
MEMORANDUM

TO: BAREFOOT HOMEOWNERS

FROM: BAREFOOT RESORT RESIDENTIAL ASSOCIATION – BOARD OF DIRECTORS

SUBJECT: WATERTOWER ROAD FENCE

DATE: AUGUST 14, 2018

CC: PONDEROSA MANAGEMENT, LLC.

The Board of Directors of the Barefoot Resort Residential Association (“BRRA”) would like to provide the owners with our position with regard to maintenance, repair and replacement of the fence on Watertower Road located on the real property owned by individual members of the BRRA. In reaching our position we have relied on the Declaration of Covenants, Conditions, and Restrictions for Barefoot Resort Residential Properties (“CCR”) as well as the Supplemental Declarations of Somerset at Barefoot Resort (“Somerset”), Sweetbriar at Barefoot (“Sweetbriar”) and Long Bridge at Barefoot Resort (“Long Bridge”) (“Supplemental CCR”), as those are the neighborhoods in which the lots are situated on which the Watertower Road fence is located. While the CCR and the Supplemental CCR for each of these Neighborhoods apply to these lots, the CCR is the controlling document and has supremacy over any Supplemental CCR.

We began by looking at what constitutes a “Unit” as defined in the CCR. A Unit is defined as follows:

“A portion of the Properties, whether improved or unimproved, which may be independently owned (and may be defined by a subdivision plat, a legal property description, or other means intended to show or describe the property as a discrete and legally definable portion) and is intended for development, use, and ***occupancy as an attached or detached residence for a single family***; provided, a garage apartment or similar

accessory structure on a lot containing living quarters in addition to the primary dwelling on such lot (and under common ownership) shall not be deemed a separate Unit. ***The term shall refer to the land, if any, which is part of the Unit and any improvements thereon.*** In the case of a condominium within a building or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. The term shall not include Common Areas of the Residential Association, spoil easements, or property dedicated to the public.” (See: CCR, 2.40, pg. 8).

Each lot within Somerset, Sweetbriar and Long Bridge on which the Watertower Road fence sits is a Unit as defined in the CCR. Each of these Units is a detached single-family residence. Each of these Units includes not only the house which is located on the lot but the land which is part of the Unit, meaning the yard and the improvements thereon.

Next, we turned to what does and does not constitute “Common Area” as defined by the CCR. Common Area is defined as follows:

"All real and personal property within Barefoot Resort or other additional property which is made subject to this Declaration pursuant to Article IX ***which the Association owns leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.*** The term shall include the Exclusive Common Area, as defined below (See: CCR, 2.10, pg. 5).

Because the Watertower Road fence sits on private property, the BRRA neither owns, leases nor holds possessory or use rights to or on this fence for the common use and enjoyment of the owners. While the BRRA is responsible for the maintenance of the Common Areas as provided in the CCR, no mention is made with regard to maintaining any fence(s). (See: CCR, 7.2, pgs. 24 & 25). However, specific mention is made of maintaining Common Area which include specifically “...landscaping and other flora, parks, lakes, signage, structures, and improvements...situated upon the Common Area...landscaping, sidewalks, streetlights, and signage within public rights-of-way within or abutting the Properties...all ponds, streams, and/or wetlands and wetland buffers...any future beach club...any property and facilities owned by Silver Carolina and made available...for the primary use and enjoyment of the Association...to be

identified by written notice from Silver Carolina to the Association....” (CCR, 7.2, pgs. 24 & 25).

For these reasons the BRRRA does not believe the Watertower Road fence is a Common Area as defined by the CCR. However, Section 13.1 of the CCR defines fences as party structures. (CCR, 13.1, pg. 52). Party structures are defined as follows:

“Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto” (CCR, 13.1, pg. 52).

Because the Watertower Road fence is a structure that serves all of the Units which abut Watertower Road, the fence is considered by the BRRRA to be a party structure as defined by the CCR. As a party structure, maintenance, repair and/or replacement of this fence is not the responsibility of the BRRRA. The responsibility for maintaining, repairing and/or replacing this fence rests with the owners of the Units on which the fence is located and who are served by the fence. The cost for the maintenance, repair and/or replacement of the fence is to be borne by the owners of these Units equally. (CCR, 13.2 & 13.3, pg. 52).

