

RESOLUTION #19-1990

Whereas a petition to vacate a platted road between Lots #3 and #6 in Engel's Sub-division located in the NE 1/4 of Sec. 3-16-8 Saunders County has been signed by at least 10 abutting land owners & filed on April 30, 1990, and

Whereas the Saunders County Board of Supervisors directed the Highway Supt. to make a study of the afore said road and to report his findings & recommendations to the Board in writing by May 21, 1990, and

Whereas, the Study has been made in writing dated May 9, 1990, and

Whereas, a time and date has been set as 9:30 A.M., June 18, 1990 to hold a public hearing on said petition, and,

Whereas, a public hearing was held at 9:30 A.M., June 18, 1990 to hear objections to or recommendations for the vacating of said roadway, and

Whereas, the County Board concluded to vacate said road by motion, dated June 18, 1990, and,

Whereas, the township of Pohocco was notified in writing to offer to relinquish said road to the township, and,

Whereas, the Pohocco Township Board has refused to accept relinquishment of said road in writing.

Now, Therefore, Be It Resolved that the platted road between Lots #3 and #6 in Engel's Sub-division located in the NE 1/4 of Sec. 3-16-8, Saunders County be vacated and ownership revert to the abutting property owners.

The above resolution was introduced by Knuth who moved its adoption. Seconded by Schmer. Voting yes were: Karloff, Bartek, Ballou, Gottschalk, Schmer, Knuth and Kadavy. Voting no were: None. Motion carried.

ATTEST: Charles J. Egri
Saunders County Clerk

Eugene C. Kadavy
Chairman, Board of Supervisors

DON CLARK
REGISTER OF DEEDS
SAUNDERS CO. NEBR.

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OF MISC INST# 180

BY Blair ✓ c

Every Owner shall have the right to the use of the streets, the underlying fee of which is to be transferred to Engel's Subdivision Home Association in accordance with its Articles of Incorporation and Bylaws, subject to:

(a) The right of the Association to borrow money for the purpose of maintenance and improvement of the streets.

(b) The right of the Association to dedicate or transfer all or any part of the streets to any public agency, authority or utility for the purposes and subject to such conditions as may be agreed upon by the members. No such dedication or transfer shall be effective unless an instrument approved by two-thirds of each class of members present and voting at a meeting duly called for that purpose and agreeing to such dedication or transfer has been recorded and unless written notice of the time and purpose of the meeting called for that purpose has been given.

(c) Until such time as the streets may be transferred to a public agency, authority or utility, the Association shall have the responsibility of maintaining, in all respects, those streets transferred to it.

(d) Declarant Alfred H. Engel and Maxine Engel reserve unto themselves an easement to use so much of the streets as is necessary to provide future access to the balance of the property adjacent to their Subdivision and owned by them, in the event the remaining property shall be platted and subdivided.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Owner shall mean and refer to the record Owner whether one or more persons or entities having a fee simple title to any Lot situated upon the Properties.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be Declarant, who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

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(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On January 1, 1986.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such interest, costs and reasonable attorney's fees incurred in collection of the same, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Properties, and in particular for the improvement and maintenance of Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the streets, and common areas.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment shall be \$ 100.00/lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than seven percent (7%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above seven percent (7%) by a vote of sixty-six percent (66%) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at any amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the streets and common areas, including fixtures and personal property related thereto; provided that any such assessment shall have the assent of sixty-six (66%) percent of the votes of each class of members who are voting in person or by proxy

at a meeting duly called for this purpose. For purposes of this section, capital improvements shall be defined as any necessary utility and street improvements.

Section 5. Notice and Quorum for Any Action Authorized under Sections 3 and 4. Written notice of any meeting called for that purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots; provided that the rate set for the Lots owned by Declarant shall be fixed at one-third (1/3) the assessment rate for the other Lots. These assessments may be collected on a monthly, quarterly, semi-annual or annual basis as designated by the Board of Directors.

Section 7. Assessment of Unplatted Ground. Each acre of unplatted ground when annexed to the Properties shall be subject to an annual assessment of Ten Dollars (\$10.00). The unplatted ground shall not be subject to any other assessments, either annual or special, beyond the Ten Dollar (\$10.00) per acre assessment prescribed herein.

Previously unplatted ground shall be treated as Lots in the manner hereinbefore set forth, in the fiscal year of the Association following the platting of such ground.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the streets and common areas from Declarant to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot, at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Such certificate shall be conclusive evidence of the facts stated therein.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of seven percent (7%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse or abandonment of his Lot.

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Section 10. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

(a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

(b) Streets and easement areas as defined herein.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. No building, fence, wall, structure or other improvement of any type or description shall be constructed, erected or maintained upon the property, nor shall any exterior addition to or change or alteration therein be made, nor shall any tree or other substantial landscaping in any location be altered, maintained, built, constructed, erected, installed or planted until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board.

Section 2. In the event said Board of Directors, or its designated Architectural Control Committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article shall be deemed to have been fully satisfied.

