners Association, Inc. Failure of any owner to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions.

(21) **Enforcement**.

Enforcement of *these restrictions,* excepting paragraph 19, shall be by proceeding at law or in equity, brought by any owner of real property in Glenmary Subdivision, by a property owner's association to be formed under paragraph (23), or by Developer itself, against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration or to recover damages.

....

(24) **Homeowners Association**.

Developer has incorporated the Glenmary Homeowners Association, Inc., a nonprofit Kentucky corporation, and has filed and recorded Articles of Incorporation and By-Laws which establish a Board of Directors and officers for the Association, and the duties for which they are responsible.

...

(27) *The Glenmary Golf and Recreation Club, Inc. will manage the golf course, building, swimming pools, tennis courts and other recreational amenities. Initial*

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[7] In this section, the Declarations set out conditions and restrictions for these additional lots covering the following 22 specific requirements for each new lot – Primary Use Restrictions; Approval of Construction Plans; Building Materials; Setbacks; Minimum Floor Areas; Garages, Carports; Nuisances; Use of Other Structures and Vehicles; Animals; Landscaping; Tree Requirements; Mail and Paper Boxes, Hedges and Fences, Swimming Pools, Antennas; Clothes Lines; Duty to Maintain Property; Business, Home Occupations; Signs; Drainage; Underground Utility Service; Disposal of Trash; Drains; and Obligation to Construct or Reconvey; Fees for Subdivision Fund, Lien.

purchasers of homesites, or houses within Glenmary Subdivision will be given an opportunity to become members in the Club. Initial purchasers of houses have sixty (60) days after taking title to property to contact the Club and apply for membership. Purchasers of lots may apply for membership in the Club upon taking title to the lot up to the time 60 days after occupancy of a house constructed on the lot by or for the lot owner. After the 60-day time period expires, application and membership to the Club will be pursuant to the By-Laws of the Club. Membership in the Club may include members from other neighborhoods, subdivisions or communities.

(28) *Membership in the Glenmary Golf and Recreation Club, Inc. will be obtained after the payment of fees in accordance with the By-Laws of the Club. Various levels of membership will be available, including full memberships or social memberships.*

(29) ***Owners of lots, homes or any residents understand that Glenmary Golf and Recreation Club, Inc. will be an integral part of the subdivision community.*** *Operation of the Club will be for the benefit of the membership and guests.* ***Homeowners adjacent to the golf course on land operated by the Club understand that recreation activities will be conducted as permitted by the By-Laws of the Club.***
(Italics and other emphasis added)

The real property at the center of this litigation is located within Sections I and II of the Glenmary Subdivision. The Supplemental Declaration of Covenants, Conditions and Restriction for Section II, executed on March 14, 1990, was filed in the Office of the Jefferson County Clerk. A review of this document reveals that it essentially identical to the original Declarations filed in 1989, with the following additional provisions relevant to this matter:

(32) **Maintenance of Open Space and Signature Walls**.
The Homeowners Association will maintain the open space and signature walls which are an integral part of the subdivision community and development.

(33) **Maintenance of Recreation Areas**.
HFH, Inc. will retain ownership of the recreation space and will be responsible for maintaining the recreation space which is an integral part of the subdivision community and development.
(italics and other emphasis added)

This real property was identified in three plats filed by HFH, Inc., in the Office of the Jefferson County Clerk, Plat Book 37, pp. 99, 100 and 101.[8] Each of the three plats include areas specifically designated as "Recreation Areas," (A, B and C) whose contours generally align with those of a golf course.[9] Each of the three plats include the following notes,

> *1) There shall be no further subdivision or resubdivision of the land into a greater number of lots than originally approved.*
>
> ...
>
> 3) All islands, common areas and/or recreation areas shall be maintained by HFH, Inc. or by Neighborhood Association. (Emphasis added)

In 1996, HFH, Inc., which had continued to be responsible for the maintenance and operation of the recreation areas, filed for Chapter 11 bankruptcy protection. As part of that bankruptcy action, HFH sold the recreation areas, which included the Clubhouse and Golf Course, to TGM, Golf Properties, Inc. TGM later sold the property to EBJ Golf Properties, LLC, which in turn sold it to Par Golf, LLC, in 2005. Shortly after purchasing the property, Par Golf began experiencing financial difficulties which have continued to the present, for a variety of reasons.

According to a May 14, 2015 affidavit by the joint owners of Par Golf, they approached Glenmary HOA in 2012 and 2013 with hopes of obtaining approval of 75% or more of the membership to convert portions of the affected property around the clubhouse to create a small conservation subdivision and to create 3 lots on another section of the property. In September 2013, Glenmary HOA conducted a certified vote for such approval. A majority of the members voted to approve of the purchase. However, although efforts were made, Glenmary HOA was unable to obtain financing satisfactory to complete the purchase. When the Board of Directors

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[8] Copies of the three plats were filed as Exhibits B – D to the Plaintiff's Notice of Appeal.

[99] It is noteworthy that the Section I plats filed in time with the original Declarations also included areas clearly identified as "Recreation Areas," (A, B, C and D), with similar Notes. One of these plats also included two areas identified as "Open Space," (F and G).

declined to enter into the sales contract, Par Golf filed Action No. 14-CI-2143 against Glenmary HOA to enforce the voidable sales contract in Division Three of the Jefferson Circuit Court. In an April 14, 2017 Opinion and Order, the Jefferson Circuit Court granted summary judgment in favor of Glenmary HOA. On December 11, 2017, the Court of Appeals granted a motion by Glenmary HOA to dismiss the appeal of that Opinion and Order.

THE PLANNING COMMISSION'S PROCEEDINGS

According to the May 14, 2015 affidavit by the joint owners of Par Golf, they met with Chris Collins of Metro Planning prior to their 2005 purchase of the property at issue. According to the affidavit, Ms. Collins advised them that the property at 10200 Glenmary Farm Drive "was only restricted by binding elements, plat notes, or the Land Development Code. According to the affidavit, Mr. Collins advised them "...that the "Recreation Area" stamp on the plat allowed us to conduct a recreational business property zoned residential, but it was in no way a deed restriction." Based upon these statements by a representative of the Planning Commission, the affiants averred that they borrowed the money and moved forward with their purchase of the property in question.

In 2007, Par Golf requested a minor plat amendment to create 3 new lots from the same residual tract designated as Recreation Areas. After two hearings, Par Golf withdrew its request.

At its August 24, 2011 meeting, the Planning Commission considered a "record plat amendment" application filed by Par Golf. The Summary of Staff Presentation includes the following information,

> The applicant requests a minor plat amendment. The minor subdivision plat proposes to create a new buildable lot[10] 11,480 square feet in size. The residual tract of 27.81 acres is part of the Glenmary Golf Club, owned and operated by Par Golf, LLC, and was designated as Recreation Area on the recorded subdivision plats.

[10] Each of the four new lots created by Par Golf and the Planning Commission are in separate locations in the Recreation Areas in Section II of the Glenmary Subdivision. While the applications suggest that the minor plat amendment is simply to divide an existing lot(s) into one additional lot, the reality is that each of the four lots created are new and distinct buildable lots carved from the Recreation Areas.

> Staff has had email communication with Ron Huff and Bob Beard requesting information as to whether the recreation restriction was being removed. It was explained that the request was only to create the new buildable lot and there was no request to remove the recreation area designation from the residual tract containing the golf course.
> Staff had phone conversations with three property owners in regards to their opposition to the proposal....They are concerned the abutting golf course 'green' would need to be moved to accommodate the new house causing drainage problems, the new house would not have to adhere to setback and building material requirements, and that they would like the Recreation Area to remain as open green space.

Bill Bardenwerper, counsel for Par Golf[11] succinctly described Par Golf's overall plan to the Planning Commission,

> ...The proposal is about what it was about the last time, trying to find a way to eliminate some of the debt load, which is considerable on this golf course. It's a challenge to operate with the debt load that it has on it. These private golf courses are no big secret as they are having trouble all over the country and many are closing down. We've been pursuing various options: ***overall strategy as to redevelop all of the open space in the golf course areas which could have realistically developed from the get go that are not needed for the golf play.*** We haven't gone forward with that because the market is such that coming forward with some big plan for condos or something doesn't make sense. We've also been pursuing the possibility of sale, but candidly, the data on the property makes it difficult to sell. ***The bank that carries the note has asked us to start executing a plan for eliminating some of the debt and one way to do it is to take a piece of the open space that isn't needed for golf course playing and create a lot to sell so another house can be built.*** (Emphasis added)

Hal Thomas, counsel for Glenmary HOA, responded,

> One concern we had is the residual tract be designated as recreational area on the plat and I see that has now been written in and as long as that's on the recorded plat, we only have one other comment. I do not believe, at this time, that Glenmary Section 2 restrictions apply to this new lot. The way the Glenmary restrictions were recorded, they list specific lots they applied to, which at that time were all of the building lots. The golf course was not included. Our second interest would be that the new building lot has a restriction on that plat to the effect that the CCR's for Glenmary Section 2 would apply to that lot. If that's agreeable to you and if it can be inserted, then the Glenmary Homeowners Association has no objection.

[11] Mr. Bardenwerper represented Par Golf before the Planning Commission in regards to each of the "minor plat amendment" applications addressed in this proceeding.

However, certain home owners did express concerns. During the discussion, Commissioner Tomes also expressed concerns,

> I've built on at least 4 golf course lots and I know that quite often what the developer sold was the view. ***I look at this plat and say all these people that bought the end lots had the long view of the golf course and paid for that. They had a plat they relied on that said it was open space, sort of like living next to a park. If I were an owner of one of those lots, I would be thinking how the value just depreciated by allowing another lot.*** It's why I asked the question just how much money is going to be realized out of this lot because it seems to me that it might pay the interest on the loan for a month or two, but I don't think it makes a big dent (from what I'm hearing) in the principal. ***So this is the first of a dozen or 20 lots like this that are going to come through us, and if it's the case we don't have any power to say no."*** (Emphasis added)

Mr. Baker[12] responded,

> ***I think it's pertinent to ask that question and I'm sure many others are mulling that over in their heads as well. I'm advising you according to laws and regulations of Louisville Metro and what this board is empowered to do. By no means am I saying there's not another equitable remedy out there but that's going to have to be pursued through a private lawsuit.*** (Emphasis added)

By a vote of 4-1, the Planning Commission approved the following action on the application,

> ...the request is in compliance with all zoning and subdivision regulations, reasonable notice has been given and there has been opportunity to express objections regarding drainage, which will be resolved (by MSD) if there was a construction project; the other concern being the view, which cannot be resolved by this committee; also, the conditions of approval will be imposed as stated previously – there will be a note on the plat stating that the lot being created on this minor plat will be under the CCR regime; not on the minor plat indicating the deed book and page number; based on the staff report and the information heard today.

The plat that was approved shows that the new buildable lot is located on Glenmary Farm Drive, across from the entrance to Glen Falls Court. The plat notes that the lot was part of Tract B, Recreation Area of the Glenmary Golf Course. The plat includes the following note,

> Lot #1 is subject to Supplementary Declaration of Covenants, Conditions and Restrictions recorded in DB 5943, Pg 269, as amended in DB 5946, Pg 876, as amended in DB 6853, Pg 53, as amended in DB 7324, Pg 568 all in the offices of the Clerk of Jefferson County, Kentucky

[12] The Court believes Mr. Baker was counsel for the Planning Commission.

On April 22, 2013, Par Golf filed Minor Plat Applications 19173, 19174 and 19219, the subjects of this appeal, with the Planning Commission. Each of the applications noted that the purpose of the requested Minor Plat amendments was to create one new lot out of other lots. Applications 19173 and 19219 state that the purpose of the Minor Plat amendment is to "Create two lots from one lot. Application 19174 reports that the purpose of the Minor Plat amendment is to "Create three tracts from two tracts." All three applications report that the existing use of each lot is "residential," and the proposed use of each lot continues to be "residential."

In reality, each of these three applications, like the 2011 application, sought to create new building lot(s) out of the recreation areas owned and operated by Par Golf. Each of the plats note that the property originated as Recreation Area in Tracts A, B or C.

Each of the Minor Plats submitted and approved include the Notes, "This site is subject to the conditions of approval and waivers of Docket 10-34-88 on file in the offices of the Louisville Metro Planning Commission" and "Lot 2 is subject to deed of restriction in Deed Book 5943, Page 269." Application 19173 also references Deed Book 6206, Page 632.

Par Golf also filed application 13SUBD1000, which sought approval of the creation of a "conservation subdivision" for an additional 44 homes. The assigned Case Manager for the applications was Maria Scheitz.

At its June 5, 2013 meeting, the Planning Commission voted to provide notice of the three applications to Glenmary HOA along with "the same tier property owners within 500 feet."

The Staff Report dated July 3, 2013 advised the Development Review Committee of the Planning Commission that review of the applications was governed by Section 7.1.91 of the

Land Development Code (hereafter "LDC"), which grants the Commission "to amend any recorded plat at the request of any lot owner in the subdivision."

