

TITLEHOLDER—NORTH SHELMORE
BOARD OF APPEALS HEARING
5 November 2014

Outcome of the Appeal

The Titleholder came to the Board of Appeals (“BOA”) to challenge the determination of the Board of Trustees (“the Board”) that he had conducting unauthorized cutting in an area of the Commons and assessing the cost of restitution against him, and of the Covenants Committee’s recommendation, approved by the Board, to impose a fine of \$500 for the violation of Rule D-109.

The Board of Appeals unanimously finds that the Board and the Covenants Committee acted reasonably and in good faith in finding a violation of Rule D-109 and in imposing requirements of restitution and payment of a fine on the Titleholder. On this basis, the Board of Appeals requires that the fine be paid within ten days of the date of this opinion.

With respect to the restitution assessment, however, in light of information presented by the Titleholder at the hearing, the BOA imposes an alternative method of determining restitution costs and implementation, as described below.

The Board of Appeals Meeting

A quorum of the BOA was constituted with Deborah Bedell, Chair, Stephen Wood, Kathy Chambers, and Brady Anderson all present.

The Titleholder appeared before the BOA with his landscape architect, as well as photographs and drawings of his Lot and vegetation on and near his Lot.

Titleholder admitted that he had a survey of his Lot but failed to consult it before authorizing his contractor to remove vegetation, resulting in damage to the Commons, which he apologized for.

Titleholder offered comments indicating that he believed the Community Manager was possibly mistaken in his estimate of the Lot boundary location, and requested the opportunity to conduct a more detailed survey to locate the Lot line. While Titleholder conceded that there was in fact cutting on the Commons, it is not clear how much extended into the Commons and how much was actually on Titleholder’s Lot.

A Town drainage easement extends across the Lot line and is partly in the Commons and partly on Titleholder’s Lot. The cutting took place

within this easement area. According to Titleholder and his architect, there is a problem with overgrown vegetation in this area that could result in increased drainage problems that they felt could be exacerbated by the restoration plan offered by the Assembly's contractor.

Based on the information presented by Titleholder, the BOA feels it is possible that the restoration plan proposed by the Assembly may actually include plantings that will go on Titleholder's property. For this reason, the BOA has decided as follows:

1. The cutting did in fact extend to some degree on the Commons, and was improper. Thus, the fine of \$500 assessed by the Board is upheld. Titleholder must pay this fine within ten calendar days of this opinion.
2. Within 45 calendar days of this opinion, Titleholder shall, at his sole expense, conduct a survey of his Lot showing the property lines, the location of the drainage easement, and the location of the cutting and vegetation removal. In addition, within this time period, Titleholder shall at his expense provide a proposed restoration plan which shall restore the Commons appropriately, and shall include such other restoration work within his Lot as needed to avoid run-off, drainage, erosion or other issues that would have the potential to flow onto or damage the Commons. The plan shall include the costs for all such restoration work.
3. The survey and restoration plan shall be jointly reviewed by Stephanie Holland, a member of the I'On Design Committee (IDC), by the Assembly's Community Manager, and by the Infrastructure Committee. Based on this review, Ms. Holland shall have the final authority to approve or reject Titleholder's restoration plan. If modifications are required, or the restoration plan proposed by the Assembly is reinstated, Ms. Holland's decision shall be final and Titleholder will comply with that decision.
4. Once a final plan is approved, Titleholder, within ten days of the approval, shall post an additional deposit of \$1,000 with the IDC to supplement his existing \$1,000 deposit.
5. Only because it is likely that restoration on both the Commons and Titleholder's Lot will be required, the BOA will permit Titleholder to contract for and implement the entire plan of restoration work, at Titleholder's expense.
6. Ms. Holland will inspect the implementation of the restoration work upon completion, and again one year following completion. Titleholder shall be responsible for replacement of any plantings that do not survive during this period. If, in Ms. Holland's sole judgment, the restoration work is completed correctly and survives for the required year, the IDC will release the deposit to Titleholder.

7. Titleholder shall reimburse the Assembly for Ms. Holland's time, up to five hours at a rate of \$75. Payment shall be due within ten days of invoicing.

Titleholder should notify Mike Parades, the Community Manager, within ten days of this opinion if he does not wish to take this opportunity to conduct the survey and develop and execute on a restoration plan. If Titleholder declines to make a submission, or fails to do so within the forty-five-day period, then the original restoration plan will remain in effect, and Titleholder shall, within ten days of notice, pay the full amount assessed by the Assembly for implementation of its restoration plan.

The Board of Appeals

Deborah Luth Bedell, Chair

Brady Anderson

Kathy Chambers

Stephen Wood

(Fred White was absent from the proceedings and does not participate in this opinion.)