



Karl E. Robinson | 7100 Northland Circle North, Suite 101, Brooklyn Park, MN 55428 | 763-401-4120
krobinson@tooheylawfirm.com | tooheylawfirm.com

March 18, 2025

Via Email

Board of Directors
Pine View Home Owners Association
c/o Omega Property Management
Attn: Lance Stendal, President
6900 Wedgewood Road North, Suite 250
Maple Grove, MN 55311

Re: Pine View Home Owners Association (General Matters)
Our File No.: 7511.001

Dear Board of Directors and Mr. Stendal:

This follows the request by Pine View Home Owners Association (the "Association") that our law firm prepare an opinion letter regarding special assessment procedures at the Association. In particular, the Association would like to know whether it can seek homeowner approval for a special assessment (or a series of special assessments) this year that would be due and payable in future years concerning a multi-year capital project. In other words, a 2025 special assessment would provide that some homeowners must pay the special assessment in 2025, other homeowners must pay the special assessment in 2026, and still other homeowners must pay the special assessment in 2027.

I understand the key facts in this situation are as follows. The Association would like to replace the exterior siding on all buildings in the community. The Association does not have sufficient funds in its reserve account to pay for the project from reserves. The Association's Articles of Incorporation currently require that at least 75% of homeowners approve any loan that the Association could obtain to pay for the project, *see* Articles of Incorporation, Article III(d), and therefore obtaining a loan to pay for the project is not a realistic option. Thus, the Association is looking to levy a special assessment or assessments to pay for the project. The Association is planning to complete the project in three phases, with one-third of the buildings' sidings completed in phase one, one-third of the buildings' siding completed in phase two, and the final one-third of the buildings' siding completed in phase three.

In forming the following opinion, I have reviewed the Association's Articles of Incorporation filed on December 23, 1986 (the "Articles"), the Association's Declaration of Covenants, Conditions, and Restrictions filed on December 22, 1986 (the "Declaration"), and the Association's Amended and Restated By-Laws dated September 17, 2018 (the "By-Laws") (collectively, the "Governing Documents").

Section 4.4 of the Declaration provides the authority for the Association to levy special assessments. This Section provides, in relevant part, as follows:

“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 or reconstruction, unexpected repair or replacement of a capital improvement; provided, however, that any such assessment shall require the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.”

Declaration Section 4.4 (emphasis added).

Also, Section 4.6 of the Declaration provides that all assessments, including special assessments, must be a uniform rate for all homes within the Association. Section 4.6 states, in relevant part, as follows: “Both general annual assessments and ***special assessments must be fixed at a uniform rate for all Lots***.” Declaration Section 4.6 (emphasis added). Likewise, Section 7.2 of the Declaration provides that all maintenance expenditures by the Association, including the repair or replacement of exterior siding, “shall be uniformly assessed against all Lots in the Property as provided in Section 4.6.” Declaration Section 7.2.

Thus, a special assessment must be for a capital project, and it must be approved by a two-third vote of homeowners at a meeting called for the purpose of voting on the special assessment. Declaration Section 4.4. Importantly, a special assessment must be “applicable to that year only.” *Id.* Accordingly, a special assessment that is approved in 2025 must be applicable to 2025 only; it cannot apply to future years.

Also, a special assessment must be uniform as to all homes in the Association. Declaration Sections 4.6 & 7.2. Thus, a special assessment approved in 2025 must apply to all homes; it cannot, for example, apply only to those homes whose building is receiving new siding in 2025.

Accordingly, and based on the above provisions in the Governing Documents, in my legal opinion the Association does not have the legal authority to seek approval of a special assessment in 2025 that is not due and payable until future years. In other words, a 2025 special assessment cannot provide that some homeowners must pay the special assessment in 2025, other homeowners must pay the special assessment in 2026, and still other homeowners must pay the special assessment in 2027. Instead, a 2025 special assessment would have to be uniformly applied to all homeowners with all homeowners required to pay the special assessment in 2025.¹

¹ This is to be distinguished from a payment plan agreement that the Association may enter into with a homeowner regarding the homeowner’s past due account. With a payment plan agreement, the Association is agreeing to accept payment of assessments that are past due with payments over time. Here, the Association’s Declaration Section 4.4 does not allow the Association to levy a special assessment that is due in a future year or years.