At its July 3, 2013 meeting, Ms. Scheitz, the Case Manager, advised the Commission,

> You did previously hear a case on this and it was determined that the lots could be created but there might be deed restrictions outstanding that would not permit them to build on these lots. The minutes from the previous case noted that the homeowners would need to address that through private means.

At that same meeting, Mr. John Carroll, legal counsel, remarked,

> This is a decision that you (DRC) have the power to make. There is a note on each of these plats that says, 'There shall be no further subdivision or re-subdivision of the land into a greater number of lots than originally approved. But there is the later section in the code, which Steve read, that states, "The Planning Commission shall have the power to amend any recorded plat at the request of any lot owner in the subdivision.' The deed restrictions are not effective on you. You could amend the plat in face of those deed restrictions....He stated the Committee would have to deal first with the note of the record plats and also with approving building lots in the recreational areas before deciding on the minor plats.

While one Commissioner expressed concern about the notes and the declarations, another commented, "...the DRC does not have to adhere to the deed restrictions."

At its February 6, 2014 meeting, the Planning Commission received a Staff Report, which included the following conclusions by staff,

> Each request is in compliance with all zoning and subdivision regulations. The record plat amendments will allow a new buildable lot to be created. *Record plat amendments do not have a standard of review, unless the applicant also requests approval of a discretionary item such as a waiver or variance. The power to approve a subdivision plat is a ministerial action reserved for the Planning Commission or its designee.*
>
> ...
>
> The Planning Commission must determine whether all persons who may be affected by the record plat amendment were given reasonable notice and whether they were given an opportunity to express their objections or concerns. *If both conditions have been satisfied, then the request to amend the recorded plats* ***shall be approved*** as each applicable plat is in compliance with the applicable regulations.. (Italics added)

At the Commission's February 20, 2014 meeting, counsel for Glenmary HOA reminded the Commissioners of the comment in the June 3, 2013 meeting that indicated that homeowners would have to enforce deed restrictions "...through private means." Counsel advised the Commission that Glenmary HOA was seeking a judicial determination regarding the deed restrictions and asked the Commission to withhold action until the Court had spoken.[13] The Commission's legal counsel confirmed that the civil action was pending but would not speak to its merits because it was in litigation. The Commission Chair determined to move forward. Accordingly, the Commission heard testimony that day.

When asked whether Par Golf could turn additional acreage into a conservation subdivision in the future, the Commission's case manager responded, "...that is correct, and that the owner of the golf course could develop it as either a standard or a conservation subdivision if their percentage of open space meets the minimum requirements." The following exchange also took place,

> An unidentified citizen asked Mr. Bardenwerper if the conservation areas would be deeded to the new owner, as part of the purchase of these properties by the developer. Mr. Bardenwerper said the open spaces would be maintained by the purchaser of the conservation subdivision, and then ultimately by the owners of the lots within that subdivision. *The citizen then asked if any future development on the conservation areas would be at the discretion of the individual owners. Mr. Bardenwerper said yes,* but there are regulations about how much open space there has to be. (Italics added)

As the meeting continued and focused upon the subdivision request, that case manager advised the Planning Commission, "...the Commissioners at DRC had asked whether deed restrictions affect their decision. *They were informed by legal counsel at that time that deed restrictions are*

[13] At the time of this meeting, the only action pending before the Court was 14-CI-0844, the action for declaration of rights. The Planning Commission had argued in that action that it was premature because the Commission had not yet acted upon the applications.

not binding in these cases." (Italics added) The case manager then addressed the applicable note in the Declarations,

> He addressed the notices on each record plat which states that, "There shall be no further subdivision or re-subdivision of the land into a greater number of lots than originally approved." He said that this notice has appears [sic] on almost every record plat. The same language for amending a record plat was in the 1988 regulations.[14] The process for amending a record plat was briefly outlined.
> In response to a question from Commissioner Profitt, Mr. Doyle explained that the purposes of a record plat for each of the three lots is to change the land use from "recreational" to "buildable."....

The following exchange also took place at this meeting,

> Al Birch asked Mr. Doyle [the case manager] if these lots would become "buildable." Mr. Doyle said that was correct. Mr. Birch said that doesn't necessarily mean they will be built on. Mr. Doyle said that was correct, that no permits have been pulled for any type of construction at this time. *He asked if one lot could be used for an entrance, if the rest of the golf course would be developed. Mr. Doyle said that, as long as it meets the R-4 zoning district regulations, it could.* (Italics added)

Finally, during this meeting, Mr. Bardenwerper stated that, if additional homes were built upon the existing areas designated as "recreation areas,"...the new homeowners would have their own HOA."

Following the testimony, six of the Commissioners expressed concerns about the applications. Commissioner Proffitt suggested continuing the case until the litigation regarding the deed restrictions is resolved. Commissioner Brown expressed concerns about the conservation subdivision plan, noting that the owner intended to demolish a historic structure to get more space for development and the views from existing roadways are not being protected. Commissioner Jarboe agreed and expressed concern that the applicant did not do enough for historic preservation. Commissioner White expressed concerns about the historic preservation

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[14] This comment was the single reference the Court could find of the regulations in place at the time of approval for this subdivision. There is no indication that staff provided the 1988 regulations to the Commission for their review and use. Rather, all other references were to LDC 7.1.91, despite the plain language of 7.1.90.

issue and the promises that had been made to the original homeowners. He took the position that the Commission is supposed to address the impacts to communities that are not addressed by the technical issues. Commissioner White also expressed concerns about the promises that had been made and the concerns that go beyond the technical guidelines of LDC. Commissioner Kirchdorfer expressed concerns whether the conservation subdivision guidelines are being met. Commissioner Tomes spoke at length about deed restrictions, the right to subdivide property, and the law and rights according to KRS; he was in favor of continuing this case to better examine the LDC and KRS regulations. It appears that at least four of the Commissioners were in favor of moving forward on the minor plat amendments, but continuing the subdivision applications. The Commission voted to continue its consideration until the March 20, 2014 meeting "to allow the Commissioners time to review and consider the conservation subdivision regulations in LDC and the testimony given.

At its March 20, 2014 meeting, the Planning Commission voted to approve the amendments to record plats for Cases 19173, 19174 and 19219.[15] Case 13SUBD1000 was passed to the May 15, 2015 meeting.

DEFINITIONS

To the extent applicable or instructive, the Court notes that the Louisville Land Development Code (hereafter "LDC") includes the following definitions of terms used:

Average Lot Size (Conservation Subdivisions) – The average, in square feet, of all lots created in a Conservation Subdivision plan. It can be calculated for a development by adding the number of square feet in each lot and dividing by the number of lots created.

Buildable Area – The portion of a lot not included within the required setback lines or other required open space areas.

Common Area – Any part of a development owned, designed and intended to be used in common by the owners, residents or tenants of the development. These areas may contain such

[15] This recorded vote differs from the record of the recorded vote appended to the Notice of Appeal.

complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of the owners, residents, or tenants.

Conservation Subdivision – A contiguous area of land to be planned and developed as a single entity in which buildings are accommodated under more flexible standards, such as building arrangements and setbacks, than those that would normally be applied following conventional Subdivision regulations, allowing for the flexible grouping of structures in order to conserve open space and existing natural resources.

Lot – The smallest subdivision of land having fixed and described boundaries for purposes of conveyance of title, and (when part of a subdivision) having an assigned number or other designation through which it is identified.

Open Space – Any publicly dedicated or privately owned area of land or water that is permanently preserved and maintained. Such an area may be predominantly in a natural condition or improved or modified for uses such as recreation, education, aesthetics, cultural or natural resource management or public health and safety

Open Space, Common – Open space that is (1) owned in common and maintained by the owners of lots in a subdivision (i.e. a homeowners association), or (2) owned by a private individual or entity but managed and maintained for common use by residents, occupants or customers of the development. Common open space shall be preserved by either a conservation easement or deed of restriction.

Plat (or Subdivision Plat) – A map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable sections of Chapters 7 and 9. This term includes Replats, Amended Plats and Revised Plats, as well as Minor and Major Plats.

Plat, Major – see "Plat".

Plat, Minor – see "Plat".

Recreation Area (Conservation Subdivisions) – Areas dedicated to passive and active recreation activities. Examples of active recreation facilities include golf courses, tennis courts, swimming pools, softball, baseball, and soccer fields. Examples of passive recreation include bird watching, walking, hiking, picnicking, horseback riding, or photography.

Residential Use – Uses associated with permanent residential occupancy in the form of a dwelling unit (permanent means for at least 30 days in duration). Specific uses such as bed and breakfasts, boarding and lodging houses, hotels, motels and extended stay facilities where stays can be less than 30 days in duration shall be considered commercial use.

Restrictive Covenant – A provision in a deed limiting the use of property.

Resubdivision – Any change in a map of an approved or recorded subdivision plat that affects any street layout on the map or area reserved thereon for public use or any lot line, or that affects any map or plan legally recorded prior to the adoption of any regulations controlling subdivisions.

Subdivision – Division of a parcel of land into two or more lots or parcels, for the purpose, whether immediate or future, of sale, lease, or building development; or if a new street is involved, any division of a parcel of land. The term includes resubdivision and when appropriate to the context, shall relate to the process of subdivision or to the land subdivided. ....
The term "**subdivision**" is further defined as follows:

A. Major Subdivision – Any subdivision not defined as a minor subdivision.

B. Minor Subdivision – A Subdivision of land into no more than five tracts or lots, provided that such subdivision does not involve the creation of any new public street. Further division of an approved minor subdivision (exceeding the total of five lots in any 12 month period) shall require the subdividers to proceed under the provisions governing major subdivisions.

LEGAL CONSIDERATIONS REGARDING RESTRICTIONS AND COVENANTS

In this case, the Court is guided by the reasoning in *Parrish v. Newbury,* 279 S.W.2d 229 (Ky. 1955). *Parrish* concerned the restriction on the use of certain lots in a subdivision by designation on a plat, coupled with certain general provisions of executed deeds. The Developer properly recorded a plat of the "Elkhorn Parks Subdivision" near Lexington. The plat contained a key that set out the nature of each of the 14 blocks and was used in advertisements for potential buyers. Block No. 3 was designated on the plat as "Apartments 10 Lots." Blocks 1 and 2 were designated "Commercial" and "Business" respectively on the plat key.

After several years had passed, the Developer, who owned Lot 3 during the period, contracted to sell that lot for the purpose of building a motel. The other lot owners objected and succeeded in obtaining a declaration of rights in their favor. The circuit court opined that the subdivision was laid out as a residential community; that the owners purchased their property in reliance thereon; and, that it would be a violation of a restrictive covenant to erect the proposed motel.

The Court of Appeals affirmed that decision and rendered a number of legal holdings that are relevant and instructive in this case,

> We have recognized that building restrictions or anything else properly written upon a recordable plat become part of it and constitute constructive public notice.
> ... Restrictions placed upon the use of property by merely marking or designating them on the plat are not looked upon with favor. Generally, the effect of such indications or statements depends upon the facts in the particular case...Such endorsements cannot be held to create or establish a restriction on the use of the property by implication. To be effective, they must be clear and specific and constitute a grant or covenant by the reference.
> ...
> Notwithstanding these general rules, always, as a fundamental and supreme rule of construction of contracts, the intention of the parties governs. That intention in respect to a restrictive covenant is to be gathered from the entire context of the instruments. [cite omitted]. Often the surrounding circumstances and the object which the covenant was designed to accomplish, which may be revealed in part by a general scheme or plan of development, are important considerations where the meaning is doubtful.
> ...This court long ago held that one who platted a parcel of land into lots and streets and sold lots by reference to the plat will not be permitted against objection of lot owners to change the streets or other public places so described or designated. [cite omitted]. The recent case of *Cassell v. Reeves,* Ky., 265 S.W.2d 801, confirms the stability of such dedications. This is in accord with the general conception of equity. [cite omitted]. As an original developer may not change the streets and parks he dedicated to the use of all who acquired and own the lots in the developments, by parity of reasoning and right we think it should be held that after the sale of lots, the original developers may not change the general scheme and plan of the development, even though it be indefinitely or ambiguously expressed in certain particulars, without the acquiescence of the owners of the lots.
> ...The plan as outlined by the deeds and plat may not have been the one which would have been adopted by some zoning experts. It may not have been the plan which was most beneficial to the owners of the subdivision, but it was one they adopted; the one they advertised; the one they recorded; the one they held out to the public and the prospective purchasers; the one the purchasers relied upon when they purchased the lots. There has been no proof offered to show such a change of conditions as would justify a release of the restriction.
> ...**The mere fact that removal of restrictive covenants would greatly enhance the value of the land will not justify their removal. 21 C.J.S., Covenants, [section] 5. And the action of the planning and zoning commission cannot be held to relieve the land from the covenant for it is a mutual and reciprocal contract.** (Emphasis added)

In this case, the areas in controversy were clearly marked on the original plats as "Recreation Areas" A – D. The term "recreation area" is defined by the Louisville Land

Development Code. The term "lot" is also defined by that Code. The terms are distinctly and demonstrably different from each other. These definitions have been available since 2005 to the parties and to the Planning Commission. The designations of specific Lots and specific Recreation Areas are clear on the face of the plats and their difference in character and nature is obvious.

