

FILMED

FILED IN CLERK'S OFFICE
Salt Lake County Utah

MAR 22 1984

H. Dixon Manning, Clerk 3rd Dist. Court
By Karen A. Bush
Deputy Clerk

R. CLARK ARNOLD
Lowe & Arnold
Attorney for Plaintiff
Valley Tower, Fourth Floor
50 West Broadway
Salt Lake City, Utah 84101

Telephone: (801) 521-5466

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

RICHARD L. JAMES, et al.,)	
)	
Plaintiffs,)	
vs.)	J U D G M E N T
JOHN W. DAVIES, et al.,)	
)	
Defendants,)	
vs.)	
BAGLEY & COMPANY, et al.,)	Civil No. C-81-8560
Third Party Defendants.)	Assigned to Judge Daniels

The above-entitled matter came on for hearing on Monday, January 9, 1984, at the hour of 10:00 a.m. Various of the plaintiffs were present and were represented by their attorney, R. Clark Arnold. Mr. Arnold did not represent all of the plaintiffs, however, some of them representing themselves individually; to wit: Edwin Kirby, Dr. Charles Hagen, Keith Gurr, Stan and Patricia Tacy, Emily Tebbs, and Sheila Tondro. Of the individual plaintiffs appearing pro se, only Keith Gurr appeared representing himself. The defendants were present and represented by their attorney, Con Kostopulos. The trial con-

tinued until January 17, 1984, at which time both parties rested. During the course of the trial, both parties presented witnesses and submitted evidence in support of their respective positions. Upon the closing of this matter, the Court continued until February 10, and later continued until February 17, 1984, closing arguments. In the interim, the parties submitted Memorandum of Points and Authorities in support of their respective positions. The matter having finally been closed, and the Court having considered all of the evidence and memorandum presented, and being fully advised in the premises, and having heretofore signed and filed its findings of fact and conclusions of law, Now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The plaintiffs' first cause of action is hereby dismissed with prejudice.

2. The plaintiffs' second cause of action is hereby dismissed with prejudice.

3. The plaintiffs are hereby granted judgment against the defendants on their third cause of action, and the Defendant Homeowners Association and the Directors thereof, individually in their capacity as Directors, are hereby permanently restrained and enjoined from taking action or expending funds of the Association to attempt to enforce the protective covenants against property owners of property located in Hi-County Estates, Phase I.

4. The defendants are hereby granted a judgment against the plaintiffs on the plaintiffs' fourth cause of action to the extent that the Court hereby declares that the protective covenants executed June 15, 1970 and recorded on March 22, 1974 to be valid and enforceable restrictions and servitudes on the property located in Hi-County Estates, Phase I. The plaintiffs, however,

are hereby granted judgment against the defendants on said fourth cause of action to the extent that the Court hereby declares that the amendment to said protective covenants prepared April 6, 1973 and recorded March 22, 1974, is void and unenforcible.

5. The plaintiffs are hereby granted judgment against the defendants on their fifth cause of action and the Directors of the Hi-Country Estates Phase I Homeowners Association, in their capacity as directors are hereby permanently restrained and enjoined from appearing at Planning Commission or zoning meetings or hearings in a representative capacity on behalf of the association or of the individual property owners of property in Hi-County Estates, Phase I.


6. The plaintiffs are hereby granted judgment against the defendants on their sixth cause of action and the Hi-Country Estates Phase I Homeowners Association and the Directors thereof, in their capacity as Directors, are hereby permanently restrained and enjoined from taking any action or expending any Association funds to enforce or attempt to enforce the protective covenants against property owners of property located in Hi-County Estates, Phase I.

7. All claims against the Defendant JoAnn Abplanalp are hereby dismissed with prejudice.

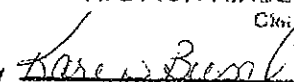
8. The defendants having abandoned their counterclaims against the plaintiffs, the same are hereby dismissed with prejudice.

9. Each part is hereby ordered to assume their own costs and attorneys' fees incurred herein.

DATED this 22 day of March, 1984.


SCOTT DANIELS
District Judge

ATTEST
H. DIXON HINDLEY


by Karen Bunk
Deputy Clerk

APPROVED AS TO FORM AND CONTENT:



Con Kostopoulos
Attorney for Plaintiffs

Section 3. DUTIES: The duties of the officers are as follows:

(a) PRESIDENT. The President shall preside at all meetings of the Board of Directors, shall see that orders or resolutions of the Board are carried out, shall sign all leases, mortgages, deeds and other written instruments and shall execute all checks and promissory notes.

