

**R.M. OF LUMSDEN NO. 189
MINUTES OF THE TERRA DEVELOPMENTS
REZONING PUBLIC HEARING
HELD ON APRIL 23, 2015**

The Rural Municipality of Lumsden Council convened the Terra Developments Rezoning Public Hearing in the Council Chambers, on the evening of Thursday, April 23, 2015 at 8:30 p.m. with Reeve Jim Hipkin presiding.

Present: Reeve: Jim Hipkin
Councillors: Tom Harrison, Ian White, Kent Farago
Dale Srochenski, Jim Atcheson, Al Szeles
Chief Administrative Officer: Darcie Cooper
Asst. Administrator: Krystal Strong

Attendees: Bob & Eleanor Porth, A.L. Campbell, Bill Reid, B. Nadurak, Ron Kidd, Ralph Haryett, Todd Bodnar, Don Mickleborough, Steve Croft, Greg Porth, Paul Andre

The public hearing was held for the proposed zoning bylaw amendment to rezone a part of the SE ¼ 06-19-20-W2 from A – Agriculture District to partially C1 – General Commercial District, partially CR2 – Medium Density Country Residential District, and partially CR3 – High Density Country Residential District. The proposed amendment is intended to accommodate the proposed subdivision and development of 1 commercial parcel and 41 country residential parcels and to allow for the accommodation and replacement of existing, lawfully constructed buildings.

Verbal Submission:

There was one verbal submission made by adjacent landowner Greg Porth. He indicated that he was concerned about the affect the proposed development would have on his water supply. He resides on the [REDACTED]

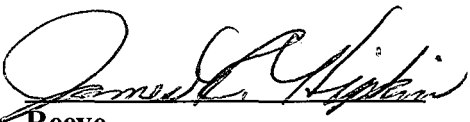

Written Submission:

There was one written submission received from Willows Wellsch Orr & Brundige LLP, solicitors for Flowing Springs Golf Greens (Regina) Ltd. which is attached hereto and forms a part of these minutes.

Adjournment:

Atcheson: "That we adjourn this meeting at 8:38 p.m."

CARRIED


Reeve

Chief Administrative Officer

WILLOWS WELLSCH ORR & BRUNDIGE LLP

BARRISTERS, SOLICITORS & NOTARIES

#401 - 1916 DEWDNEY AVENUE • REGINA, SASKATCHEWAN • S4R 1G9 • TELEPHONE: (306) 825-2191 • FAX: (306) 767-8198

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April 17, 2015

G. Gregory Willows, Q.C.
B.A., J.D.

Hal B. Wellsch
B.A., LL.B.

Donald G. Orr
B.Admin., LL.B.

David J. Brundige, Q.C.
B.A. (Hons.), J.D.

J. Paul Malone
B.A., LL.B.

Scott A. Mazinke *
B.Admin., LL.B.

Timothy J. Beler
B.A., LL.B.

Monte L. Stewart
B.Admin., LL.B.

Stewart D. Orr
B.A., LL.B., LL.M.

Louis A. Browne
B.A. (Hons.), LL.B. (Dist.)

Matt M. Sirols
B.A. (Hons.), LL.B.

Marlel R. Wellsch
B.A., J.D.

E. Olayinka Jarikre *
B.A. (Hons.), J.D.

Alexander R. Deacon
B.A., J.D.