Furthermore, the originating plats included specific Notes 1 and 3, which provided respectively,

> There shall be no further subdivision or resubdivision of the land into a greater number of than originally approved.
>
> ...
>
> All islands, common areas, or recreation areas shall be maintained by HFH, Inc. or by neighborhood association.[16]

The Declarations of Covenants, Conditions and Restrictions filed by the Developer plainly treat individual lots as entities distinct and different than the recreation areas. They also make very specific assurances to lot purchasers,

> 27. The Glenmary Golf and Recreation Club, Inc., will manage the golf course, building, swimming pools, tennis courts and other recreational amenities.
>
> ...
>
> 29. Owners of lots, homes or any residents understand that Glenmary Golf and Recreation Club, Inc. will be an integral part of the subdivision community. Operation of the Club will be for the benefit of the membership and guests. Homeowners adjacent to the golf course on land operated by the Club understand that recreation activities will be conducted as permitted by the By-Laws of the Club.

When the Planning Commission was considering each of the applications for "minor plat amendments,"[17] they heard from lot owners that the owners were assured at time of purchase that the recreation areas would remain intact. These comments were consistent with the plats and

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[16] While later amendments modified the party(ies) responsible to maintenance of the recreation areas, there was no disavowal of the notion that the recreation areas would be maintained by some party.

[17] As noted, this term is not defined in LDC. The Court cannot conclude that the term authorizes a change in the nature of a subdivision, a re-interpretation or variance of a plat note, an indirect means of approving a new subdivision lot by lot, or a means of creating a new subdivision within an existing subdivision.

Declarations. A majority of Commissioners expressed similar concerns, but were advised by staff that they must approve the applications. It is noteworthy that, when the Commission approved the 2011 "minor plat amendment," they conditioned their approval on incorporation of the Declarations of Covenants, Conditions and Restrictions for the subdivision. Each of the amended plats includes the Note, "This site is subject to the binding elements/conditions of approval of docket 10-34-88 on file in the offices of the Louisville Metro Planning Commission."

The April 15, 2005 Deed between EJB Golf Properties, LLC and Par Golf, LLC excepts certain property tax encumbrances from the declaration that the property is free from encumbrances and then includes the statement, "There are further excepted any restrictions, stipulations, easements and zoning regulations of record."

It is especially significant to the Court's analysis that, from the time of original approval until the purchase of the recreation areas by Par Golf, LLC – an approximate 16-year period, the original developer and two other purchasers maintained the recreation areas in the manner originally specified. They operated the recreations areas as a clubhouse, golf course, swimming pool, tennis courts and generally as a private club. Essentially, each of the previous three owners fully respected the restrictions included in the plats, the declarations and the deeds.

When Par Golf, LLC, chose to purchase this property, they must be assumed to have exercised due diligence prior to the purchase. This would have included a review of the recorded instruments and a review of the financial success/challenges of each of the prior owners. After exercising the level of diligence chosen, Par Golf made the business decision to purchase the property. After determining that the purchase would not prove financially profitable, they took steps to transform portions of the recreation areas into residential lots to help them manage their

debt. While their initial plan was to identify and develop specific areas not necessary to the operation of the recreation services, they have since determined that it would be more beneficial to convert all of the recreation areas into residential lots. This will essentially create a new subdivision within the Glenmary Subdivision. Par Golf has further indicated that a new and separate homeowners association would be formed to address the concerns of the new lot - owners/subdivision participants. To that end, Par Golf has convinced the Planning Commission to approve the creation of four distinct residential lots in different locations within the recreation areas. They have also indicated their intent to continue this subdivision project "minor plat amendment" by "minor plat amendment."[18]

In this appeal, the Court must determine whether the Planning Commission's decision to approve the creation of these three new residential lots in the recreation areas was authorized by law.

DISCUSSION

Although the scope of the Kentucky Declaratory Judgment Act is liberal and wide, there are, however, limits. Declaratory judgment does not fit every occasion and does not replace the existing system of remedies and actions. For example, an action for a declaratory judgment cannot be instituted to secure a determination of substantive rights involved in a pending suit. *Mammoth Med. v. Bunnell*, 265 S.W.3d 205, 210 (Ky. 2008).

Glenmary HOA filed the action for declaratory judgment in 14-CI-0844 because they understood that the Planning Commission was scheduled to consider and possibly act upon Par Golf's applications. At the time it was filed, that action was an appropriate attempt to obtain a

[18] The Court is aware that the 2011 action by the Commission is not part of this administrative appeal. However, it is relevant to the Court's consideration of the Commission's approval of the three current applications.

judicial ruling declaring the parties' respective rights. The Planning Commission had not yet acted upon the applications and, in fact, asserted lack of exhaustion as an affirmative defense. In spite of the fact that an action was pending before this Court to determine the parties' respective legal rights and its knowledge of that action, a quorum of the Planning Commission approved Par Golf's applications, which prompted Par Golf to promptly enter a contract of sale relating to the property in question. Pursuant to KRS 100.347(5), the Panel's vote to approve Par Golf's application constitutes final action upon those applications. Glenmary HOA has filed its statutory appeal from that final action according to KRS 100.347(2), in Action No. 14-CI-2143. The Court may fully address the issues presented in both actions by Glenmary HOA by resolving the appeal in Action No. 14-CI-2143. *See Whitley v. Robertson County,* 406 S.W.3d 11, 17 (Ky. 2013); *City of Pikeville v. Blackburn,* 297 S.W.3d 47, 51-52 (Ky. 2009).

KRS 13B.150 provides,

> 1) Review of a final order shall be conducted by the court without a jury and shall be confined to the record, unless there is fraud or misconduct involving a party engaged in administration of this chapter. The court, upon request, may hear oral argument and receive written briefs.
> (2) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:
> (a) In violation of constitutional or statutory provisions;
> (b) In excess of the statutory authority of the agency;
> (c) Without support of substantial evidence on the whole record;
> (d) Arbitrary, capricious, or characterized by abuse of discretion;
> (e) Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing;
> (f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to KRS 13B.040(2); or
> (g) Deficient as otherwise provided by law.

Based upon its review, the Court has determined that the actions by the Planning Commission must be reversed and this matter remanded, based upon KRS 13B.150(2)(a), (c), (d) and (g).

All of the proceedings before the Planning Commission were based upon two guiding premises:

1. The review and action relating to Par Golf's minor plat amendment applications were governed by LDC 7.1.91; and,

2. The Planning Commission's actions relating to these applications were simply ministerial, rather than discretionary.

The determination that these applications were governed by LDC 7.1.91 and the Commission's application of that regulation in this proceeding require that their actions be set aside as void.

LDC 7.1.91 provides,

> The Planning Commission shall have the power to amend any recorded plat at the request of any *lot owner* in the subdivision.
> A. If all owners whose property is subject to the recorded plat have acknowledged their consent to the amendment, Division staff may approve the amendment provided it is in compliance with all other applicable requirements. Parties shall acknowledge their consent, in writing, on forms provided by the Division.
> B. If all such owners have not acknowledged consent, no amendment shall be permitted until there has been reasonable notice given to all persons who may be affected by the record plat amendment and giving such persons a reasonable opportunity to express their objections or concerns.
>
> The Land Development and Transportation Committee shall determine:
> 1. who may be affected;
> 2. who should be given notice;
> 3. the nature of the notice; and
> 4. the manner by which the opportunity to express objections or concerns will be accommodated.
>
> The applicant shall be responsible for providing the Planning Commission with the names and addresses of those persons the Land Development and Transportation Committee determines shall be notified. (Emphasis added)

Throughout these proceedings, the Planning Commission's staff and counsel repeatedly advised the Commission that their actions regarding the applications were governed solely by this provision. They also advised the Commission regarding the scope and nature of their review and action citing this provision.

The Court first concludes that the conduct of the proceedings in accordance with LDC 7.1.91 is a basis for reversal pursuant to KRS 13B.150(a) and (g). It was directly contrary to the provisions of LDC 7.1.90, the provision just preceding 7.1.91. That provision directs, in part,

> The provisions of the Land Development Code shall apply to all major and minor subdivision applications *filed on or after March 1, 2003 (LDC effective date). Subdivision plans (major and minor) filed with a complete application prior to March 1, 2003 shall be reviewed for compliance with the Subdivision regulations in effect at the time of filing.* (Emphasis added)

It is uncontested that the Glenmary Subdivision application was approved prior to March 1, 2003. In fact, each of the plats involved include the note, "This site is subject to the conditions of approval and waivers of Docket 10-34-88 on file in the offices of the Louisville Metro Planning Commission." The Court has not been cited to any evidence in the record that the Commission or its staff obtained the regulations in effect at the time of filing of the Glenmary Subdivision application or used them. This primary failure and the use of LDC 7.1.91 in spite of the clear language of 7.1.90 requires reversal and remand.

Assuming arguendo that the Land Development Code provisions applied to the Glenmary Subdivision plats, the Court questions whether Par Golf was legally eligible to apply for plat amendments under the language of LDC 7.1.91. Such amendments are specifically limited by that provision to "the request of any lot owner in the subdivision;" in other words, the owner of a lot. As noted above, LDC defines "lot" as "The smallest subdivision of land having fixed and described boundaries for purposes of conveyance of title, and *(when part of a subdivision) having an assigned number or other designation through which it is identified.*" (Emphasis added). The record is clear that, in the previously approved plats for Glenmary subdivision, the lots are identified by number. Both parties have referenced the lots by number. Par Golf did not

purchase and does not own a "lot." Rather, they purchased and own the "recreation areas" in the subdivision, which are defined as a separate and distinct entity in the LDC.

While these conclusions by the Court provide a sufficient legal basis for reversal and remand pursuant to KRS 13B.150(2), the Court feels an obligation to address the interpretation of LDC by the Planning Commission and its staff. Their interpretation and application of that provision presents a structural flaw that would appear to affect all applications for plat amendment, including these. The core concept underlying their interpretation and application is that the Commission has no discretion under subsection (2) of 7.1.91; rather, their only role is ministerial – simply stamp their approval of any application the staff concludes meet the requirements of the LDC.

As an initial matter, the staff, counsel, and the Commission appear to have improperly conflated the substance of subsections (1) and (2) of 7.1.91., the approach to plat amendments taken by the staff and the Commission The essential premise of this approach is that approval of a plat amendment application by the Commission is guaranteed when staff has determined that the application is in compliance with all other applicable requirements. In essence, the staff determines that approval is appropriate, and the Commission is required to accept that approval and make it official. The practical effect of this approach is that it is the staff, rather than the Commission, that approves plat amendment applications.

By accepting this approach, the Commission is effectively applying the provisions of subsection (1) of 9.1.71 to applications filed pursuant to subsection (2). Subsection (1) specifically provides, in part, "Division staff may approve the amendment provided it is in compliance all other applicable requirements." However, by its express terms, this provision only applies to such applications, "[i]f all owners whose property is subject to the recorded plat

have acknowledged their consent to the amendment." Unfortunately, staff and the Commission have chosen to apply this provision, essentially allowing for staff approval, to applications where, as here, the owners have not acknowledged consent. In this case, subsection (2) would have been applicable if the LDC applied. Staff approval is specifically not included in subsection (2). Rather, subsection (2) requires notice and opportunity to be heard, consistent with principles of due process. By subjecting themselves to staff approval of applications filed pursuant to subsection (2) of LDC 7.1.91, the Commission's review process must be reversed as arbitrary and capricious and as contrary to applicable law.

As importantly, the review and action process recommended by staff and counsel and accepted by the Commission effectively nullifies the intent of subsection (2) of LDC 7.1.91 in contested cases. Two basic tenets of statutory construction are that it must be presumed that the legislative body intended something by what it attempted to do and that all statutes are presumed to be enacted for the furtherance of a purpose and should be construed so as to accomplish that end rather than to render them null. *Reyes v. Hardin County*, 55 S.W.3d 337, 342 (Ky. 2001). The approach taken by the Commission and its staff violates these tenets.

For applications filed pursuant to subsection (2) of LDC 7.1.91, where other affected lot owners do not consent, the clear purpose of the notice and hearing requirements is to ensure that the Commission is able to hear and consider contrary views before making its decision whether or not to approve the application. By treating their decision in these cases as ministerial, rather than discretionary, the Commission's approach truly nullifies the purpose and meaning of the notice and hearing requirements. Essentially, the Commission is telling the owners who appear that they can say whatever they'd like or present whatever evidence they have, but that won't affect the Commission's decision in any manner.

