

THE FOWLER LAW FIRM

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Board of Directors
The Dominion Ridge Homeowners' Association, Inc. *First Class Mail*
c/o Investment Management Company *and Email: jskinner@imcmanagement.net*
3500 West Davis, Suite 190
Conroe, Texas 77304

RE: *Inquiry Concerning Development of Montgomery Oaks Subdivision and Street Right of Way Adjacent to and East of Dominion Ridge Subdivision*

Dear Board:

Please accept this letter as my opinion concerning the above-referenced inquiry. Specifically, you have requested an opinion as to whether the Association can require the new developer of Montgomery Oaks subdivision (the "Subdivision") to construct a privacy fence or other barrier, vegetative or otherwise, along the western border of the Dominion Ridge subdivision.

A. *Relevant Facts.*

My understanding of the relevant facts is as follows. The developer of Montgomery Oaks has already agreed, in principal, to install an eight (8) foot tall privacy fence along the southern border of the Montgomery Oaks subdivision, where it borders the Dominion Ridge subdivision. However, several residents and owners within the Dominion Ridge subdivision, which reside along the Western border of Dominion Ridge, have submitted complaints regarding the proposed new city street and public right-of-way, which is adjacent to their lots that border the Western boundary of the Dominion Ridge plat.

These residents believe that their privacy and security have been impacted, and potentially their property values. Also, at least with respect to some of the platted lots within the Dominion Ridge subdivision, there appeared to be some requirement for a vegetative barrier on these lots. There has been some representations made that at least on some of these lots, owners or previous owners have cleared portions of the vegetative barrier, which only exacerbates the privacy concerns now that the platted road is being installed and constructed on the adjacent property lines of the two subdivision developments.

The Board has requested that I contact the City of Conroe, and specifically the Engineering Department, to see if there any other ordinances or other rules or regulations which would require the developer to install privacy or border fencing, or provide some type of vegetative barrier. Additionally, you requested that I look at all possible City Ordinances, as well as any applicable

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State law, that might assist in this matter. I have reached out to Chris Bogert, City Engineer for the City of Conroe and discussed the matter at length with him. I have also reviewed relevant sections of the City of Conroe's Code of Ordinances, including its subdivision regulations and development regulations, as well as its tree preservation ordinance.

B. Findings

I conducted a review of the above-referenced ordinances for the City of Conroe, and unfortunately and as expected, I cannot find any specific requirement which would impose a duty upon the developer of Montgomery Oaks to install privacy fencing, or any other type of vegetative barrier, between the newly anticipated platted roadway for Montgomery Oaks and the western boundary of the Dominion Ridge subdivision. Specifically, there does not appear to be any ordinance with the City of Conroe which would require fencing within the right-of-way, or the erection of some type of vegetative barrier. I was able to locate, and verify with City Engineer, that there are ordinances requiring barriers between industrial or commercial properties, as well as residential subdivisions, but those do not appear applicable to a platted right-of-way and street entrance for an adjacent residential subdivision. Chris Bogert confirmed that these regulations did not apply to the situation.

Additionally, I reviewed the tree ordinance of the City of Conroe, which is relatively new. Unfortunately, the ordinance does not appear to be clear and unambiguous with respect to any duty to maintain any trees within the right-of-way. In fact, after discussing this with Chris Bogert, he indicates the City typically does not want any trees whatsoever within the street right-of-way. In this particular instance, if I'm not mistaken, the developer was actually permitted a variance to only require a 50 foot right-of-way, which is different from the City's normal 60 foot right-of-way requirements. This is likely going to create a situation where there's even more reason why the City of Conroe does not want to require the preservation of large trees in the street right-of-way, which could adversely affect and impact the street itself that will ultimately be dedicated to and become the maintenance responsibility of the City of Conroe. Therefore, I don't think it's very likely at all that we will see the City of Conroe's cooperation in terms of requiring the developer to maintain a certain amount of trees within the right-of-way. I cannot locate any requirements that imposes upon the developer a duty to erect a fence within the street right-of-way or a fence which borders upon the Dominion Ridge subdivision and the newly platted Montgomery Oaks subdivision.

Finally, I did want you to know that Chris Bogart, in the Engineering Department, is sympathetic to your views and has expressed a willingness to go to the developer to seek their cooperation in erecting some type of privacy fence along the common border. However, Chris made it clear that this would be simply a request, and that they did not feel like they had any lawful basis whatsoever to require the developer to install the fence or vegetative barrier. The Engineering Department representations to me seem consistent with my review of applicable local law. Chris Bogart also represented to me that he would further review the City's ordinances, and maybe even check with the City Attorney, to determine whether or not there any other ordinances that could provide Dominion Ridge some relief.

C. Summary

In summary, unfortunately, I really don't feel like the Dominion Ridge Homeowners' Association, Inc. has a valid legal remedy, whether grounded in the deed restrictions, or State or local law, to require the developer to install a privacy bear, whether vegetative barrier or wood privacy fencing,

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along the street right-of-way, which is the entrance into the newly platted Montgomery Oaks subdivision. Additionally, I do not believe that the City of Conroe has any enforcement mechanism to require the developer to install such a barrier. Subject to the City of Connor's Engineering Department's discussion with the developer and further review of applicable ordinances, I simply don't think the Association is going to be able to require fencing or a barrier. With enough political pressure, and given the somewhat ambiguous language in the subdivision tree ordinance, members of the Association might convince the City of Conroe to enforce the City's tree ordinance as strictly as possible. But again, in my experience, the City does not typically enforce the tree ordinance within publicly dedicated street right-of-ways. In fact, they would rather see no trees within those right-of-ways.

Let me know if we need to discuss this further. Hoping this meets with your attention and consideration, I am

Sincerely yours,

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Bryan P. Fowler

BPF:jks
Enclosure(s): as stated