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David K. Larson
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Via email (dkl@mllslawyers.com) and fax (733-3947)

Re: Need for a Third Well

Dear Dave,

I received your letter of April 17, 2012 in which you argue why a third well is not necessary. I will leave the HOA's response to the more technical questions regarding interpretation of and compliance with WDEQ regulations to its engineer. (Please find enclosed a letter from Nelson Engineering to the HOA that responds to Jorgenson's letter dated April 13, 2012.) However, I feel compelled to respond to some of the less technical aspects of your letter.

On page 3, in the second full paragraph, you point out that there exist two additional wells for irrigating the open space, which will be transferred to the HOA. While this is true, I fail to see the relevancy of this fact to the determination of whether the two domestic water wells are sufficient for subdivision's domestic water needs, including irrigation of individual lots.

In the last paragraph of page 3, you discuss the leak testing, and the likely savings in water usage that could be achieved were the HOA to require repair of any leaking water service lines. While it is for the engineers to decide whether such savings would be sufficient to eliminate the need for a third well, this suggestion merits comments. A leak test was done for the first time this past fall. Your client has controlled the Melody Ranch water system since its inception, and continues to control it to this day. And your client retained the right to appoint a majority of the board members until this past spring (though admittedly two of the three of developer's appointed members voted more on behalf of owners in recent years than on behalf of the developer). The point being that while your client controlled the board and the water system for many years, it only recently chose to perform a leak test. The leak test that was performed identified probable locations of leaks but, without getting into homes, could not specifically identify where those leaks are occurring. The cost to the HOA to further identify precise locations of leaks, and to dig up any curb stops that might be leaking without knowing whether an owner will be responsible for paying for the repairs, is considerable. As a developer of Melody Ranch, your client is obligated to turn over the water system in good repair. A water system that leaks 115,000 – 172,000 gallons per day is not in good repair. Accordingly, the board requests that the developer pay for the further testing that needs to be conducted to isolate the location of leaks, and the costs of undertaking and overseeing the repair of leaking water lines.

On page 4, you suggest that the HOA undertake a program of monitoring individual use by the homeowners and consider implementing a tiered billing system. While these may be worthwhile suggestions for the Board to consider in the future, they do little to change the present analysis of whether a third well is needed. Even if the board were to decide to implement a tiered billing system for water, any anticipated savings as a result of that system would be purely speculative at this point.

Further, it was the developer who required all lots to have lawns with underground sprinkler systems and a certain amount of landscaping. All of the lawn areas and landscaping requires considerable watering to keep it healthy and green, from which your client greatly benefitted as it developed and sold the different phases of the subdivision. While tiered billing may cause some owners to water less because of the increased costs, it may also result in less healthy and less green lawns and landscaping than Melody Ranch has enjoyed in the past. It does not sit well with board for your client now to suggest a different standard, now that your client no longer has a financial interest in the appearance of the subdivision. Moreover, historically, the HOA has fined homeowners who have failed to keep their landscaping in good order. What is the HOA to do when an owner can't afford the water necessary to keep her lawn green because of the tiered billing system?

Finally, as for your comments on pages 4 and 5 regarding what was originally contemplated for the subdivision, these are not even tangentially related to the discussion of whether a third well is necessary as you have suggested they are. The current water system as constructed is either adequate or it is not. Owners who purchased in Melody Ranch are entitled to a water system that can adequately satisfy the demands placed on the system at build-out, including all additional demands that have been imposed upon the system by the connections to the water system by Sage Meadows and Glory View subdivisions. The question that needs to be answered is: given the current demands on the systems, as well as those still to be added by future build-out, is the current system adequate? Your client, based upon its engineer's analysis, maintains that it is. The HOA, based upon its engineer's analysis, maintains that it isn't. It is my understanding that the County will make the final determination of the need for a third well if we can't reach resolution amongst ourselves.

If you would like to discuss possible resolution of this issue, please don't hesitate to call. However, in order to satisfactorily resolve this issue for the HOA, your client would need to be willing to install a third domestic well. Otherwise, it will be left for the County to decide.

Thank you.

Sincerely,



Paul E. D'Amours

Enclosure

cc: The Meadows at Melody Ranch Homeowners Association, Inc. via email
Dave Dufault via email
Jeff Daugherty via email
Paula Stevens via email
Sean O'Malley via email