By taking this approach, the Commission concludes that it cannot consider and evaluate the negative impact upon other owners or the subdivision, any restrictions or covenants applicable to the application, or the concerns of the Commissioners themselves. A number of lot owners spoke out against the applications. Glenmary HOA demonstrated that the applications were contrary to the notes on the plats and to the Declarations of Covenants, Conditions and Restrictions. Most importantly, a number of the Commissioners raised serious concerns about the nature and impact of these applications, especially in light of Par Golf's stated long-term goal of creating a whole new subdivision within Glenmary Subdivision through the process of "minor plat amendments." The refusal of the Planning Commission to consider and act upon any of this information in voting on the applications is arbitrary, capricious and an abdication of its discretion, warranting reversal under KRS 13B.150(d).

Par Golf argues that the former Court of Appeals decided in *Snyder v. Owensboro*, 528 S.W.2d 663 (Ky. 1975) that the subdivision of property is a ministerial act and that at least three other cases confirmed this holding. Glenmary HOA responds that those cases are not controlling and addressed preliminary and final plats, rather than plat amendments. The Court has reviewed the cited decisions and agrees with Glenmary's reading.

Snyder involved the approval of a preliminary plat and its holding specific to this issue was,

> Our statute, KRS 100.281, specifies requirements for the contents of subdivision regulations. The statute plainly contemplates that specific standards shall be set forth, rather than mere broad generalizations with regard to health, safety, morals and general welfare, or the use of such flexible terms as 'most advantageous development.'
>
> The proposition is generally accepted in other jurisdictions that a mere generalization of matters to be considered in approval of subdivision plats is not sufficient; there must be rules and regulations constituting specific standards to be applied in determining whether approval is to be granted. See Rathkoff, The Law of Zoning and Planning, Vol. 3, p. 71—

> 18. And the power of a planning board to approve or disapprove plats is limited by those rules and regulations. Rathkoff, Vol. 3., p. 71—82.
>
> It follows, therefore, that the approval of subdivision plats is a ministerial act. See Knutson v. State, 239 Ind. 656, 157 N.E.2d 469; Castle Estates, Inc. v. Park & Plan Bd. of Medfield, 344 Mass. 329, 182 N.E.2d 540; R.K. Dev. Corp. v. City of Norwalk, 156 Conn. 369, 242 A.2d 781; Levitt and Sons, Inc. v. Township of Freehold, 120 N.J.Super. 595, 295 A.2d 397. That our statute so intends is made obvious by the provision of KRS 100.281 that the planning commission may delegate to its secretary or any other officer or employe the power to approve plats. *Id.*, at 664.

This holding was repeated intact in *Wolf Pen Preservation Ass'n, Inc. v. Louisville & Jefferson County Planning Com'n* In *Sebastion-Voor Properties, LLC v. Lexington-Fayette Urban County Governmeni*, 265 S.W.2d 310, 312 (Ky. 2008) *Snyder* was cited to support the limited proposition, "Subdivision plats are approved by the planning commission to insure compliance with the subdivision regulations." In *Louisville and Jefferson County Planning Commission v. Schmidt*, 83 S.W.3d 449, 455 (Ky. 2001), *Snyder* was cited for the proposition, "[M]ere broad generalizations with regard to health, safety, morals and general welfare are not specific enough standards to justify a delegation of authority." That case, like this one, involved the use by the Planning Commission of one process, rather than two other available processes, to address the economic considerations of the applicant. In affirming the reversal of the Planning Commission's "waiver," the Court noted, "...the limitations imposed on the grant of variances protect the comprehensive plan from gradual erosion on a case by case basis."

It is noteworthy that the holding is based upon the premise that the statute in question 1) authorized the delegation of the power to approve plats to "its secretary or any other officer or employee;" and, 2) the statute limited the consideration of the preliminary plat to the rules and regulations constituting specific standards to be applied in determining approval. Unlike subsection (1), subsection (2) of LDC 7.1.91 does not authorize the delegation of approval to staff. More importantly, subsection (2) specifically requires the Commission to consider the

comments and information presented by other affected lot owners before making its decision. Obviously, if the Commission determines to deny the application based upon such comments or information, it must clearly state the reason for the denial so that the decision may be appropriately reviewed. While there may be concern about the extent of discretion exercised, the denial will likely be upheld if the decision is based upon accepted zoning laws and standards.

Finally, the Court notes its concern with the Planning Commission's decision to move forward with these applications while an action for declaration of rights between the parties was pending before this Court. The Commission and its staff noted on more than one occasion that, rather than being a consideration for the Commission, enforcement of a restriction is a private matter that must be resolved by the Courts. If that is, in fact, their position, they should have let this Court determine whether approval of the applications would result in the violation of a restriction, before taking action on the applications themselves. By doing so, they would have clear guidance from the Court on the issue. By acting in the face of the pending declaration action, the Commission essentially mooted that action and modified it to an administrative appeal. If action under 7.1.91(2) is actually a ministerial act, there was no reason to rush their action in this manner. Such action could likewise be considered arbitrary and a basis for reversal. Taken together with their position that the Commission's act is ministerial, rather than discretionary, the Commission's action in the face of a pending declaration of rights action on a matter the Commonwealth claims to have no authority over, would essentially render the Commission's actions unreviewable. That would be unacceptable and contrary to statute.

This is an unfortunate case. Each of these parties has won and lost certain battles throughout this process. Unfortunately, the end result may be that they both lose the war. In the end, Par Golf may lose the property at a significant financial loss and face other consequences.

At the same time, Glenmary HOA may find itself with an untended swath of nature running through the property, rather than the recreation areas envisioned by HFH, Inc. and the initial purchasers. The Court has tried more than once to help the parties reach a resolution that may not be optimum but that is realistic and the best possible solution for both parties. At various times, Par Golf has suggested a process whereby the bulk of the Recreation Areas may be maintained by identifying non-essential areas that could be sold to help weather the financial storm. At others, Par Golf has announced a plan to essentially create a new subdivision inside Glenmary Subdivision by placing and placing and selling lots throughout the Recreation Areas, establishing a separate and distinct homeowners association. At times, Glenmary HOA has indicated a willingness to find a reasonable solution, but essentially asks Par Golf to maintain the Recreation Areas as a golf club, swimming pool, tennis courts, and clubhouse, in spite of the financial reversal. The Court has been asked to create an equitable solution. However, this is a statutory appeal and not an action in equity. If there is a reasonable solution that benefits both parties, they must find and implement that solution.

ORDER

Based upon the Court's opinion, **IT IS HEREBY ORDERED** that:

1. The Planning Commission's decisions to approve applications 19173, 19174 and 19219 at its March 20, 2014 meeting are **REVERSED and SET ASIDE;**
2. Within sixty (60) days of this Order, the Planning Commission shall take all necessary and required actions to ensure that the amended plats resulting from their vote on applications 19173, 19174 and 19219 are voided and held for naught;

3. Applications 19173, 19174 and 19219 are hereby **REMANDED** to the Planning Commission for any further proceedings consistent with this Opinion and LDC 7.1.90 and 7.1.91.

ENTERED IN COURT
DAVID L. NICHOLSON, CLERK
MAR -- 2018
BY _____ DEPUTY CLERK

BARRY WILLETT, JUDGE
JEFFERSON CIRCUIT COURT

3/1/18
DATE

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Exhibit B

Bobbie Holsclaw

Jefferson County Clerk's Office

As evidenced by the instrument number shown below, this document has been recorded as a permanent record in the archives of the Jefferson County Clerk's Office.

INST # 2021124823
BATCH # 303248
JEFFERSON CO, KY FEE $65.00
PRESENTED ON: 05-21-2021 1 12:58:30 PM
LODGED BY: simplifile
RECORDED: 05-21-2021 12:58:30 PM
BOBBIE HOLSCLAW
CLERK
BY: TINK BROWN
INDEXING SUPERVISOR
BK: D 12025
PG: 512-522

527 W Jefferson St ~ Louisville, KY 40202 (502) 574-5700
Website: www.jeffersoncountyclerk.org | Email: countyclerk@jeffersoncountyclerk.org

QUITCLAIM DEED

THIS QUITCLAIM DEED is made as of May 21, 2021, between

CHRISTOPHER PURCELL
2313 Stratmoor Blvd
Louisville KY 40205

and

MARIA PURCELL
2313 Stratmoor Blvd
Louisville KY 40205

and

JACK RIDGE
180 Ashton Court #300
Naples FL 34105

(collectively, the "Grantor")

and

a 65.66% tenant-in-common interest to:

AL CAT, LLC
a Kentucky limited liability company
2602 Alia Circle
Louisville, Kentucky 40222

a 34.34% tenant-in-common interest to:

VALLEY STATION TOWNE CENTER, LLC
a Kentucky limited liability company
4901 Fern Valley Road
Louisville, Kentucky 40219

(collectively, the "Grantee")

WITNESSETH:

For purposes of confirming the conveyance by Par Golf, LLC, a Kentucky limited liability company, and for purposes of conveying all the right, title, and interest of the Members having an ownership interest in Par Golf, LLC, which is currently administratively dissolved and could not be reinstated at the time of this conveyance, and for nominal consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor, Grantor hereby releases, conveys, transfers and

forever quitclaims to Grantee all of Grantor's right, title, and interest in and to the real property located in Jefferson County, Kentucky, together with all improvements thereon and appurtenances thereto and more fully described on Exhibit A attached hereto and made a part hereof (collectively, the "Property").

See attached Exhibit A.

Grantor represents and warrants that Christopher Purcell, Maria Purcell, and Jack Ridge are all of the Members of Par Golf, LLC, a Kentucky limited liability company.

Grantor covenants lawful seisin of the estate hereby conveyed, if any, and that said estate is free of encumbrances except liens for real property taxes and assessments due and payable for 2021, and thereafter, which Grantee assumes and agrees to pay. Provided, however, this conveyance is made subject to easements, restrictions and conditions of record, and governmental laws and regulations affecting the Property.

To have and to hold the Property together with all of the rights, privileges, appurtenances and improvements thereunto belonging unto the Grantee, and its successors and assigns forever.

This Deed is exempt from the transfer tax pursuant to KRS 142.050(7)(d).

IN WITNESS WHEREOF, the Grantor has executed this deed this _____ day of May 2021.

TRANSFER YEAR PROPERTY TAX BILL TO BE ADDRESSED IN CARE OF THE GRANTEE, AL CAT, LLC, 2606 ALIA CIRCLE, LOUISVILLE, KENTUCKY 40222.

GRANTOR:

Christopher Purcell

Maria Purcell

Jack Ridge

(collectively, the "Grantor")

forever quitclaims to Grantee all of Grantor's right, title, and interest in and to the real property located in Jefferson County, Kentucky, together with all improvements thereon and appurtenances thereto and more fully described on Exhibit A attached hereto and made a part hereof (collectively, the "Property").

See attached Exhibit A.

Grantor represents and warrants that Christopher Purcell, Maria Purcell, and Jack Ridge are all of the Members of Par Golf, LLC, a Kentucky limited liability company.

Grantor covenants lawful seisin of the estate hereby conveyed, if any, and that said estate is free of encumbrances except liens for real property taxes and assessments due and payable for 2021, and thereafter, which Grantee assumes and agrees to pay. Provided, however, this conveyance is made subject to easements, restrictions and conditions of record, and governmental laws and regulations affecting the Property.

To have and to hold the Property together with all of the rights, privileges, appurtenances and improvements thereunto belonging unto the Grantee, and its successors and assigns forever.

This Deed is exempt from the transfer tax pursuant to KRS 142.050(7)(d).

IN WITNESS WHEREOF, the Grantor has executed this deed this 31 day of May 2021.

TRANSFER YEAR PROPERTY TAX BILL TO BE ADDRESSED IN CARE OF THE GRANTEE, AL CAT, LLC, 2606 ALIA CIRCLE, LOUISVILLE, KENTUCKY 40222.

GRANTOR:

Christopher Purcell

Maria Purcell

Jack Ridge

(collectively, the "Grantor")

Consideration Certificate

For purposes of KRS Chapter 382.135, Christopher Purcell, Maria Purcell, Jack Ridge, AL CAT, LLC, and Valley Station Towne Center, LLC, by execution of this Quitclaim Deed, certify that the transfer herein is for no consideration. The estimated fair cash value of the Property is Six Hundred Twenty-five Thousand Dollars ($625,000.00).

GRANTOR:

Christopher Purcell

Date May 21, 2021

Maria Purcell

Date: May 21, 2021

Jack Ridge

Date: May ___, 2021

GRANTEE:

AL CAT, LLC,
a Kentucky limited liability company

By: _____
Chris Thieneman, Manager

Date: May 21, 2021

VALLEY STATION TOWNE CENTER, LLC,
a Kentucky limited liability company

By Thieneman Multifamily Properties, LLC,
a Kentucky limited liability company,
its sole member

By: _____
Chris Thieneman, Manager

Date: May 21, 2021

Consideration Certificate

For purposes of KRS Chapter 382.135, Christopher Purcell, Maria Purcell, Jack Ridge, AL CAT, LLC, and Valley Station Towne Center, LLC, by execution of this Quitclaim Deed, certify that the transfer herein is for no consideration. The estimated fair cash value of the Property is Six Hundred Ninety-five Thousand Seven Hundred Fifty Dollars (~~$695,750.00~~ $625,000.00).