With that said, the Association could levy a special assessment in 2025 under which all homeowners would be required to pay the special assessment in 2025, even though the work on the siding is not to be completed on their building until a future year.

The Association could also seek to amend its Articles of Incorporation to remove the requirement that at least 75% of homeowners approve any loan that the Association could obtain to pay for the project. This could be accomplished by approving an amendment that deletes the requirement of member approval for such a loan by modifying Article III(d) of the Articles of Incorporation.

The following is the process the Association could use to seek to amend Article III(d) of the Articles of Incorporation.

First, our law firm would draft a proposed amendment to Article III(d) of the Articles of Incorporation. Our law firm has completed nearly identical amendments of this type for other associations. Our law firm would also prepare a proposed letter to homeowners briefly explaining the proposed amendment and the owners' right to vote in favor of or against the proposed amendment. We would also prepare a proposed ballot for owners to use to vote on whether to approve the proposed amendment. We normally have the owners return the ballot to the Association's property management company. We would work with you and the Board to revise and finalize the documents before they are sent to the owners. We anticipate that the documents could be sent to homeowners in early April 2025.

Under the Association's Articles of Incorporation, the proposed amendment must be approved by at least 75% of the homeowners in the Association.

The Minnesota Common Interest Ownership Act set forth in Minnesota Statutes Chapter 515B (often called MCIOA) was amended in August 2020 to make it easier for associations to amend their governing documents. Importantly, the 2020 amendments allow associations to use the updated process to seek to amend their governing documents even if MCIOA does not otherwise apply to the particular association. *See* 515B.1-102(g) & 515B.2-108(a)(7). This is good because it increases the likelihood that the proposed amendment will pass.

The amended statute allows the Association to send the proposed amendment to all homeowners by certified mail, return receipt requested, postage prepaid, with a ballot to vote on the proposed amendment by a certain deadline. If an owner does not return the ballot by the deadline, then that owner is deemed to have voted to approve the amendment. Thus, only those owners who timely return a ballot voting no are counted as voting against the proposed amendment. Those who timely vote yes and those who do not timely return a ballot are counted as approving the proposed amendment. So, the Association would have to send out the materials for voting on the proposed amendment by certified U.S. mail, postage prepaid, and return receipt requested. We have been doing such certified mailings for many associations that have been amending their governing documents over the last few years. Thus, unless at least 26% of the homeowner vote in the Association timely returns their ballots voting no, the amendment will be approved.

Under the Association's Bylaws, the deadline to return the ballots could be set at fifteen (15) days after the date of the certified mailing to homeowners. *See* Bylaws Section 3.4(c). Thus, the deadline to return ballots would be in mid to late April if the certified mailing is sent in early April.

After the deadline to return the ballots passes, you would then tell us the number of votes for and against the proposed amendment. If the owners approve the proposed amendment, the amendment would be signed by officers of the Association before a notary public and then our law firm would file the Amendment to the Articles of Incorporation with the Minnesota Secretary of State.

Thus, it is realist to expect that by May 2025, the Association could complete the amendment of Article III(d) of its Articles of Incorporation, resulting in the Association being able to obtain a loan without membership approval.

Please let us know if the Association would like to seek to amend Article III(d) of its Articles of Incorporation.

I trust this information adequately addresses the Association's questions and concerns regarding this matter at this time. Please contact me with any follow-up questions or for clarification of any of these issues. Also, if you have further questions or concerns, please contact me.

Very truly yours,

TOOHEY LAW FIRM, P.A.



Karl E. Robinson
Attorney at Law

KER/cor