



THE
VAN WINKLE
LAW FIRM

Writer's Extension: 2404
Writer's Facsimile: 828-257-2767
Writer's E-mail: cjustus@vwlawfirm.com

June 19, 2019

Via regular mail and facsimile

Riverbend Property Owners' Association, Inc.
C/o Martin Birenbaum, Registered Agent
110 Bills Creek Road
Lake Lure, NC 28746

Vista North Carolina Limited Partnership ("Vista")
C/o Deena or David Birenbaum, President of Vista North Carolina, Inc.,
General Partner
110 Bills Creek Road
Lake Lure, NC 28746

Facsimile: (828) 625-1967

RE: Riverbend at Lake Lure - Rental Fees

To Whom It May Concern:

I represent a group of concerned owners that own properties and/or homes in Riverbend at Lake Lure ("CO") ("Riverbend"). I have been asked by my clients to contact representatives of the Riverbend Property Owners' Association, Inc. ("Riverbend POA") and the above listed Vista regarding fees you are trying to collect from and restrictions you seek to impose against owners who rent their homes as vacation rentals. Several of my clients recently received correspondence marked as Final Notice for past due fees, from the Director of Community Services of Riverbend at Lake Lure. The correspondence attached hereto as Exhibit "A" suggests an obligation to pay "Fees". There is no legal basis for this contention for several reasons as detailed below.

A brief historical review of the Riverbend development is appropriate:

- Around July, 1978, Ecological Development Corporation of America, Inc., ("Developer") the then developer of the Riverbend Subdivision, filed of record in Deed Book 396, Page 595, Rutherford County Registry, a Declaration of Restrictions ("Original Covenants") for the development.¹ The Original

¹ The Original Covenants provided the "Developer" or assigns with the right of amendment. There is no record of any assignment of developer rights to any party, including Vista North Carolina Limited Partnership. A majority of lot owners can amend by a written instrument but only after a 30-year duration period.

Covenants contemplates leasing. Owners who rent cannot be discriminated against.

- Although the Riverbend POA was incorporated in 1979, there was no provision in the Original Covenants for any control over the placement of directors. Consequently, every year since 1979, there should have been elections for the directors of that entity.
- By document recorded in 2002 at Book 807, Page 517, Vista purported to unilaterally amend the Original Covenants ("2002 Amendment"). Since there is no assignment of declarant rights to Vista from Ecological, this document appears to fall outside the chain of title of many lots within Riverbend. In any event, it purports to establish a "Developer Control Period". The threshold for such period's expiration is "75% of the total lots it owns in all the Riverbend Subdivisions, including Riverbend and adjacent properties." The term "Riverbend" is defined on page 1 as being property developed and subdivided in various sections shown on several recorded plats. Of record, there are approximately 1500 platted lots comprising Riverbend.² I see no "adjacent properties" that may be added to this development. As of the date of this letter, there appears to be 326 lots owned by Vista within Riverbend.³ Applying math, Vista owns approximately 22% of the lots within Riverbend, less than the 75% threshold referenced above.

The actions of the Riverbend Board are not valid. The grounds are:

One, the Board of said entity is not legally constituted; therefore, any action it takes is invalid.

Two, the imposition of multiple restrictions in terms of number of vehicles, septic capacity, etc. discriminate against owners who choose to rent, which is not allowed under North Carolina law. See *Miesch v. Ocean Dunes Homeowners Ass'n, Inc.*, 120 N.C. App. 559, 464 S.E.2d 64 (1995)(where neither governing documents or statutes allow for disproportionate burdens to be placed on owners who rent, actions such as imposing rental fees are invalid).

² The Riverbend HUD Property Report from 2010 says 1,501 lots. The Rutherford County Tax Office shows 1452 lots.

³ 19 lots were recently conveyed this year to Robert Birenbaum, IRR Trust and 1 lot conveyed to Bernie W. Beasley.

Riverbend at Lake Lure

June 19, 2019

Page 3

Finally, we believe there are multiple instances of director malfeasance related to obvious conflict of interest transactions that have occurred over the years involving Vista and related entities and the Riverbend POA. This sort of wrongdoing is the subject of a pending lawsuit involving Riverbend Highlands. Putting aside the legality of the 2002 Amendment, or the passing of the 75% threshold, we believe equity will intervene to divest Vista of its control over the Riverbend POA.

This letter is to serve as a demand letter for the Board to take immediate action to correct the issues set forth in this letter. This includes calling for a special meeting of the membership to elect directors. We are aware of Rutherford County seeking to foreclose Vista lots within Riverbend due to delinquent taxes. If that matter timely proceeds, then a call for elections may need to account for new non-Vista owners who may purchase some of those foreclosed lots.

In summary, you must cease and desist any enforcement action regarding rental rules or rental fees.

Since the point noted above is tied to similar issues in Riverbend Highlands, I have copied attorneys of record in that case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

**VAN WINKLE, BUCK, WALL,
STARNES AND DAVIS, P.A.**

Craig D. Justus

(Signed Electronically)

Craig D. Justus

CDJ/ca

Enclosure

cc: Clients - via email
John Spainhour, Esq. - via regular mail
Zephyr Sullivan, Esq. - via regular mail
Joshua Offutt, Esq. - via regular mail
Ashley Rudy, Esq. - via regular mail
Paul E. Culpepper, Esq. - via regular mail