GRANTOR:

Christopher Purcell

Date May ____, 2021

Maria Purcell

Date: May ____, 2021

Jack Ridge

Date: May 31, 2021

GRANTEE:

AL CAT, LLC,
a Kentucky limited liability company

By: _____
Chris Thieneman, Manager

Date: May ____, 2021

VALLEY STATION TOWNE CENTER, LLC,
a Kentucky limited liability company

By Thieneman Multifamily Properties, LLC,
a Kentucky limited liability company,
its sole member

By: _____
Chris Thieneman, Manager

Date: May ____, 2021

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The Quitclaim Deed and foregoing consideration statement were subscribed, sworn to and acknowledged before me this 21st day of May 2021, by Christopher Purcell and Maria Purcell to be their free and voluntary act.

My commission expires: JUNE 14, 2023.

NOTARY PUBLIC
Printed Name: Spencer K. Pribble
Notary ID: 625141

STATE OF FLORIDA
COUNTY OF Hillsborough

Sworn to (or affirmed) and subscribed before me this 21 day of May 2021, by Jack Ridge.

(Seal)

CONNIE LANAEH ELLIS
Notary Public - State of Florida
Commission # GG 160779
My Comm. Expires Nov 15, 2021

Connie Lanaeh Ellis
Signature of Notary Public

Connie Lanaeh Ellis
Print, Type or Stamp Name of Notary

Personally Known: ____
OR Produced Identification: X
Type of Identification Produced: FL DL

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The foregoing consideration statement was subscribed, sworn to and acknowledged before me this 21st day of May 2021, by Chris Thieneman, in his capacity as Manager of AL CAT, LLC, a Kentucky limited liability company and as Manager of Thieneman Multifamily Properties, LLC, a Kentucky limited liability company, the sole member of Valley Station Towne Center, LLC, a Kentucky limited liability company, collectively the within named Grantee, to be the free act and voluntary deed of said companies and to be his free act and voluntary deed as each of their Manager aforesaid.

My commission expires: June 14, 2023.

NOTARY PUBLIC
Printed Name: Spencer K Probst
Notary ID: 625141

THIS INSTRUMENT PREPARED BY:

Robert W. "Tad" Adams, III, Esq.
D. A. Andrews
ADAMS LAW GROUP
6004 Brownsboro Park Blvd., Ste. A
Louisville, Kentucky 40207
(502) 895-8210

EXHIBIT A
Real Property Description

Beginning at a point at the southeast corner of a tract of land conveyed by Harold E. Kendrick and wife to HFH, Inc., as recorded in Deed Book 5844, Page 244, in the Office of the Clerk of the County Court of Jefferson County, Kentucky; said point is also in the southline of said Kendrick tract; said point of beginning is further defined as being at the southeast corner of Tract C, Glenmary, Section 2, as recorded in Plat Book 37, Pages 99, 100 and 101 in said Office; thence from the Point of Beginning the following: S 86°33'42"W for 99.27 feet to a point, S 49°55'55"W for 13.525 feet to a point, S 49°55'55"W for 13.525 feet to a point, S 72°33'05"W for 505.47 feet to a point, N 07°06'43"W for 60.00 feet to a point, N 32°56'27"W for 180.01 feet to a point, N 12°50'13"W for 186.92 feet to a point, N 71°35'51"W for 282.33 feet to a point, N 17°57'03"W for 337.04 feet to a point, N 31°13'21"W for 322.82 feet to a point, N 45°21'43"W for 200.72 feet to a point, N 85°04'26"W for 98.87 feet to a point, S 18°14'33"W for 141.75 feet to a point in the north line of Black Iron Road, thence westwardly along the north line of Black Iron Road the following: with a curve said curve having central angle 004°00'20", radius 666.62 feet, chord bearing N 73°44'44"W, and chord distance 46.40 feet, along the said curve for an arc distance of 46.60 feet to the end of the curve, N 75°44'54"W for 128.07 feet to the beginning of a curve, radius 2834.79 feet, the chords of which bear S 74°37'28"W 111.21 feet to a point, and S 71°07'30" W 234.99 feet to a point, along the said curve for an arc distance of 346.37 feet to the end of the curve, N 68°44'58"W for 384.22 feet to a point, N 67°01'44"W for 333.15 feet to the beginning of a curve, said curve having central angle 096°12'02", radius 15.00 feet, chord bearing N 28°38'52"W, and chord distance 22.33 feet, along the said curve for an arc distance of 25.19 feet to the end of the curve in the east line of Glenmary Farm Drive; thence northwardly along same the following: N 27°27'04"E for 73.14 feet to a point, N 27°27'04"E for 19.66 feet to a point; thence leaving said Glenmary Farm Drive S 62°32'54"E for 90.00 feet to a point, N 60°52'27"E for 63.51 feet to a point, N 27°27'04"E for 525.00 feet to a point, N 46°03'20"E for 118.92 feet to a point, N 62°34'17"E for 120.97 feet to a point, N 69°19'25" E for 160.70 feet to a point, N 60°29'29"E for 314.97 feet to the Southeast corner of Revised Lot 291, Glenmary Subdivision, Section 2, as shown on Minor Subdivision Plat attached to Deed of record in Deed Book 6063, Page 56; thence with the East line of Revised Lot 291, North 02 degrees 15 minutes 22 seconds West 108.00 feet, to the beginning of a curve, radius 722.94 feet, the chords of which bear S 52°19'34" E 30.00 feet to a point, S 78°33'52" E 66.34 feet to a point, and N 70°18'28"W 144.30 feet to a point, along the said curve for an arc distance of 241.54 feet to the end of the curve, to the beginning of a curve, said curve having central angle 093°11'22", radius 15.00 feet, chord bearing S 18°02'47"E, and chord distance 21.80 feet, along the said curve for an arc distance of 24.40 feet to the end of the curve, S 28°32'54"W for 152.26 feet to the beginning of a curve, said curve having central angle 006°48'29", radius 547.86 feet, chord bearing S 51°87'09"W, and chord distance 45.07 feet, along the said curve for an arc distance of 65.11 feet to the end of the curve, N 54°38'37"W for 100.00 feet to a point, S 52°34'29"W for 140.67 feet to a point, S 60°40'58"W for 204.48 feet to a point, S 09°36'43 "E for 70.00 feet to the beginning of a curve, said curve having central angle 080°12'51", radius 50.00 feet, chord bearing N 79°49'58"W, and chord distance 64.42 feet, along the said curve for an arc distance of 70.00 feet to the end of the curve, N 82°12'57"W for 118.00 feet to a point, S 06°21'53"W for 101.50 feet to a point, S 14°43'42"E for 100.00 feet to a point, S 89°18'45"E for 120.00 feet to a point, N 05°05'05"W for 92.65 feet to the beginning of a curve, radius 50.00 feet, the chords of which bear S 82°40'42" E 19.37 feet to a point, and N

83°21'58"E 1.08 feet to a point, along the said curve for an arc distance of 20.88 feet to the end of the curve, S 05°05'05"E for 90.50 feet to a point, S 49°18'45'E for 223.97 feet to the beginning of a curve, said curve having central angle 029°42'04", radius 50.00 feet, chord bearing N 75°50'13"E, and chord distance 25.43 feet, along the said curve for an arc distance of 25.92 feet to the end of the curve, S 39°00'50"E for 35.00 feet to a point, S 89°18'45" E for 125.00 feet to a point, N 09°40'41" E for 85.74 feet to a point, N 15°28'00"W for 110.91 feet to a point, N 37°42'26"W for 144.91 feet to a point, the beginning of a curve, said curve having central angle 013°34'40", radius 597.36 feet, the chords of which bear N 37°35'24" E 94.58 feet to a point and N 30°48'04" E 47.10 feet to a point, along the said curve for an arc distance of 141.70 feet to the end of the curve, N 28°32'54" E for 57.67 feet to a point, S 56°36'06"E for 128.30 feet to a point, S 43°09'19"E for 142.21 feet to a point, S 14°36'13"E for 408.25 feet to a point, S 39°06'31"E for 136.06 feet to a point, S 86°27'01"E for 179.25 feet to a point, S 31°36'37"E for 296.00 feet to a point, N 54°81'11"E for 122.45 feet to a point, N 04°15'40"W for 70.00 feet to the beginning of a curve, said curve having central angle 023°34'41", radius 50.00 feet, chord bearing S 82°20'13" E, and chord distance 20.43 feet, along the said curve for an arc distance of 20.54 feet to the end of the curve, S 04°16'40"E for 90.00 feet to a point, S 35°40'21"E for 80.00 feet to a point, S 24°28'13"E for 286.79 feet to a point, S 23°56'38"E for 782.51 feet to the Point of Beginning. Containing 45.92 acres more or less.

Being the remainder of Tract C, Glenmary Subdivision, Section 2 as shown on Plats of record in Plat and Subdivision Book 37, Pages 99, 100 and 101, as revised by Minor Subdivision Plat attached to Deed of record in Deed Book 6063, Page 56, in the Office aforesaid.

Being a portion of the same property acquired by Par Golf, LLC, a Kentucky limited liability company, by that certain Deed, dated April 15, 2005, of record in Deed Book 8609, Page 13, in the Office of the Clerk of Jefferson County, Kentucky.

The above described 45.92 acres includes certain real estate for which a subdivision approval under Planning Commission Docket No. 19173 is subject to a pending appeal in *Glenmary Homeowner's Association, Inc. v. Par Golf, LLC, et al*, Cases 14-CI-000844 and 14 CI-002143. The pending subdivision tract is described as follows:

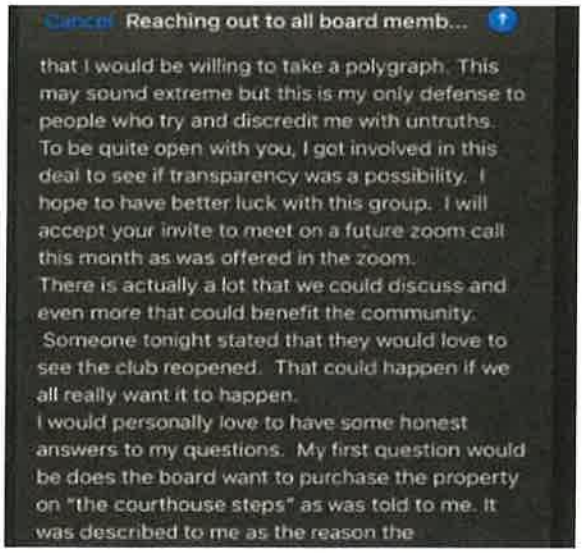
BEING Lot 2 as shown on that certain Minor Subdivision Plat, which was approved by the Louisville Metro Planning Commission on March 20, 2014 as Docket No. 19173, attached to and made a part of that certain Deed of record in Deed Book 10377, Pages 639, in the Office of the Clerk of Jefferson County, Kentucky.

Being the same property acquired by Par Golf, LLC, a Kentucky limited liability company, by that certain Quit-Claim Deed, dated March 17, 2015, of record in Deed Book 10377, Page 639, in the Office of the Clerk of Jefferson County, Kentucky.

