

To: The Woodlands Township Board of Directors

Subject: Wednesday Board Meeting--DRCS to DSC Transfer

I am a “member elect” of the Sterling Ridge RDRC but I am sending this email on my own behalf. This pertains to Wednesday’s Agenda Item 23, the proposed transfer of certain covenant enforcement duties from the TWA DRC to the WCA DSC. In preparing to take my seat on the SRV RDRC, I was researching how the DRC works and its relationship to RDRCs. In the course of this research, I became aware of this pending change about a month ago.

It is my understanding that the TWLDC is proposing to retain control, separate from the Township (no Township funding) and no longer is to be supported by the Township Covenant Department, of all those functions under the TWA covenants except for those applicable to completed single family detached residential properties (“Delegated Authority”). The responsibility for this latter area is to be transferred to the DSC under the current proposal. They also wish the Township to indemnify the DRC for any legal and litigation risks resulting from any DSC actions. BUT they are not indemnifying the DSC or the Township for any potential risks of their actions.

My overriding question, is why is any change needed and what is the urgency of making this change now? I would guess that the issue relates to whether the Township can continue to fund the DRC, as the TWA did, when it operates contrary to the Open Meetings Act and is solely a function of a private entity i.e. TWLDC. The 6th paragraph of page 79 of the Executive Summary for Agenda Item 23 in the Public documents reads:

“DRC meetings have traditionally been conducted in the afternoon and have not been subject to the Open Meetings Act **as the Committee is a function of TWLDC**. CSC meetings have also been considered as not subject to the Open Meetings Act as also a function of TWLDC.”

TWLDC no longer has control over the DSC. Under state law the DSC must operate under the Open Meetings Act as it is now part of a government entity, The Township. The DRC is still controlled by a private entity and thus not subject to the Open Meetings Act. At least, this is my understanding.

Although funded by the TWA (and now the Township), the DRC, until the development company opts otherwise, remains a function solely under the control of TWLDC. On page 1 (paragraph 3) of the Executive Summary for this agenda item, this is confirmed again. It is covered in the TWA Covenants as well. Under the TWA Covenants TWLDC makes all appointments to the DRC per Article 9.01 below:

“**Organization of the Development Review Committee (“DRC”)**. The DRC shall be comprised of five (5) individuals, at least three (3) of whom shall have experience in architecture, engineering, contracting, building code enforcement or a related field. TWA shall pay all costs incurred by the DRC, in accordance with the provisions of the Mutual Benefit Agreement (referred to in Section 18.01 below). **The members of the DRC shall be appointed from time to time by TWC, and the DRC shall be a function of TWC.** Following the date written notice from TWC is recorded in the Real Property Records of Montgomery County, Texas that TWC desires to transfer the authority of the DRC to TWA (or WCA if at that time TWA has merged into WCA as provided for in Article XVIII below), the members of the DRC shall be appointed from time to time by TWA, and the DRC shall be a function of TWA.”

In order to understand how the RDRCs will work in the future with the DRC (or DSC) and as a resident, I have several questions which I have listed below. I ask that the Board give this matter the discussion and deliberations it warrants, especially my first question.

Questions:

1. The proposed agreement makes no provision to insure that TWA residents will have a seat at the DRC table. I take issue with the comment in the Executive Summary implying that just because the existing DRC/DSC administrative procedures are similar, such representation does not warrant a recommendation. Such a position implies that the need for representation by TWA residents is not important. Personally, I think representation of all residents with The Woodlands, both TWA and WCA alike, is absolutely critical and a necessary prerequisite to the proposed change. The WCA Convents have no stated restrictions for when appointments may be made to the DCS. Thus, if this proposal is approved by the Board I would request that a change in membership of the DCS be made within the next two months to accommodate individuals other than just those from the WCA area
2. Could you clarify under the proposed agreement what body, the DRC or the DSC, will have the responsibility in the future for maintaining the covenant standards, rules and policies pertaining to the TWA residential properties? Section 9.3 of the TWA covenants dealing with this subject does not appear to be excluded from the “Delegated Authority” under the proposed agreement. So in the future will the DSC have this responsibility relating to detached single family properties?
3. If the DSC will have this responsibility, will it follow the same provisions of the WCA covenants of asking the RDRCs for public comment and input on any proposed changes or amendments before they are implemented (see provision in italics below)? The TWA covenants have no requirement similar to that of the WCA but I would think the DSC could adopt their process for all the properties, both those in TWA and those in WCA.

“TWA--Establishment and Amendment of Rules and Policies. The DRC shall promulgate standards, rules and regulations governing the improvement of Tracts including, but not limited to, the form and content of plans and specifications for specific Structures or Improvements. The DRC may also promulgate standards or issue statements of policy with respect to the approval or disapproval of the architectural style, details of construction or other aspects of Structures or Improvements which may be presented for approval. Such standards, rules, regulations and statements of policy may be amended or revoked by the DRC from time to time.”

“WCA - Establishment and Amendment of Rules and Policies. The D.S.C. shall promulgate rules and regulations governing the improvement of Lots including, but not limited to, the form and content of plans and specifications for specific Structures or Improvements. The D.S.C. may also issue statements of policy with respect to the approval or disapproval of the architectural style, details of construction or other aspects of Structures or Improvements which may be presented for approval. Such rules and regulations and such statements of policy may be amended or revoked by the D.S.C.

It shall be the responsibility of an RDRC to inform its members of such amendment or revocation and to receive comments thereon. If substantial public comment is made, an open meeting shall be held by each RDRC concerned. It shall further be the responsibility of an RDRC to convey the substance of such comments to the D.S.C.”

4. Section 5 of the proposed agreement says in part that neither the DRC nor TWLDC shall be responsible for any legal fees and other litigation costs incurred by the DSC in enforcing TWA covenants. However, this provision is not reciprocal in that it does not similarly require the DRC to indemnify the Township or the DSC for any action by the DRC. Should this not be the case?

5. Section 6 of the proposed agreement gives the DRC the right to terminate the delegation of authority to the DSC at any time. However the DSC does the have the same right. Here again should these provisions not be reciprocal and not so one sided?

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