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Glastonbury Landowner's Association Board of Directors

Sent via email to: Charlotte Haley Mizzi mizzi@wispwest.net

Dear Board:

Ms. Mizzi called me regarding a recent application from Mr. Buchanan. It is my understanding that he applied to build a home and one outbuilding. However, some confusion has come up because according to his DEQ application, the DEQ approved him for two dwelling units, one is the home and one for an dwelling above the shop. It is also my understanding that he made the application to the DEQ before he was informed by the Board that he could only have one home on the property.

Ms. Mizzi requested that I go through the procedure to get a "cease and desist" from the Court so that you, as a Board, were fully informed on the cost, time and chances of getting a good resolution.

What you would be requesting from the Court is a three part request. You would be asking for a temporary injunction, a permanent injunction and then a final declaratory judgment on the matter. A temporary injunction acts as an immediate cease and desist. It is intended to keep the status quo until the Court can set an emergency hearing on the matter. The permanent injunction is granted during the pending litigation if you are successful at the emergency hearing. Last, you still have to win the case. Therefore, you need to litigate the issue and show the Court that your interpretation is correct.

I am not sure that you would receive either of the injunctions. As you might suspect, I am asked about these at least once a month for my other Associations. It is very typical for someone to start building and then to deviate from the approved plans. I tell them all the same thing, that usually a Court will not grant the injunction because you have to show that the Association will be damaged in some way that is beyond monetary damage. This is impossible.

The fact is, the only person that will be damaged is the Owner of the property. That is because if you win, then the Owner will have to tear down what they built. If they continue to build during the pendency of the case, the Association is not harmed. Therefore, the Courts typically deny the motions for an injunction.

The last one I filed was just in the last six months. It was for Baxter Meadows in Bozeman. We filed it because the Owner refused to communicate with the Association. He was in the process of building five noncompliant houses. By serving the Owner with the motion for injunction and lawsuit, we got him to communicate. As expected, the Court denied our motion for the injunction (since we could not show that the Association would be damaged in any way if the building continued), but did set the case for a pretrial conference. The Owner was then aware that he may have to tear down the houses, so he negotiated with Baxter Meadows.

Just filing to receive the denial cost the Association $1000.00 in my fees and costs. If we had to go through the whole Court process, it could have been more than $30,000.00. Typically, my clients find that it is not worth filing, until you have hit a brick wall of resistance and you are sure of your facts.

In this case, it appears that Mr. Buchanan applied to the DEQ for two dwellings before he knew that he was allowed only one. At this time, you do not know if he plans on building what was approved by you after the fact, or if he is going to build two dwellings because he refuses to communicate with you. I would suggest that you have me write a letter to him regarding this matter. Usually, people respond to an attorney when they fail to respond to a Board. It would be more cost effective that filing suit at this point, especially since there may not be an issue.

Let me know what you choose to do.

Thank you.

Alanah Griffith