END OF DOCUMENT

Exhibit C


Cancel
Reaching out to all board memb...
Good evening.
My name is Chris Thieneman and am a developer who has the contract to purchase the golf property in Glenmary. I am under the impression that I am emailing the board of the HOA.
I would like to take this time to reach out to you all, unlike the previous times in the recent past when I only emailed your president.
I was able to listen to the meeting tonight and wanted to express my disappointment in the lack of communication. I will take responsibility in my part in assuming that Bob would forward my emails to the rest of you. I do take offense to Bobs accusation that I declined his offer to meet.
Actually I am the one that has reached out to him as president seeking to meet with the board. I don't want to play games either and am so serious that I would be willing to take a polygraph. This


Cancel
Reaching out to all board memb...
that I would be willing to take a polygraph. This may sound extreme but this is my only defense to people who try and discredit me with untruths.
To be quite open with you, I got involved in this deal to see if transparency was a possibility. I hope to have better luck with this group. I will accept your invite to meet on a future zoom call this month as was offered in the zoom.
There is actually a lot that we could discuss and even more that could benefit the community.
Someone tonight stated that they would love to see the club reopened. That could happen if we all really want it to happen.
I would personally love to have some honest answers to my questions. My first question would be does the board want to purchase the property on "the courthouse steps" as was told to me. It was described to me as the reason the

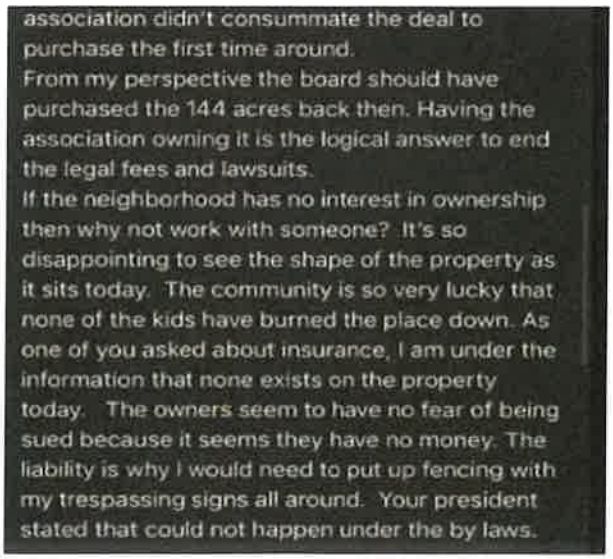

association didn't consummate the deal to purchase the first time around.
From my perspective the board should have purchased the 144 acres back then. Having the association owning it is the logical answer to end the legal fees and lawsuits.
If the neighborhood has no interest in ownership then why not work with someone? It's so disappointing to see the shape of the property as it sits today. The community is so very lucky that none of the kids have burned the place down. As one of you asked about insurance, I am under the information that none exists on the property today. The owners seem to have no fear of being sued because it seems they have no money. The liability is why I would need to put up fencing with my trespassing signs all around. Your president stated that could not happen under the by laws.

Exhibit D

Lori Ann Berry
Ken Hardman can you show me where it says it's protected wetlands? I just want to have it to show someone. Thank you 😊

Like Reply 2d 1

Ken Hardman
Lori Ann Berry at this point I am going by the appraiser who walked the property with our hoa a couple of weeks ago. He is looking into it for our hoa . I can tell you that it is drainage for the fairways of Glenmary without the pond the Fairways will flood. We were told it was very doubtful that msd will allow the pond to be drained

Like Reply 2d 1

Lori Ann Berry
Ken Hardman thank you!

Like Reply 2d

Kimberly Anderson Page
Chris Thieneman If you don't own it, then why are you feeling pressure from the bank to sell it? I would think the bank would be selling it. Or Par Golf. Or whoever owns it. Unless you worked out a deal with the bank, and if you helped to sell the rest, you get a better deal on your land. Which maybe true. Don't know. I just know that if it wasn't my property, or I have no interest financially in it, wouldn't be trying to sell it.

Like Reply 2d Edited 2

Kimberly Anderson Page
Chris Thieneman If you don't own it, then why are you feeling pressure from the bank to sell it? I would think the bank would be selling it. Or Par Golf. Or whoever owns it. Unless you worked out a deal with the bank, and if you helped to sell the rest, you get a better deal on your land. Which maybe true. Don't know. I just know that if it wasn't my property, or I have no interest financially in it, wouldn't be trying to sell it.

Like Reply 2d Edited 2

Chris Thieneman
Kimberly Anderson Page Kimberly they are my number one bank We got together a year old to see what could be done for them to get this off their books.
I have tried everything to sell this to the community. I'm doing all I can and I can't make you buy it. But it will be sold. Please send up your ideas. When your HOA board backed out of their agreement to purchase options have lowered groups willing to purchase.
The only option I have every heard from the community was for the property to be given away. But that just isn't an option.

Like Reply 2d

Chris Thieneman
Monica Buckler Altman Maybe you haven't been paying attention but I'm focused on getting the property sold. If you aren't interested that's ok. But it will be sold

Like Reply 4d

Kristy Higdon Stoess
Chris Thieneman if you try to sell if for a purpose such as this you're setting yourself up for a class action law suit for property devaluation.

2

Like Reply 4d

Emily Johnson
Chris Thieneman you didn't answer my question. Why are you selling land for a bank?

1

Like Reply 4d

Chris Thieneman
Emily Johnson I have answered that 100 times. One more just for you.
Stockyard is my main bank. They want to get this off their books before end of year. I said I will work my ass off to make that happen. I have tried hard to explain that the neighborhood should own it. If not it still has to be sold. Why some of you think it should be free use with no expense ? I have no idea. But it's not about to work that way.

2

Like Reply 4d

Chris Thieneman
Kristy Higdon Stoess I'm just the seller. But threatening to Sue because the owner wants to sell their property goes back centuries. People have property rights. Please make sense how do you think it's a legal issue.

Like Reply 4d

Kristy Higdon Stoess
Chris Thieneman parking a homeless camp in a neighborhood immediately devalues the property. It's not rocket science. Let's park one in your neighborhood???

4

Like Reply 4d

Kristy Higdon Stoess
Chris Thieneman I don't think any of us ever said it should be free..... Glenmary should purchase, but not at the current price.

1

Like Reply 4d

Emily Johnson
Chris Thieneman you're hilarious. Truly.

Like Reply 4d

Chris Thieneman
Kristy Higdon Stoess Who is telling you a price Kristy. Because my last words to then was "make an offer any offer just make an offer ".

Like Reply 4d

Exhibit E

Chris Thieneman
October 1 at 8:33 PM

If you have time and want to help out please stop by the Homeless retreat on the golf course holes behind the gas station. Maybe you have some things you don't need or maybe you would want to drop off some food. This weekend the West end coalition is testing out the property in anticipation of purchasing this parcel. Thank you Neal Robertson

All Comments

Emily Johnson
Homeless retreat???
Like Reply 2d 1

Husein Elezović
Hey Chris, want to let them squat in the clubhouse while you're at it!!?
Like Reply 2d 8

Pamela Forrest Moran
Absolutely not Chris!! What are you doing??
Like Reply 2d 2

...

Sharon McDermott
That's insane. This is trash in the first stage. Crap somewhere else. Get out
Like Reply 2d 5

Justin Haas
If you didn't see this coming from a mile away, you are blind
Like Reply 2d 11

Emily Johnson
Imagine being so deplorable you bully homeowners.
Like Reply 2d 10

Teri Hardman
Monica Buckler Altman if I were home I definitely would

Like Reply 2d

Husein Elezović
Chris, hopefully none of them get hurt while "testing out" the land and file a suit. Wouldn't want that for you, "neighbor". You already had a couple lawsuits you were dealing with, right?

Like Reply 2d 4

Chris Thieneman
Husein Elezović They plan on purchasing it. I just asked them to test it before I got the contract signed.

Like Reply 2d 1

Morgan Wells
Chris Thieneman you're kidding right?! You have people camping behind our homes as a test drive? Real neighborly Bud. You're just winning people over left and right.

Like Reply 2d 7

Patti Gipe Mitchell
Chris Thieneman who currently owns this hole to approve this test drive?? You do NOT own it. Who granted permission for this?

Like Reply 2d 3

Sharon McDermott
Chris Thieneman you are not doing yourself any favors. You are proving yourself to be as rumors have said. You are not trustworthy

You are out for the fast buck.
Stop all of these under table scare tactics and be a real business person who has enough b;$(to be honest

Like Reply 2d 3

Reply to Chris Thieneman...

Monica Buckler Altman
Chris I tried to like you and look past all the crap. But in my mind your worse than the board. Do you not think we can't see right past this crap that you do it next to the hoa president ? Not saying I like him. I don't like any of you all at this point

Like Reply 2d 11

Chris Thieneman
Monica Buckler Altman Thx Monica. I cannot control how you feel about me. I can control my actions and my words. This property will get sold and I know I did above and beyond trying to help get the community to own it. Not sure what some think would eventually happen.

Like Reply 2d

Mary Jean Gonyea Kenney
Chris Thieneman Why did you invite them here?

Exhibit F

Ed Pait
October 2 at 10:45 AM

In case you missed it. "You're getting what you deserve". Wow. True colors always come through.

10:30
◄ Search

Glenmary's Future
Chris Thieneman · 1d ·

I did

1d Like Reply 1

Brenda Anne
I noted over a dozen people who indicate that after tonights shenanigans they will be sure to vote for the existing HOA Board. Way to get the neighborhood working together

7h Like Reply

Chris Thieneman
Brenda Anne This explains why you are in the position you are in Brenda. Explains a lit. Just the fact that you think it's shenanigans. I did what I could to help y'all decide who should own it. But you get what you deserve

11 34 Comment

Like Comment

All Comments

Patti Gipe Mitchell
No, I don't deserve any of this. I voted to purchase the property. I want the HOA to purchase the property. Your actions are harming a lot of innocent residents — many of whom were excited for your promises of fixing up the clubhouse and barn. Sleep well.

Like Reply 4d 15

Kristy Higdon Stoess
He's an ass. None of the new people are siding with him that I'm aware of.

Like Reply 4d 3

Exhibit G

Neal Robertson
October 5 at 11:18 PM ·

THE CITY IS MOVING THE HOMELESS CAMPS FROM DOWNTOWN, SO WE WILL BE RECRUITING THEM FOR GLENMARY RETREAT HALLOWEEN WEEKEND.

7 2 Comments 5 Shares

Like Comment Share

Chris Thieneman
Brenda Anne. Trick or treat
1
Like · **Reply** · 1d

Odell Chandler

Like · **Reply** · 5h

Write a comment...

Exhibit H

CORRECTED SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

GLENMARY SUBDIVISION, SECTION II

PLAT AND SUBDIVISION BOOK 37, PAGES 99, 100 AND 101
JEFFERSON COUNTY, KENTUCKY

THIS SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GLENMARY SUBDIVISION (Section II), is made on March 27, 1990, by HFH, Inc., with principal office and place of business at 9420 Bunsen Parkway, Suite 200, Louisville, Kentucky 40220 ("Developer").

WHEREAS, Developer is the owner of certain real property in Jefferson County, Kentucky, which is to be developed as a residential subdivision:

NOW, THEREFORE, Developer hereby declares that all of the property described in this instrument, and such additional property as may be hereafter made subject to this Declaration, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the real property. The easements, restrictions, covenants and conditions shall run with the real property and be binding on all parties having any right, title or interest in it, their heirs, successors and assigns, and shall inure to the benefit of each owner.

Existing Property. The real property which is subject to this Declaration is located in Jefferson County, Kentucky and is more particularly described as follows:

> BEING LOTS 246 through 345, inclusive, as shown on the plat of Glenmary Subdivision, of record in Plat and Subdivision Book 37, Pages 99, 100 and 101, in the Office of the Clerk of Jefferson County, Kentucky.
>
> BEING a part of the same property acquired by Developer by Deed dated January 24, 1989, of record in Deed Book 5837, Page 661, in the Office of the Clerk of Jefferson County, Kentucky.

Additions to Existing Property. Additional lands may become subject to this Declaration in any of the following manners:

(a) Additions in Accordance with a General Plan of Development. Developer intends to make this section containing 100 lots a part of a larger community being developed in accordance with current plans and known as Glenmary Subdivision.

BOOK 5916 PAGE 876

Developer reserves the right to create cross easements and to restrict all of the properties according to the terms of this Declaration. The common area initially covered by this Declaration shall inure to the benefit of the owners of any new lots within Glenmary which may become subjected to this Declaration or a similar set of deed restrictions and common area allocable to the owners of all such lots within Glenmary shall inure to the benefit the owners of lots recorded earlier, each to enjoy the common area of the other and to have and to hold the same as if each new lot had been developed and subjected to this Declaration simultaneously.

All additions shall be made by filing with the Office of the Clerk of Jefferson County, Kentucky, a Supplementary Declaration of Covenants, Conditions and Restrictions with respect of the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property. The Supplementary Declarations may contain additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

(b) Other Additions. Additional residential property and common area which are not presently a part of the general plan of development of Glenmary may be annexed to Glenmary by Developer.

(1) Primary Use Restrictions.

No lot shall be used except for private single family residential purposes. No structure shall be erected, placed or altered or permitted to remain on any lot except one single family dwelling designed for the occupancy of one family (including a domestic servant living on the premises), not to exceed two and one-half stories in height and having a single kitchen. All residents of the dwelling, except one resident, must be related by blood, marriage or adoption.

(2) Approval of Construction Plans.

No building, fence, wall, structure or other improvement shall be erected, placed or altered on any lot until the construction plans, specifications and a plan showing the grade elevation (including front, rear and side elevations) and location of the structure, fence, wall or improvement, the type of exterior material and the driveway (which shall be of asphalt or concrete) shall have been approved in writing by Developer or by any person or association to whom it may assign the right. Developer may vary the established building lines, in its sole discretion, where not in conflict with applicable zoning regulations.

Garages and driveways shall be located on the right side of each house, when viewed from the street. Other locations will be considered for approval in writing by the Developer after

BOOK 5946 PAGE 877

consideration is given for the proper development of a particular lot, such as the slope of the land, protection of existing trees, amount of buffer area between houses and the location of other garages and driveways on nearby lots.

(3) Building Materials.