Section 3. A majority vote of the Board of Directors or its designated committee is required for approval or disapproval of proposed improvements.

Section 4. The said Board or its designated committee shall maintain written records of all applications submitted to it and of all actions taken by it.

ARTICLE VI

USE RESTRICTIONS AND EASEMENTS

Section 1. All lots covered in this Declaration shall be used only for residential purposes, except such lots as may be hereinafter conveyed or dedicated by the undersigned for public uses.

Section 2. No noxious or offensive trade or activity shall be carried on upon any Lots covered by this Declaration nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 3. For one story structures on Lots, the ground floor enclosed living area of the main residential structure, exclusive of open breezeways, basements and garages, shall not be less than 1,200 square feet minimum size. For two story structures on Lots, the ground floor enclosed living area of the main residential structures, exclusive of open breezeways, basements and garages, shall not be less than 1,100 square feet and with the total living area of both stories not less than 1,400 square feet total minimum size.

Section 4. No house trailer, basement, tent, shack, barn or other out-building shall be built, erected or placed upon any Lot covered by this Declaration.

Section 5. No existing structure shall be moved onto any lot.

Section 6. Where septic tanks are used, they shall be maintained in good condition, and laterals buried in such a manner that there will be no surface drainage onto other lots and will be constructed so as to comply with regulations established by the Nebraska Department of Health.

Section 7. (a) All weeds must be cut before they exceed 12 inches in height.

(b) Vegetable gardens must be limited so as not to exceed 15% of total lot area.

(c) Driveways and curbs shall be constructed so as not to interfere with drainage in any adjacent street. The owner shall, at his own expense, install and maintain the necessary culvert or spillway for driveway purposes at the correct level in the ditch which separates his property from the road.

(d) All fuel tanks shall be buried or screened in such a manner as not to be apparent.

Section 8. Ornamental vegetation grown in such a manner as to constitute a continuous line upon the boundary of any lot shall be maintained so as not to exceed six feet in height at any time.

Section 9. No camping trailer, travel trailer, boat trailer, motorboat, houseboat, sailboat, motorhome, truck or other recreational vehicle may be maintained, stored or kept on any of the Lots covered by this Declaration for more than one hundred eighty (180) days in any one calendar year, unless housed completely within a structure allowed on said Lots by other provisions contained herein.

Section 10. No animals of any kind (excepting ordinary house pets) shall be kept or maintained on Lots covered by this Declaration.

Section 11. No signs, except conventional temporary "For Sale" and similar temporary real estate signs or signs advertising show homes shall be erected or placed on any Lot or structure located thereon covered by this Declaration.

Section 12. No garbage, refuse, rubbish or cuttings shall be deposited on any street, road or portion thereof, nor on any of the Lots covered by this Declaration unless placed in a suitable container discretely concealed so as to not be visible from other Lots or streets.

Section 13. No fences shall be erected, placed or maintained on any Lot unless it is made of wood, is less than 48 inches high, and is approved by the Architectural Control Committee, as provided in Article V hereof.

Section 14. No more than one main residential structure may be erected upon any one Lot as originally platted, provided however, that parts of two or more private Lots may be combined into one building plot if the plot is at least equal in size to the largest of said Lots as originally platted. No Lot as originally platted shall be used as a building plot if it has been reduced below seventy percent (70%) of its original platted size.

Section 15. No trees or other substantial landscaping on any location on any Lot will be altered, built, constructed, erected, installed, planted or otherwise maintained or undertaken without approval of the Architectural Control Committee, as provided in Article V hereof.

Section 16. All buildings located on the Lots covered by this Declaration shall comply with the front, side and rear yard requirements as specified in the zoning ordinances of Sevier County, Utah for residences applicable thereto.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Notices. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date of recording of this Declaration, after which time they shall be automatically extended for successive periods of ten (10) years. The Declaration may be amended during the first twenty (20) year period by an instrument signed by Owners of not less than seventy-five percent (75%) of the Lots, and thereafter by an instrument signed by Owners of not less than sixty percent (60%) of the Lots, provided that Declarant may, within ten (10) years of the date of this instrument, amend this Declaration without the consent of Class A members. Any amendment must be recorded.

Section 5. Annexation. (a) Additional residential property, streets and common areas may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members, and (b) additional land may be annexed by Declarant without the consent of members within fifteen (15) years of the date of this instrument.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has hereunto set its hand and seal this 13 day of October, 1979.

Alfred H. Engel
Alfred H. Engel
Maxine Engel
Maxine Engel

STATE OF NEBRASKA)
Dodge COUNTY) ss.

Before me, a notary public qualified in said County, personally came Alfred H. Engel and Maxine Engel, known to me to be the identical persons who signed the foregoing instrument, and acknowledged the execution thereof to be their voluntary act and deed.

WITNESS my hand and notarial seal on this 13 day of October, 1979.

Thomas B. Thomson
Notary Public