If, however, the Watertower Road fence was to be determined not to be a shared structure, the BRRRA believes the fence would be considered a regular structure or improvement to the Units on which the fence is located. The CCR requires each owner to maintain his or her Unit and all structures...and other improvements which comprise the Unit. (CCR, 5.1, pg. 18). Therefore, the responsibility of maintaining, repairing and/or replacing the fence rests with the owners of the Units on which it is located.

A review of the CCR, the specific sections of the CCR and the specific wordings of those sections lead us, as a Board, to the conclusion that the fence is not a common area for which the BRRRA is responsible. Based upon our reading of

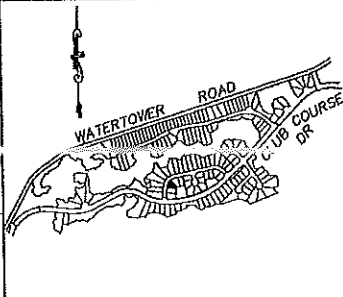
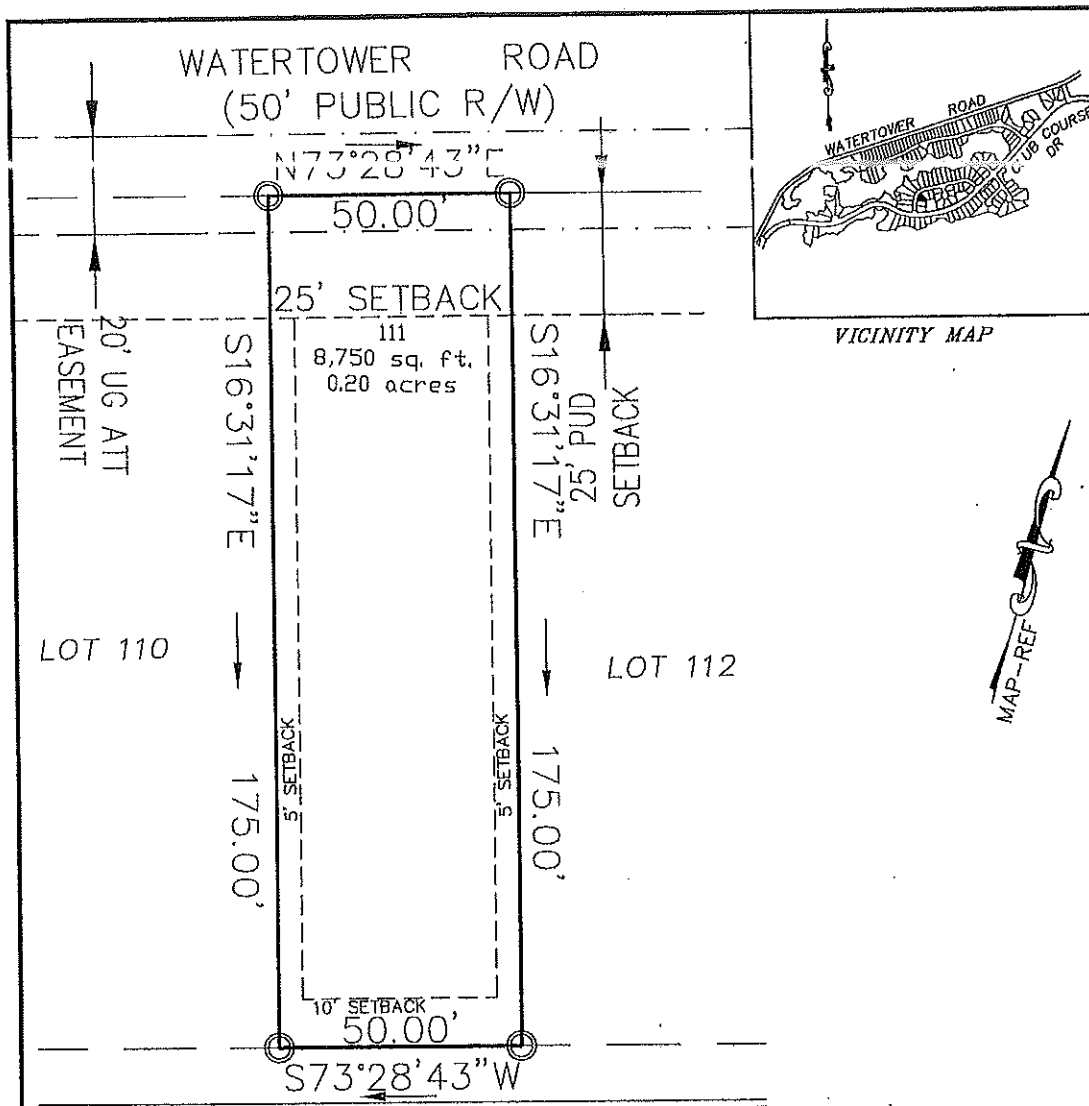
the CCR, our position continues to be the owners of the Units on which the Watertower Road fence is located are responsible for the maintenance, repair and replacement of the fence.