The exterior building materials of all structures shall be either brick, stone, brick veneer or stone veneer or a combination of same, and shall extend to ground level. However, Developer recognizes that the appearance of other exterior building materials (such as wood siding or vinyl) may be attractive and innovative, and reserves the right to approve in writing the use of other exterior building materials.

(4) Setbacks.

No structure shall be located on any lot nearer to the front lot line or the side street line than front lot set back of 30 feet. Side yards total for both eighteen (18) feet with a minimum of six (6) feet. The minimum building setback lines shown on the recorded plat shall be followed except bay windows and steps may project into side areas up to eighteen (18) inches, and open porches may project into the front yard area not more than six (6) feet.

(5) Minimum Floor Areas.

(a) The ground floor area of a one story house shall be minimum of 1650 square feet, exclusive of the garage.

(b) The total floor area of a one and one-half story house shall be a minimum of 1750 square feet, with the ground floor area a minimum of 1000 square feet exclusive of garage.

(c) The ground floor area of a two story house shall be a minimum of 1100 square feet, exclusive of the garage, provided further, the minimum total for such house shall be 2200 square feet.

(d) Basements are required where possible, any exception must have Developer's approval. Finished basement areas, garages and open porches are not included in computing floor area.

(e) Garages; Carports. The opening or doors for vehicular entrances to any garage located on a lot shall not face any lot line adjoining a street unless otherwise approved in writing by Developer. All lots shall have at least a two car garage unless otherwise approved in writing by Developer. No detached garages are allowed unless otherwise approved in writing by Developer. Garages, as structures, are subject to prior plan approval.

No carport shall be constructed on any lot in Glenmary Subdivision.

(6) Nuisances.

No noxious or offensive trade or activity shall be conducted on any lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

(7) Use of Other Structures and Vehicles.

(a) No structure of a temporary character shall be permitted on any lot except temporary tool sheds or field offices used by a builder or developer, which shall be removed when construction or development is completed.

(b) No outbuilding, trailer, basement, tent, shack, garage, barn or structure other than the main residence erected on a lot shall at any time be used as a residence, temporarily or permanently.

(c) No trailer, truck, commercial vehicle, camper trailer, camping vehicle or boat shall be parked or kept on any lot at any time unless housed in a garage or basement. No automobile which is inoperable shall be parked on any street in the subdivision for a period in excess of twenty-four (24) hours in any one calendar year.

(d) No automobile shall be continuously or habitually parked on any street or public right-of-way in Glenmary.

(8) Animals.

No animals, including reptiles, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets (meaning the domestic pets traditionally recognized as household pets in this geographic area) may be kept provided that they are not kept, bred or maintained for any commercial or breeding purposes. All household pets, including dogs and cats, shall at all times be confined to the lot occupied by the owner of such pet.

(9) Landscaping.

After the construction of a residence, the lot owner shall grade and sod that portion of the lot between the front and street side walls of the residence and the pavement of any abutting streets. All finished grades must be in accordance with construction plans approved by and on file with the Jefferson County Department of Works.

(10) Tree Requirement.

Upon the construction of a residence, the lot owner shall cause to be planted two trees, each with a minimum diameter of

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three inches, when planted in the front yard. An exception is if existing trees (3" in diameter) are growing in the front yard. Upon an owner's failure to comply with this paragraph, or paragraph (9), Developer or any person or association to whom it may assign the right, may take action necessary to bring about compliance, and the owner on demand shall reimburse Developer or other performing party for the expense incurred in so doing.

(11) Mail and Paper Boxes; Hedges and Fences; Swimming Pools; Antennae.

(a) A mailbox and paper holder selected by the Developer will be placed at lot owner's expense.

(b) No hedge or fence shall be placed or planted on any lot unless its design and placement or planting are approved in writing by Developer or by any person or association to whom it may assign the right. In only remote circumstances, such as fencing for a small pet or for swimming pool enclosures, will fencing be considered. Fence height, if approved, may only be 48" maximum. Fence material to be of wood, or possibly wrought iron, and landscaped. Only a portion of the rear yard shall be fenced. Chain link fences will not be approved.

(c) Developer reserves the right to place a fence on the outer perimeter of the subdivision or, to replace existing wire or wood fences. Fences placed will be the responsibility of adjacent lot owners for maintenance and repairs.

(d) No aboveground swimming pools shall be erected or placed on any lot from the date hereof unless its design and placement are approved in writing by Developer, which approval shall be within the sole and absolute discretion of the Developer and may be arbitrarily and unreasonably withheld.

(e) No antennae (except for standard small television antennae) or microwave and other receivers and transmitters (including those currently called "satellite dishes") shall be erected or placed on any lot unless its design and placement are approved in writing by Developer, which approval shall be within +the sole and absolute discretion of the Developer and may be arbitrarily and unreasonably withheld.

(12) Clothes Lines.

No outside clothes lines shall be erected or placed on any lot.

(13) Duty to Maintain Property.

It shall be the duty of each owner to keep the grass on the lot properly cut, to keep the lot free from weeds and trash, and to keep it otherwise neat and attractive in appearance. Should any owner fail to do so, then Developer, or any person or association to whom it may assign the right, may take such action

as it deems appropriate, including mowing, in order to make the lot neat and attractive, and the owner shall upon demand reimburse Developer or other performing party for the expense incurred in so doing.

(14) Business; Home Occupations.

No trade or business of any kind (and no practice of medicine, dentistry, chiropody, osteopathy and the like endeavors) shall be conducted on any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Notwithstanding this provision or section (1) hereof, a new house may be used by the builder thereof as a model home for display or for the builder's own office, provided the use terminates within one (1) year from completion of the house.

(15) Signs.

No sign for advertising or for any other purpose shall be displayed on any lot or on a building or a structure on any lot, except one sign for advertising the sale or rent thereof, which sign shall not be greater in area than nine (9) square feet; except Developer shall have the right to erect larger signs when advertising the subdivision. This restriction shall not prohibit placement of occupant name signs and lot numbers as allowed by applicable zoning regulations.

(16) Drainage.

Drainage of each lot shall conform to the general drainage plans of Developer for the subdivision. Each home owner shall ensure that the grading of his lot shall comply with drainage plans. If drainage is blocked or altered the home owner shall correct problem at his expense or Developer may correct problem and bill the home owner for expenses to correct problem.

(a) Underground Utility Service. Each property owner's electric utility service lines shall be underground throughout the length of service line from Louisville Gas & Electric's (LG&E) point of delivery to customer's building; and title to the service lines shall remain in and the cost of installation and maintenance thereof shall be borne by the respective lot owner upon which said service line is located.

Appropriate easements are hereby dedicated and reserved to each property owner, together with the right of ingress and egress over abutting lots or properties to install, operate and maintain electric service lines to LG&E's termination points. Electric service lines, as installed, shall determine the exact location of said easements.

The electric and telephone easements shown on the plat shall be maintained and preserved in their present condition and no encroachment therein and no change in the grade or elevation thereof shall be made by any person or lot owner without the

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express written consent of LG&E and South Central Bell Telephone Company and their respective successors and assigns.

(b) Easements for overhead transmission and distribution feeder lines, poles and equipment appropriate in connection therewith are reserved over, across and under all spaces (including park, open and drainage space area) outlined by dash lines and designated for underground and overhead facilities.

Aboveground electric transformers and pedestals may be installed at appropriate points in any electric easement.

In consideration of bringing service to the property shown on this plat, LG&E is granted the right to make further extensions of its lines from all overhead and underground distribution lines.

(c) The electric and telephone easements hereby dedicated and reserved to each lot owner, as shown on the recorded plat of Glenmary, shall include easements for the installation, operation and maintenance of cable television service to the lot owners, including the overhead and/or underground installation and service of coaxial cables, cable drop wires, converters, home terminal units and other necessary or appropriate equipment, as well as easements for the installation, operation and maintenance of future communication, telecommunication and energy transmission mediums.

(17) Disposal of Trash.

No lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash or garbage or other waste shall not be kept except in sanitary containers. If trash is placed on lot, owner must remove within thirty (30) days.

(18) Drains.

No storm water drains, roof downspouts or ground water shall be introduced into the sanitary sewer system. Connections on each lot shall be made with watertight joints in accordance with all applicable plumbing code requirements.

(19) Obligation to Construct or Reconvey.

Within twenty-four (24) months after the date of conveyance of a lot without a dwelling thereon, if the lot owner has not begun in good faith the construction of a single family dwelling approved according to paragraph (2), upon each lot conveyed, Developer may elect to repurchase any and all lots on which construction has not commenced for the original purchase price in the deed of said lot or lots hereunder, in which event the lot owner shall immediately reconvey and deliver possession of said lot or lots to Developer by deed of special warranty.

(a) Duty to Repair and Rebuild. Each owner of a lot shall, at its sole cost and expense, repair his residence, keeping the same in condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

If all or any portion of a residence is damaged or destroyed by fire, or other casualty, then owner shall, with all due diligence, promptly rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its apparent condition immediately prior to the casualty.

(20) Restrictions Run With Land.

Unless cancelled, altered or amended under the provisions of this paragraph, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of thirty (30) years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten (10) years. These restrictions may be cancelled, altered or amended at any time by the affirmative action of 75% of those persons entitled to vote pursuant to the Articles of Incorporation of the Glenmary Homeowners Association, Inc. Failure of any owner to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violations, shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions.

(21) Enforcement.

Enforcement of these restrictions, excepting paragraph 19, shall be by proceeding at law or in equity, brought by any owner of real property in Glenmary Subdivision, by a property owners association to be formed under paragraph (23), or by Developer itself, against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration or to recover damages.

(22) Invalidation.

Invalidation of any one of these covenants by judgment or court order shall not affect any of the other provisions which shall remain in full force and effect.

(23) Fees for Subdivision Fund; Lien.

Effective with the occupancy of a house on any lot, the homeowner will automatically be a Class A member of the Glenmary Homeowners Association, Inc.

Every lot owner, except Developer, shall pay an annual fee on February 1, which fee shall be $100.00 per lot for 1989. This same amount shall automatically be charged annually until the Association gives notice of an increase or decrease. The annual

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fee shall be paid within thirty (30) days of written notice, and shall thereafter be considered delinquent.

The Fund may only be used for purposes generally benefitting the Association.

All annual fees shall constitute a lien upon the lot and improvements, but shall be subordinate to the lien of any first mortgage or vendor's lien and shall be enforceable against the real estate by foreclosure or otherwise. A notice of lien or lis pendens as notice of a nonpayment of an assessment may be recorded, but failure to record shall not invalidate or extinguish the lien.

(24) Homeowners Association.

Developer has incorporated the Glenmary Homeowners Association, Inc., a nonprofit Kentucky corporation, and has filed and recorded Articles of Incorporation and By-Laws which establish a Board of Directors and officers for the Association, and the duties for which they are responsible.

(25) Sidewalks required by construction plans approved by and on file with the Jefferson County Deparment of Works will be constructed on each lot by the lot owner before house construction is completed.

(26) Developer reserves the right to utilize lot _____ as a possible future passageway (road) to adjacent property.

(27) The Glenmary Golf and Recreation Club, Inc. will manage the golf course, building, swimming pools, tennis courts and other recreational amenities. Initial purchasers of homesites, or houses within Glenmary Subdivision will be given an opporunity to become members in the Club. Initial purchasers of houses have sixty (60) days after taking title to property to contact the Club and apply for membership. Purchasers of lots may apply for membership in the Club upon taking title to the lot up to the time 60 days after occupancy of a house constructed on the lot by or for the lot owner. After the 60-day time period expires, application and membership to the Club will be pursuant to the By-Laws of the Club. Membership in the Club may include members from other neighborhoods, subdivisions or communities.

(28) Membership in the Glenmary Golf and Recreation Club, Inc. will be obtained after the payment of fees in accordance with the By-Laws of the Club. Various levels of membership will be available, including full memberships or social memberships.

(29) Owners of lots, homes or any residents understand that Glenmary Golf and Recreation Club, Inc. will be an integral part of the subdivision community. Operation of the Club will be for the benefit of the membership and guests. Homeowners adjacent to the golf course on land operated by the Club understand that

recreation activities will be conducted as permitted by the By-Laws of the Club.

(30) All owners of lots bordering, or backing up to the golf course, shall, during the construction period for clearing and/or building of any structure on the lot, place a fabric silt fence minimum 18" in height and a minimum of 6" underground along the perimeter of the lot contiguous to the golf course. This silt fence shall remain in good repair during the entire construction period, removed only when the lot is seeded and grass has been established. The purpose is to keep silt from contaminating the golf course. No dumping of dirt, trees, wood or any material will be permitted on the golf course land. No paper debris shall be allowed to blow from lot to golf course land. Removal or clean up of the above-referenced items shall be at lot owner's expense.

(31) Fences if erected by Developer on the outer perimeter and at the rear of lots in various parts of the subdivision will become the property of abutting lot owner. Fences will be maintained and painted by the lot owner.

