

Abiqua Heights Homeowners Association

RESOLUTION regarding Lot 69 Assessments Abiqua Heights Homeowners Association

WHEREAS:

1. The Abiqua Heights Homeowners Association ("AHHA") annual assessments on Lot 69, owned by Black's Construction, Inc., were not paid for the years 2009, 2010, and 2011 (total amount without late fees or interest: \$ 1250.00);
2. On April 10, 2012, the AHHA Board of Directors that was then in office passed by 3-1 vote a motion to discontinue collection action for the dues, late charges, and/or interest on Lot 69 for those years if Black's Construction agreed to pay the annual assessments on Lot 69 beginning with fiscal year 2012 (Board member Chris Mayou, a principal of Black's Construction, Inc. abstained);
3. The dissenting board member (Dave Paul) and some other members of the Association felt the Board action was improper since the Board has no legal authority or power to waive annual assessments;
4. At the direction of the current Board, the Associations' attorney sent a demand letter on April 10, 2013 to the owners of Lot 69 for payment of the \$1250 in unpaid assessments;
5. On April 23, 2013, Caleb Williams, the attorney for the owners of Lot 69 responded to the demand letter by rejecting the demand for payment based the Board's April 10, 2012 board action (No. 2, above), which he described as a "settlement agreement", suggesting (without reference to any statute or other legal authority) that Oregon law permits homeowners' associations to "settle assessment disputes" including forgiveness of assessments;
6. The Association's attorney has advised the current Board he disagrees with the position of attorney Williams (No. 5 above) and that there is nothing in Oregon statutes or the AHHA CC&R's that authorizes a board to forgive mandatory assessments, and that his advice is never to do so because it increases proportionally the financial obligation of the other owners in the Association;
7. At the May 14, 2013 Board meeting, the current AHHA Board of Directors passed a motion to refer collection of the Lot 69 assessments for 2009 through 2011 to the Association's attorney for further collection efforts;
8. However, the Association's attorney recommends that, while the Board has appropriately attempted to enforce the CC&R's with its collection efforts to date, further collection efforts at this point are impractical from an economic standpoint because the cost of doing so exceeds the amount of the unpaid assessments, and could even expose the Association to liability for the other party's attorney fees if a court accepted

the argument that the April 10, 2012 board action is a binding "settlement agreement";

THEREFORE, the Board by this Resolution suspends collection efforts on the Lot 69 assessments for the years 2009 through 2011 in the interest of avoiding further legal costs. This Resolution is consistent with the advice and recommendation of the Association's attorney, and is made with the continued assertions by this Board that the previous Board did not have the authority to waive these assessments; that this Board does not recognize Black's Construction, Inc. as having Declarant rights specific to Lot 69; and that Lot 69 is not eligible for exemption from assessments as a declarant owned lot, and is further made without waiving the right to pursue collection of these assessments, as well as late fees, interest, and attorney fees at any point in the future by this board or a future board.

Motion to adopt Resolution made by: Rauch; Second by: Helbling

Vote: 3 for; 1 against (Dave Paul) Motion Passes

Date: 10/8/2013

Attest: /s/Dave O Paul Board Secretary