In support of our position, attached are three (3) surveys or maps of lots which abut Watertower Road. Attached are the maps of Lot 111 located in Sweetbriar, Lot 195 located in Long Bridge and Lot 115 located in Sweetbriar. On each map each owners' lot fronts on either Grovecrest Circle or Weatherwood Drive and extends and abuts Watertower Road. Therefore, their respective Units extend from either Grovecrest Circle or Weatherwood Drive to Watertower Road. Also, at the rear of each owners' lot where it abuts Watertower Road, there is a twenty-foot (20') utility easement on which nothing can be built. The Watertower Road fence is located on each of these lots on the southside of the utility easement on or inside the setback on the rear of each of these lots. As these three (3) maps demonstrate the owners of lots which abut Watertower Road own the real property on both sides of the Watertower Road fence making the fence the property of these owners and the Watertower Road fence a party structure as defined in the CCR (CCR, 13.2 & 13.3, pg. 52).

Some owners believe the BRRA should simply assume responsibility for the Watertower Road fence. However, the BRRA can only assume responsibility for the Watertower Road fence if the responsibility is assumed pursuant to one of the Supplemental Declarations or the declaration of covenants which apply to these Units (CCR, 5.1, pg. 18). There exists no such Supplemental Declaration or other declaration of covenants applicable to the Units which abut Watertower Road.

Finally, the position being taken by the BRRA is consistent with the position it has taken with Edgewater Condominium Owners Association ("Edgewater") and may be required to take with Harbour Cove Condominium Owners Association ("Harbour Cove"). Edgewater requested the BRRA assume responsibility for the bulkhead which abuts the intracoastal waterway and repair or replace it if necessary. Harbour Cove requested the Joint Committee assume responsibility for the damage and erosion to the outfall and repair it. We refused both Edgewater's

requests based upon the same rationale outlined and would refuse Harbour Cove as well if we are asked. The cost to the BRRRA if we were to accept responsibility for the bulkhead at Edgewater could run in the millions and the hundreds of thousands for the outfall at Harbour Cove. If we accept responsibility for the maintenance and repair of the Watertower Road fence, the BRRRA would surely receive renewed request from Edgewater. Also, if we accept responsibility for the maintenance and repair of the Watertower Road fence we believe Harbour Cove, at the direction of the Joint Committee, will request we assume responsibility for the maintenance and repair of the outfall. If again we refuse Edgewater and refuse Harbour Cove, we most probably would face legal actions from both seeking to compel the BRRRA assume responsibility for the bulkhead and the outfall, which if successful would deplete 1% marketing fund and/or result in a substantial community-wide assessment.