(32) Maintenance of Open Space and Signature Walls.

The Homeowners Association will maintain the open space and signature walls which are an integral part of the subdivision community and development.

(33) Maintenance of Recreation Space.

HFH, Inc. will retain ownership of the recreation space and will be responsible for maintaining the recreation space which is an integral part of the subdivision community and development.

WITNESS the signature of Developer by its duly authorized officer on this 27th day of March, 1990.

HFH, INC. - Glenmary Subdivision
a Kentucky Corporation

By: _____

STATE OF KENTUCKY)
) SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 27th day of March, 1990, by William T. Hinton, President of HFH, Inc., Glenmary Subdivision, a Kentucky Corporation, on behalf of the corporation.

My commission expires: Dec. 25, 1990

Brenda E. Fisher
NOTARY PUBLIC, State-at-Large

THIS INSTRUMENT PREPARED BY:

Kyle T. Hubbard
KYLE T. HUBBARD
2100 First National Tower
Louisville, Kentucky 40202
Phone: (502) 582-1891

LODGED BY Hubbard
PAID AT COUNTER

90 MAR 29 PM 2:47
PAID $ 22.50
REBECCA JACKSON J.C.C.

4733

Exhibit I

1 INTRODUCTION

Thornton Acoustics & Vibrations (TAV) performed a community noise study at the Chick Residence, located at 2307 Glenview Ave., Louisville KY 40222, over the period July 9, 2021 to August 6, 2021. The purpose of the study was to measure, record and assess the ambient community noise levels and the community noise emissions and the impact created by Pickleball play and associated activity on the adjacent Court. An aerial view of the study site is shown in Figure 1 and a photograph of the Pickleball Court as viewed from the Chick Property is shown in Figure 2.

Figure 1 aerial site view showing the Chick Property and the Pickleball Court. The Noise Monitor location is indicated by the red dot.

Sound is a pressure perturbation propagating through air (in this case) that can be described in terms of the level or intensity, the frequency content (tone/pitch) and temporal variation. These variables affect the perception and impact of the sound, which when unwanted is called noise by convention.

In measuring and characterizing noise, there exist numerous metrics and descriptors. The metrics/descriptors used must be carefully chosen such that they capture and accurately describe and characterize the sound or noise problem being addressed. For many of these metrics and descriptors, although they fundamentally differ in their computation, the final results are expressed in terms of decibels (dB) and this can lead to confusion and misinterpretation. The use of the wrong metric will distort the measured results leading to erroneous conclusions. For example, impulsive noises (characterized by short durations and high levels) must be measured with metrics that have sufficiently short time averaging properties to characterize the levels in a way that can be meaningfully compared to the human perception of loudness. Accordingly, impulsive sounds such as Pickleball strikes must be characterized using the Peak sound pressure level (L_{peak}, (dB)). The Peak sound pressure level is the instantaneous (no time averaging) maximum sound level occurring over some arbitrary time interval. Note that attempts to measure impulsive noises with meters not capable of accurately measuring the Peak, by using either the Fast (1/8 second) or Slow (1 second) response time found on survey grade sound level meters will dramatically underestimate the actual sound level and resultant loudness of the Impulse noise. This is a common technical mistake when measuring impulsive noise.

In order to characterize the typical ambient sound levels in a community, the sound level exceeded 90 percent of the time (L_{90}, (dB)) metric is often used by convention (in the absence of a formal standard or specific guidance in an ordinance).

The decibel scale used to measure noise is a logarithmic scale rather than a simple linear scale and this leads to misunderstanding and misinterpretation of noise data and levels. Relatively small numerical changes or differences in sound level (expressed in decibels (dB)) are actually relatively large differences in acoustical energy. In order for the reader to interpret and understand the measured noise data, several simplified rules-of-thumb regarding the sound

level/decibel scale are useful. First, every 3-dB increase (or decrease) is a doubling (or halving) of the amount of acoustical energy and is generally considered the smallest change perceptible to an average human listener. Secondly, every 10-dB increase (or decrease) is a doubling (or halving) of the perceived loudness of a sound. For example, if the ambient sound level is increased by 10 dB, the average person would perceive this is twice as loud. An increase by 20 dB, would be perceived as roughly 4-times as loud, 30 dB as 8-times as loud and so on.

In reviewing and interpreting the measured noise data, particularly the Peak levels, it is important to point out that a relatively quiet event, very close to the monitoring microphone (such as birds on the fence near the microphone) and a very loud event far from the microphone (such as gun fire) will appear to create similar peak levels at the microphone. However, this is very misleading in that these events do not contain similar amounts of acoustical energy; the near events impact a very small, localized area and do not propagate to affect the larger property while the distant loud events impact a very large area.

1.2 Codes, Statutes and Restrictions

The noise emitted by the Pickleball Court has been evaluated relative to the Kentucky Statutes, the Glenview Manor Amended Declaration of Restrictions and the Louisville-Jefferson County Metro Government Noise Ordinance.

I am informed that:

1.2.1 Kentucky Statute KRS 411.540 Temporary Nuisance

The Kentucky Statute KRS 411.540, entitled Temporary Nuisance, provides that: "[a] temporary nuisance shall exist if and only if a defendant's use of property causes unreasonable and substantial annoyance to the occupants of the claimant's property or unreasonably interferes with the use and enjoyment of such property, and thereby causes the value of use or the rental value of the claimant's property to be reduced."

KRS 411.550, entitled Determination of private nuisance, provides that:

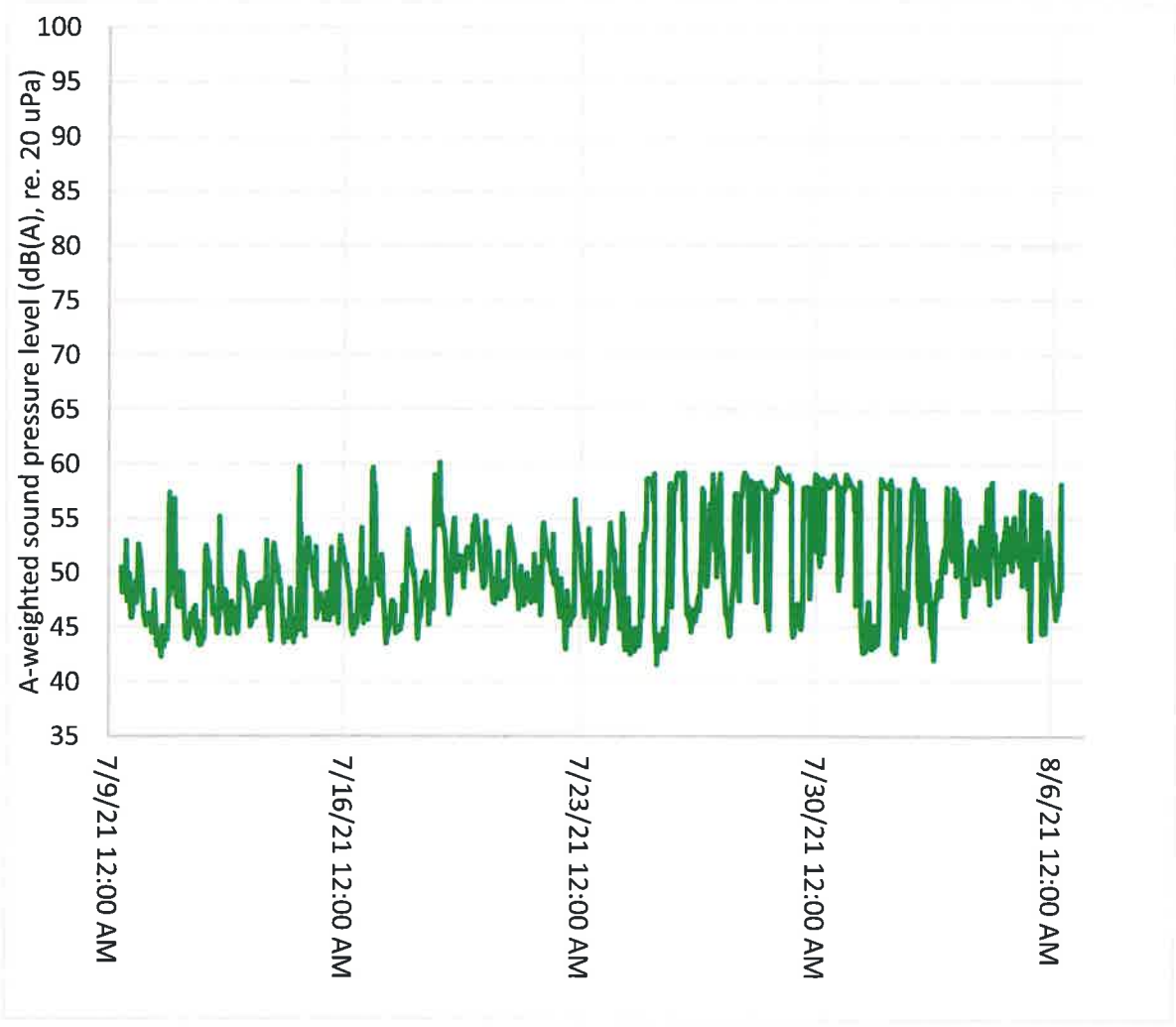

Figure 3 Ambient (L_{AF90}) sound pressure levels for 30-minute increments recorded over monitoring period.

3.2 PICKLEBALL NOISE LEVELS

The measured Peak sound pressure levels recorded throughout each Pickleball game, in 1-second increments to capture the Impulse noise emitted by each strike, are shown in Figures 4-24 (corresponding to each individual Pickleball game/session).

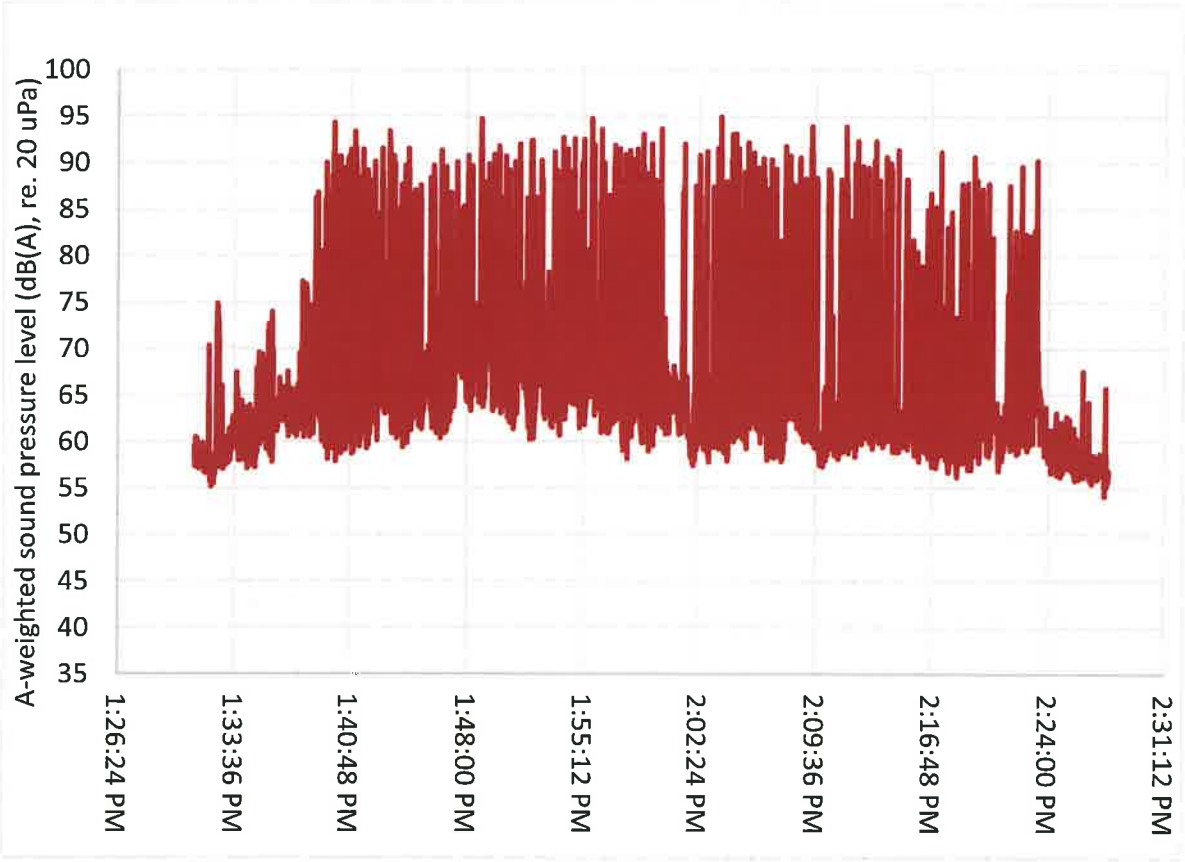

Figure 5 Pickleball noise (peak A-weighted sound pressure level (L_{Apeak})) 7/12/2021