

Introduction

Townhome Lot Owners have made numerous verbal requests for additional parking to the Salem Fields Board of Directors and FirstService Residential Management personnel. Some of these requests have been from tenants and should not be viewed as a requirement by the Lot Owners. The Board of Director's responsibility is to the Owners. Owners are affected by Board actions that affect property values and have a right to vote for acceptance or rejection of any project that will cause special assessment such as additional parking construction.

There are several steps that need to occur before the Board can adequately respond to these Owners. The first step is to quantify how many parking spaces are required. Townhomes are multi-family dwellings and must have 1.6 parking spaces per unit per County of Spotsylvania, Code of Ordinances Section 23-5.9.3. The developer designed and built each townhome with two parking spaces per Lot, exceeding the county ordinance requirement. For townhomes without garages, the two spaces are assigned parking spots designated by lot numbers. For townhomes with garages, the two spaces consist of the garage and the driveway. In addition to two spaces per townhome Lot, the developer built spaces for visitor and overflow parking. These consist of 28 Common Area parking spaces in Fairfield and 57 Common Area parking spaces in Parkview.

Background

Before the Fairfield and Parkview neighborhoods were built, the County of Spotsylvania approved the Salem Fields site development plans that included the visitor/overflow common area parking spaces, and private roads currently found in those neighborhoods. Townhome owners pay, as a Limited Common Expense as provided in Section 6.2(a)(2) of the Amended and Restated Declaration for Salem Fields ("Declaration") and the Supplementary Declarations, the monthly assessment for the Upkeep of the townhome visitor/overflow parking spaces (other than garages and driveways), and private roads.

Briefly, Section 6.2(a)(2) of the Declaration and the respective Supplementary Declarations, which are part of the Salem Fields Community Association governing documents ("Association Documents"), provides the authority to assess Fairfield and Parkview Owners as a Limited Common Expense for the Upkeep (i.e., repair, renovations, replacement, etc.) of visitor/overflow parking spaces, and private roads with the townhome sections. This is important to understand because Fairfield and Parkview owners do not pay for the private roads, and visitor/overflow parking in the attached Villa neighborhoods. Conversely, attached Villas, detached Villas, and

detached single family homes do not pay for private roads, and visitor/overflow parking in the Fairfield and Parkview neighborhoods.

Some townhome residents have stated that it is not fair for the Villas to have more visitor/overflow parking per unit and more parking is not available for townhomes. This argument appears to be without merit as it does not take into consideration that each attached Villa and Townhome Owner bought his or her respective Lot with the existing parking scheme as provided for in the governing documents, and that each also pays as Limited Common Expenses for the Upkeep of their respective visitor/overflow parking and private roads as provided in Section 2(a)(2) of the Declaration.

Findings

- The parking in the Fairfield and Parkview sections of the Property meet the County of Spotsylvania, Code of Ordinances requirement of 1.6 parking spaces per Townhome Lot.
- We believe that the number of parking spaces conforms to the plans approved by Spotsylvania County and has remained constant since the initial construction by the Declarant and subsequent purchase of the Lots by Townhome Lot Owners. Please note that we have not actually reviewed the approved plans on file with the County.
- Costs and expenses for additional parking in the Fairfield and Parkview neighborhoods must be paid for by the Owners benefitting from the capital improvement (parking spaces). The expense for capital improvements such as additional parking is called a Limited Common Expense. Limited Common Expenses (additional townhome parking and all associated fees) must be paid from the townhome assessments per the Association Documents. The percentage of the vote required to approve the expense depends on the nature of the expense. In some cases, such as the engineering assessment/study, the vote required will be a majority vote. In other cases, such as the approval for the design and construction of the parking improvements, which would be considered a capital improvement, the vote required is sixty-seven percent (67%) of the affected Owners. In addition, the approval of the expense of the capital improvements would also have to be approved by Mortgagees as defined in the Declaration.
- Based on the foregoing, to incur expenditures as a Limited Common Expense, a majority of the Fairfield owners and a majority of the Parkview owners must each approve the expenditure of the engineering assessment/study. Thereafter, the design, approval and construction of additional parking and all related

expenses, which would be Limited Common Expenses, must be approved by sixty-seven percent (67%) of the Fairfield and Parkview owners and fifty-one percent (51%) of the Mortgagees.

- Please note that the approach outlined in the report is based on the authority granted under the Association Documents to designate parts of the Common Area as Reserved Common Area. Note further, that if the Board were to have additional parking area designated as Limited Common Area, the Association would have to take the steps outlined in the November 3, 2011 memo from prior legal counsel.