VICINITY MAP



NOTES:

1. PARENT TM# 142-00-01-291
2. REFERENCE: "MAP OF CENTEX, TRACT "Y"-PHASE 1B, FINAL SUBDIVISION PLAT" BY DDC ENGINEERS, INC. DATED 1/04/2006. (NOT YET RECORDED)
3. PLAT BOOK REFERENCE 191, PAGE 003.
4. PLAT BOOK REFERENCE 166, PAGES 119-119H (FINAL MASTER PLAT)
5. RESTRICTIVE COVENANTS DEED BOOK 2220, PAGE 811.
6. PLAT BOOK REFERENCE 192, PAGES 197-197A(PHASE 1A).
7. LOTS ARE LOCATED IN FLOOD ZONE "X", AS SHOWN ON FLOOD INSURANCE RATE MAP NUMBERS 45051C0560 & 0567 H, DATED 8/23/99. FLOOD ZONES ARE SCALED, APPROXIMATE AND SUBJECT TO VERIFICATION BY THE LOCAL FEMA OFFICER.
8. TYPICAL BLDG SETBACKS:

10' FRONT	10' FRONT
5' SIDE	2.5' SIDE
25' REAR (EXTERIOR LOTS)	10' REAR
10' REAR (INTERIOR LOTS)	UNLESS OTHERWISE NOTED.
9. TYPICAL LOT UTILITY & EASEMENT SETBACKS:

10' FRONT	10' FRONT
5' SIDE	2.5' SIDE
25' REAR (EXTERIOR LOTS)	10' REAR
10' REAR (INTERIOR LOTS)	UNLESS OTHERWISE NOTED.
10. PROPERTY ZONED PUD

LEGEND

- ICV □ IRRIGATION CONTROL VALVE
- ★ LIGHT POLE
- ⊙ SEWER CLEANOUT
- ⊗ WATER VALVE
- ⊘ WATER METER
- CB □ CATCH BASIN
- T.P. □ TEL. PEDESTAL
- EB □ ELEC. TRANSFORMER
- TV □ TV PEDESTAL
- WM □ WATER VALVE MARKER
- GUY WIRE
- PP POWER POLE
- ADJOINING PROPERTY LINE
- SURVEYED PROPERTY LINE
- BUILDING SETBACK LINE
- E-E- ELECTRIC LINE

ETS ENGINEERING AND TECHNICAL SERVICES, INC.

Pawleys Business Center • 58 Centermarsh Lane • P.O. Box 2040 • Pawleys Island, S.C. 29585
 Phone: (843) 237-3002 • Fax: (843) 237-2269 • Email: ets@etsengineers.com • http://www.etsengineers.com

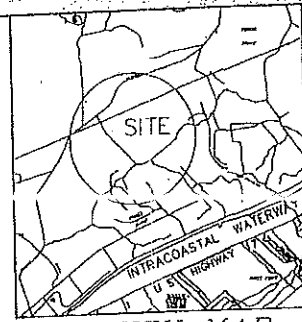
SALES MAP

LOT 111
 SWEETBRIAR, TRACT "Y" PHASE 1B
 AT BAREFOOT RESORT
 FOR
 CENTEX HOMES,
 A NEVADA GENERAL PARTNERSHIP
 LOCATED IN NORTH MYRTLE BEACH, Horry COUNTY, S.C.