(b) VICE-PRESIDENT. The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) SECRETARY. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) TREASURER. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a Public Accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX
Committees

The Association shall have the right to appoint members of the Architectural Control Committee, as provided in the Protective Covenants, at such time as all Lots in the Tract have been sold by the Grantor, as stated in Protective Covenants. The Board shall also have the right to appoint a Nominating Committee, as provided in these By-Laws, and in addition thereto shall appoint other committees as deemed appropriate in carrying out its purposes.

ARTICLE X
Books and Records

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Protective Covenants, Certificate of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI
Assessments

As more fully provided in the Protective Covenants, as amended, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of seven (7) percent per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common area, roads or abandonment of his lot.

ARTICLE XII
Corporate Seal

The Association shall have a seal in circular form having within its circumference the words "Hi-Country Estates Homeowners Association."

BYLAWS
of
HI-COUNTRY ESTATES HOMEOWNERS ASSOC
1999

ARTICLE I
Name and Location

The name of the Association is Hi-Country Estates Homeowners association, hereinafter referred to as the "Association." The principal office of the Association shall be located at 13300 South 7370 West, Riverton, Utah, but meetings of members and directors may be held at such places within or without the State of Utah, as may be designated by the Board of Directors.

ARTICLE II
Definitions

Section 1. "Association" shall mean and refer to Hi-Country Estates Homeowners Association, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property known as Hi-Country Estates, located in Salt Lake County, State of Utah, Phase 1, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners, to include the road and street system, and the common areas used for mail delivery, garbage collection and school bus pickup.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is part of the property, including persons or entities purchasing a lot under contract, but excluding those having such interest merely as security for the performance of an obligation.

Section 5. "Protective Covenants" shall mean and refer to the Declaration of Protective Covenants applicable to the property.

Section 6. "Member" shall mean and refer to those persons entitle to membership as provided in the Protective Covenants, Certificate of Incorporation, and these Bylaws.

ARTICLE III
Meeting of Members

Section 1. ANNUAL MEETINGS. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 7:30 o'clock P.M. If the day for the annual meeting of the members is a legal holiday, the meeting shall be held at the same hour on the first day following which is not a legal holiday.

Section 2. SPECIAL MEETINGS. Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request by not less than one-fourth of the members.

Section 3. REGULAR MEETINGS. Regular meetings of the members shall be held on the second Tuesday of the months of January, April, July, and October.

Section 4. NOTICE OF MEETINGS. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and in the case of a special meeting, the purpose of the meeting.

Section 5. QUORUM. The presence at the meeting of members entitled to cast, in person or by proxy, one tenth of the votes shall constitute a quorum for any action except as otherwise provided in the Certificate of Incorporation or these Bylaws. If, however such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 6. PROXIES. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his lot.

ARTICLE IV

Board of Directors: Selection: Term of Office

Section 1. NUMBER. The affairs of this Association shall be managed by a Board of Directors consisting of five directors, who shall be qualified voting members of the Association.

Section 2. TERM OF OFFICE. Each Director shall serve a three year term, none of which shall be Concurrent. This was enacted so that one Director would be elected each year at the Annual Meeting, replacing the outgoing Director whose term has expired, as was established by amendment as voted on by the members in the Annual meeting held October 23, 1975.

Section 3. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the members of the association. In the event of death, resignation or removal of a Director, his successor shall be appointed by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. COMPENSATION. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. ACTION TAKEN WITHOUT A MEETING. The Directors shall have the right to take any action in the absence of a meeting which they could take at any meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as through taken at a meeting of the Directors.

ARTICLE V

Nomination and Election of Directors

Section 1. NOMINATION. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the Annual Meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members. The Nominating Committee shall make as many nominations for the Board of Directors as it shall, in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among voting members.

Section 2. ELECTION. Election to the Board of Directors shall be by secret written ballot. At such elections the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI

Meetings of Directors

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly, with at least one day's notice, at such place and hour as may be fixed from time to time by the resolution of the Board. Should such meeting fall upon a legal holiday, then that meeting shall be held at a time approved by the Directors.

Section 2. SPECIAL MEETINGS. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two Directors, after not less than three days notice to each Director.

Section 3. QUORUM. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act of decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the board.

ARTICLE VII

Powers and Duties of the Board of Directors

Section 1. POWERS. The Board of Directors shall have power to:

(a) Adopt and publish rules and regulations governing the use of roads, streets, common area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) Suspend the voting rights and right to use of the recreational facilities of a member during any period in which such members shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty days for infraction of published rules and regulations;

(c) Exercise for the Association all power, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-laws, the Certificate of

Incorporation, or the Protective Covenants;

(d) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three consecutive regular meetings of the Board of Directors;

(e) Employ a manager, and independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. DUTIES. It shall be the duty of the Board of Directors to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the Annual Meeting of the members, or at any special meeting when such statement is requested in writing by not less than one-fourth of members who are entitled to vote.