Conclusions

The Salem Fields Community Association is not under any legal requirement as of the date of this report to add additional parking in the Fairfield and Parkview sections of the Property. However, additional parking could be approved and added within these sections as Reserved Common Area under the authority of Section 3.8, 7.4 and 7.6 of the Declaration, if approved by the required votes of the Board of Directors and the affected Owners in those sections of the Property. The costs associated with this type of project would be Limited Common Expenses that would be paid by the Owners in each respective section of the Property. The expenses associated with this project falls into two (2) categories. The first category is the costs and expenses associated with conducting an engineering assessment/study, which would require a majority vote of the owners in both the Fairview and Parkside sections. The second category would be for the project itself and all costs and expenses associated with the engineering design, approval (including any County approvals), and construction of the parking improvements. The required vote is sixty-seven percent (67%) of the affected Owners and fifty-one percent (51%) of the Mortgagees as defined in the Declaration. See Declaration, Sections 7.4 and 14.4.

Proposed Actions

- The first step would be to conduct a survey of the Owners in the Fairview section and the Owners in the Parkside section to determine the level of interest in the Association investigating whether additional parking could be added within each of these respective sections of the Property at the expense of the Owners living in each of these sections. Thus, it will be important to keep it simple, ask the right questions, and present the survey at the right time. Please note that this is an optional step. The Board may conclude that past inquiries warrant starting with Step 2.

- Assuming that the survey results indicate a sufficient interest, the second step would be to obtain proposals for an engineering assessment/study of the Common Area property within the townhome neighborhoods to determine the following: (i) identify and opine on whether (and if possible where) existing parking facilities in the townhome sections may be altered or improved to create more parking spaces; (ii) identify and opine on whether (and if possible where) additional parking facilities could be built within these sections of the Property; and (iii) prepare a general cost projection of what the associated costs and expenses would be for such additions, alterations and improvements including any approvals that will be required from Spotsylvania County. Please note that should the engineering firm determine that County approvals will be required, the costs of such approvals including any professional and legal fees will have to be incorporated into the construction costs. The request for proposals should seek three (3) cost schemes because the expense for the study is a Limited Common Expense that would have to be paid by the owners in the Fairview and/or Parkside sections. See Declaration, Section 6.2(a)(2)(D). The first scheme would be both the Fairview and Parkside sections of the Property. The second would be for just the Fairview section. The third would be for just the Parkside section. The request for proposal should also request that the prices provided be valid for at least ninety (90) days in order to allow time to seek the required Owner approvals for the expenditures.
- Step 3 would be to present the project and cost projections to the Owners in the Fairview and Parkside sections to determine if the Owners will approve the expense of the engineering study. The vote of the Owners in these sections would be conducted by a referendum vote in accordance with the requirements in Section 3.3 of the Amended and Restated Bylaws. The referendum vote could be conducted by mail. The Board of Directors should set a forty-five (45) to sixty (60) day time frame for the mailing and completion of the vote. Ideally, the Association would mail a letter to the Owners explaining the proposed engineering assessment and include an instructed ballot, which would set a firm deadline by which the Owners would be required to vote on the expenditures. The letter would also indicate that the Board will set aside time at a Board of Directors meeting on a specific date to discuss the project and allow Owners to ask questions.

For purposes of illustration, let's say for sake of discussion that the cost of the engineering assessment/study proposal is \$10,000. There are 286 townhomes in the Fairfield and Parkview section of the property. \$10,000.00/286 is about \$34.97

per Lot. This would be collected as a special assessment. If a majority of the Fairfield Owners vote to proceed with a study and Parkview Owners vote not to proceed, the Association would only assess Fairfield Owners and the Board of Directors will approve an engineering study for Fairfield. The engineering study would evaluate construction of additional parking and hopefully will provide an overall assessment of the options that may be available. An engineering study will also identify the direct and indirect cost estimates associated with pursuing each option. **NOTE: No funds will be expended or assessment made unless a majority of the benefitted townhome Owners vote to pursue options for additional parking.**

- Assuming that the Owners approve the engineering study, the next step would be to approve the engineering agreement and collect the funds from the affected Owners.
- Once the Board of Directors has the engineering assessment/study, it can then consider whether it makes sense to move forward with a parking improvement project and present it to the affected Owners for approval. The project and costs would have to be approved by at least sixty-seven percent (67%) of the affected townhome Owners to move forward with a parking improvement project and pay for the associated costs. See Declaration, Sections 7.4 and 14.4. The cost of the parking construction would then be calculated for another special assessment to be paid by the Fairview and Parkview Owners. In addition, the parking improvements will require approval of fifty-one percent (51%) of the Mortgagees who have provided notice to the Board of Directors of their status as Mortgagees and requested all rights under the Declaration. The term “Mortgagee” is defined in Section 1.1(22) of the Declaration. The Board will need to check with management to see if the Association has received any notices from Mortgagees requesting such rights. The Board of Directors should set a forty-five (45) to sixty (60) day time frame for the mailing and completion of the vote. Ideally, the Association would mail a letter to the Owners explaining the proposed engineering assessment and include an instructed ballot, which would set a firm deadline by which the Owners would be required to vote on the expenditures. The letter would also indicate that the Board will set aside time at a Board of Directors meeting on a specific date to discuss the project and allow Owners to ask questions.
- Please note that an engineering firm may not be able to provide sufficient cost projections for the construction of the parking facilities at this stage; thus, a third vote would have to be conducted once the RFP is issued for the project.

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