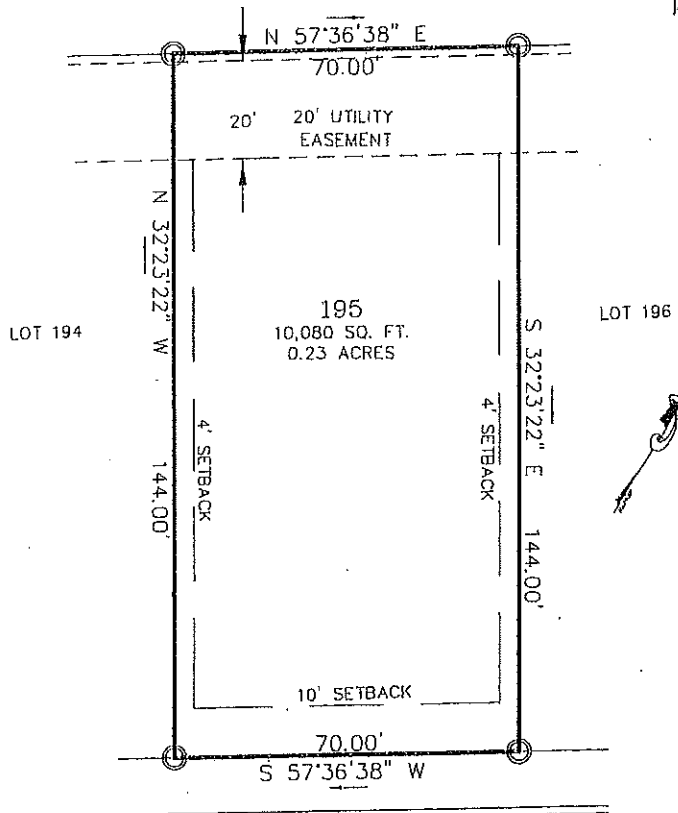
DATE:
 09/26/2006
 DRAWN BY:
 FLR
 JOB NO.:
 307A111



THIS PLAT WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSON OR PERSONS SHOWN IN THE TITLE BLOCK AND THIS OFFICE DOESN'T MAKE ANY CERTIFICATION TO ANY UNNAMED PARTIES WITHOUT A REVISION AND UPDATE TO THE CERTIFICATION WITH THE CLIENTS AUTHORIZATION. ADDITIONAL FEES MAY BE APPLICABLE.



WATERTOWER ROAD
50' R/W (PUBLIC)



GROVECREST CIRCLE
50' R/W (PUBLIC)

NOTES:

1. REFERENCE TO A PRELIMINARY SUBDIVISION PLAT BY DDC ENGINEERS, INC. ENTITLED, 'PRELIMINARY SUBDIVISION PLAT OF 'CENTEX TRACT Y - PHASE 2A' DATED MARCH 27, 2003, REVISED MARCH 2, 2004.
2. TYPICAL LOT SETBACKS ARE (PER REF. MAP)
10' REAR (UNLESS OTHERWISE NOTED)
4' SIDE
10' SIDE ON CORNER LOTS (UNLESS OTHERWISE NOTED)
10' FRONT (UNLESS OTHERWISE NOTED)
3. PARENT TMB 142-00-01-076
4. SETBACKS ARE AS PER SUBDIVISION PLAT.

LEGEND

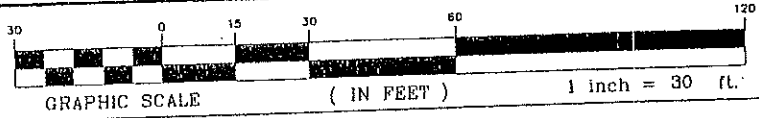
☆	LIGHT POLE
⊙	SEWER CLEANOUT
⊗	WATER VALVE
⊕	WATER METER
ca □	CATCH BASIN
tp □	TEL. PEDESTAL
et □	ELEC. TRANSFORMER
tv □	TV PEDESTAL
wv □	WATER VALVE MARKER
—	GUY WIRE
○pp	POWER POLE
---	ADJOINING PROPERTY LINE
---	SURVEYED PROPERTY LINE
---	BUILDING SETBACK LINE

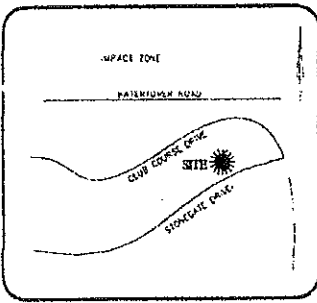
ETS ENGINEERING AND TECHNICAL SERVICES, INC.
 Pawleys Business Center 58 Centermarsh Lane P.O. Box 2040 • Pawleys Island, S.C. 2958
 Phone: (843) 237-3002 Fax: (843) 237-2269 Email: ets@etsengineers.com http://www.etsengineers.com