(b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) Assessments

(1) Fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) Send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period;

(3) Fix the amount of special assessments, if necessary, to conduct the business of the Association as determined at the Annual Meeting or a Special Meeting;

(4) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring and action at law against the Owner personally obligated to pay the same.

(d) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the board for the issuance of such certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) Procure and maintain adequate liability and hazard insurance on property owned by the association;

(f) Cause all officers or employees having fiscal responsibilities to be bonded, as the board may deem appropriate;

(g) Cause the common area and road system to be maintained.

ARTICLE VIII Officers and Their Duties

Section 1. ENUMERATION OF OFFICERS. The officers of this Association shall be a President and Vice-President, who at all times will be members of the Board of Directors, a Secretary, a Treasurer and such other officers as the Board may from time to time by resolution create. The Secretary and Treasurer may be the same person.

Section 2. ELECTION OF OFFICERS. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. TERM. The officers of this Association shall be elected annually by the Board and each shall hold office for one year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. SPECIAL APPOINTMENTS. The Board may elect other such officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. RESIGNATION AND REMOVAL. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. VACANCIES. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve the remainder of the term of the officer he replaced.

Section 7. MULTIPLE OFFICES. The office of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. DUTIES. The duties of the officers are as follows:

(a) PRESIDENT. The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board are carried out, shall sign all leases, mortgages, deeds, and other written instruments and shall co-sign all checks and promissory notes.

(b) VICE-PRESIDENT. The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the board.

(c) SECRETARY. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) TREASURER. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX Committees

The Association shall have the right to elect members of the Architectural Control Committee, as provided in the Protective Covenants, at such time as all Lots in the Tract have been sold by the Grantor, as stated in the Protective Covenants. The Board shall also have the right to appoint a Nominating Committee, as provided in these Bylaws, and in addition thereto shall appoint other committees as deemed appropriate in carrying out its purposes.

ARTICLE X Books and Records

The books, records, and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Protective Covenants, Certificate of Incorporation, and the Bylaws shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI Assessments

Each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due, shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 1.5% (18% APR) per month, and the Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees in any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common area, roads, or abandonment of his Lot.

The annual assessment may be increased each year up to five percent (5%) of the maximum authorized payment for the previous year.

ARTICLE XII Corporate Seal

The Association shall have a seal in circular form having within its circumference the words "Hi-Country Estates Homeowners Association."

ARTICLE XIII
Amendments

These Bylaws may be amended at any regular or special meeting of the members by a two-thirds vote, provided that the amendment has been submitted in writing at the previous regular meeting. A copy of the proposed amendment shall be mailed to each member with the notice of the meeting at which the amendment will be considered.

ARTICLE XIV
Fiscal year

The fiscal year of the Association shall begin on the 1st of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

ARTICLE XV
Indemnification of officers, Trustees, and Employees

Except to the extent prohibited by then applicable law, this corporation shall reimburse, indemnify and hold harmless each present and future officer, trustee, and employee of this corporation and each person who, at the request of this corporation acts as a officer, trustee, or employee of any other corporation in which this corporation has an interest, from and against all loss, cost, liability and expense which may be imposed upon or reasonably incurred by him/her, including reasonable settlement payments, in connection with any claim, action, suit or proceedings, or threat thereof, made or instituted, in which he/she may be involved or made a party by reason of his/her being or having been a director, officer or employee of this corporation or such other corporation, or by reason of any action alleged to have taken or omitted by him/her in such capacity, if a disinterested majority of the Board of Directors of Hi-Country Estates Phase One (or, if a majority of the Board of Directors is not disinterested, then independent legal counsel) determines in good faith that such person acting in good faith (a) within what he/she reasonably believed to be the scope of this authority or employment, and (b) for a purpose which he/she reasonable believed to be in the best interest of the corporation.

The right of indemnification provided in this Article shall inure to each person referred to in this section whether or not the claim asserted against him/her is based on matters which arose whole or in part prior to the adoption of this section and in the event of his/her death shall extend to his/her legal representatives. The right of indemnification provided in this section shall not be exclusive of any other rights to which any such person, or any other individual, may be entitled as a matter of law (including without limitation, his/her rights under the Utah State Corporation Code), or under any agreements, vote of trustees or otherwise.

ARTICLE XVI
Ranking of Documents

In the case of any conflict between the Certificate of Incorporation and these Bylaws, the Certificate shall control. In the case of any conflict between the Protective Covenants and these Bylaws, the Protective Covenants shall Control.

IN WITNESS WHEREOF, We, being all of the Directors of Hi-Country Estates Homeowners Association, have hereunto set our hands this 28th day of February, 1997.

President

Vice President

Vice President

Secretary

Treasurer