

From: Brandon Bethell [mailto:bbethell@mulcahylawfirm.com]
Sent: Wednesday, October 3, 2018 11:31 AM
To: 'Tolp, Bud'
Cc: 'Cheryl Kaufman'; 'kathleen kuchta'; Diana Cole
Subject: RE: Tonto Hills DoR's Interpretation (Attorney Client Privileged)

Bud:

Pursuant to Article 2 of the Declaration, “[i]n the event of any ambiguity in a provision of these restrictions, the interpretation of the Board of Directors of the Association as to the meaning intended shall prevail.” As such, the Board’s authority to interpret the Declaration pursuant to Article 2 is limited to those instances where a provision is ambiguous. It is my legal opinion that the phrase “high class business” as used in Article 17 could be open to multiple interpretations, and therefore, I agree that it is within the Board’s discretion in interpreting the meaning of “high class business” pursuant to Article 2.

Any time the Board is met with a matter of interpretation pursuant to Article 2, I recommend taking the following steps:

- Researching whether any words or phrases in the ambiguous provision are defined within the Declaration or elsewhere in the Governing Documents;
- For words without definition, I recommend researching the plain meaning of those words;
- Once the Board has determined the possible interpretations, I recommend taking the context and likely intent of the drafters of the Declaration into consideration;
- If/when the Board comes to a conclusion regarding interpretation, I recommend documenting the Board’s decision (e.g. via Board Resolution or in the Meeting Minutes of an Open Meeting of the Board); and
- At any time throughout the process, you are welcomed and encouraged to contact my office for assistance

Please feel free to contact my office with any further questions. Thank you.

/s/ Beth Mulcahy

Sincerely,

Beth Mulcahy, Esq.



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