PRELIMINARY
SALES MAP

LOT 195
 LONGBRIDGE SUBDIVISION PH. 3
 BAREFOOT RESORT
 FOR
CENTEX REAL ESTATE CORP.
 LOCATED IN NORTH MYRTLE BEACH, Horry COUNTY

DATE:
03/30/2004
 DRAWN BY:
FWF
 JOB NO.:
307LB195





VICINITY MAP
Not To Scale

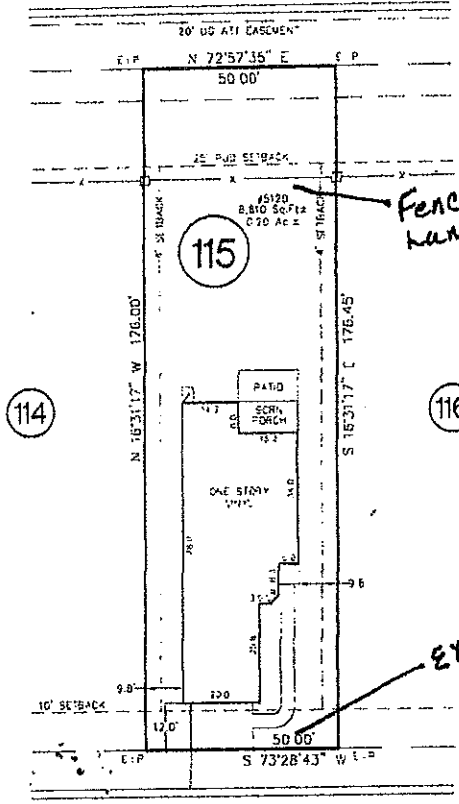
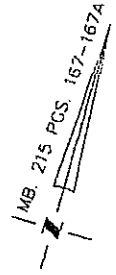
I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO ENCROACHMENTS, PROJECTIONS, OR SETBACKS AFFECTING THE PROPERTY OTHER THAN THOSE SHOWN.

SIGNED Robert L. Arrington
ROBERT L. ARRINGTON, S.C. PLS. 19889

- LEGEND**
- EXISTING ROAD, P.W.
 - EXISTING CONCRETE MONUMENT
 - SET POINT MARK
 - PUBLIC DRAINAGE EASEMENT
 - PUBLIC UTILITY EASEMENT
 - SANITARY SEWER EASEMENT
 - FLOOD PROTECTION ELEVATION EXCEEDS 1' ACH IN 10,000'
 - CLOSURE PROPERTY LINE
 - ADJACENT PROPERTY LINE BY DEED OR PLAT



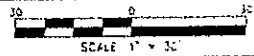
50' PUBLIC R/W
WATERTOWER ROAD



#5120 WEATHERWOOD DRIVE
50' PUBLIC R/W

NOTE
THERE IS A 10' PRIVATE UTILITY & DRAINAGE EASEMENT ALONG THE REAR AND FRONT PROPERTY LINES. ALSO A 2.5' PRIVATE UTILITY & DRAINAGE EASEMENT ALONG 50' YARD BOUNDARY LINES.

THIS PROPERTY MAY BE SUBJECT TO ANY AND ALL APPLICABLE DEED RESTRICTIONS, EASEMENTS, RIGHT-OF-WAY, UTILITIES AND RESTRICTIVE COVENANTS WHICH MAY BE OF RECORD OR APPLIED.



RLA ASSOCIATES, P.A.
100 S. MAIN STREET, SUITE 1
SUMMERVILLE, SC 29483
PHONE (843) 879-9097
FAX (843) 261-9092

PHYSICAL SURVEY

FDR
"SWEETBRIAR"
LOT 115, CENTEX TRACT "Y" - PHASE 1B
CITY OF NORTH MYRTLE BEACH, Horry County, SOUTH CAROLINA
PROPERTY OF: Wayne & Nora Wren
PLAT BOOK 215, PAGE 167-167A DEED REFERENCE
DRAWN BY: JWS DATE: AUGUST 10, 2011