Member of Collaborative
Lawyers of Saskatchewan

Robert D. McCrank (Inactive)

Richard P. Rendek, Q.C. (Retired)

Nicholas A. Kaufman, Q.C. (Retired)

R.M. of Lumsden No. 189
P.O. Box 160
300 James Street N.
Lumsden, SK. S0C 3C0

Sent to Fax No. 306-731-3572

No. of Pages: 6

Dear Sirs:

RE: Public Meeting Notice
Rezoning of SE ¼ Sec. 06-19-20-W2M
Flowing Springs Golf Greens (Regina) Ltd.
Our File No. 63789 DGO

We are solicitors for Flowing Springs Golf Greens (Regina) Ltd. (Flowing Springs) which operates the golf course adjacent to the above property. Our client is neither in support of or opposed to the proposed development. Flowing Springs Golf Course has operated in the RM for approximately 60 years and believes that it has been a good corporate citizen and taxpayer over these years. Although it welcomes development in the RM it wishes to ensure that the developer and the RM of Lumsden No. 189 are aware of the potential for future legal issues mainly from errant golf balls leaving our clients golf course and causing damage to the new homes. Over the past few years, the Joanne Goulet Golf Course run by the City of Regina and Aspen Links Golf Course located in Emerald Park have incurred legal claims due to the proximity of the golf course and errant golf balls causing damage to homes located next to the golf course. Our client uses power equipment and will be operating and maintaining the golf course at times that may be inconvenient for residential owners. Our client requests that as a condition of the RM approval that a Restrictive Covenant Agreement be entered into between the Developer, the RM and Flowing Springs. The Agreement would bind future owners of the residential lots and Flowing Springs will be indemnified from any liability for claims for errant golf balls and normal operational and maintenance activity on the golf course from the Developer and future owners. As well our client would propose that if the subdivision is approved that a 12 foot high chain link fence be required to be installed along the perimeter of the golf course, by the developer. This will minimize the chance of errant golf balls landing in the residential or commercial lots.

BRANCH OFFICE:
BOX 175, GRENFELL, SK, S0G 2B0
TELEPHONE / FAX: (306) 697-2500




WEBSITE: www.wwoillp.com
EMAIL: reception@wwoillp.com

In addition the golf course has a creek and ponds located near the proposed subdivision and our client has concerns that a young child may have unaccompanied access to the golf course and fall into the water. A condition of the subdivision should be that the Developer be required to cause a fence to be constructed to prevent access to the golf course from the subdivision.

The last concern that our client has is that the RM is proposing to widen the road leading into the subdivision and the golf course. This may affect our client's business and would ask that this construction work be completed at a time when the golf course is not busy. This should be coordinated with golf course management.

We have prepared a draft Restrictive Covenant Agreement for review by the parties. The Restrictive Covenant Agreement would be registered by a Miscellaneous Interest against all of the lots of the subdivision. If you have any questions, please feel free to contact Loney Anderson at 543-5050 or the writer.

Yours truly,

Per: 
Donald G. Orr

DGO/bh

E-Mail: dorr@wwobltp.com

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT is dated the ___ day of April, 2015.

BETWEEN:

DAKINE HOME BUILDERS INC.,
a body corporate, incorporated under
the laws of the Province of Saskatchewan
(hereinafter called "**the Grantor**")

OF THE FIRST PART

- and -

FLOWING SPRINGS GOLF GREENS (REGINA) LTD.
a body corporate, incorporated under
the laws of the Province of Saskatchewan
(hereinafter called "**the Grantee**")

OF THE SECOND PART

WHEREAS:

A. The Grantor is the registered owner of lands described as follows:

South East Quarter of Section 06, Township 19, Range 20, West of the Second Meridian, being surface parcel #109234997

(the said lands of the Grantor being hereinafter collectively called "**the servient lands**")

B. The Grantee is the owner of the lands described as follows:

Block AA, Plan 88R43134, Extension 0, being surface parcel #164344709
Block CC, Plan 88R43134, Extension 0, being surface parcel #109256429

(which lands are hereinafter collectively called "**the dominant lands**")

which dominant lands - located immediately to the north of the servient lands and adjoining thereto, and immediately to the west of the servient lands and adjacent thereto - are capable of being benefited by the restrictive covenant hereinafter set out under the circumstances hereinafter described.

C. The dominant lands have been and may continue to be used for the purpose of operating a golf course thereon, including the playing of the game of golf and the maintenance of the golf course and associated facilities (which includes the operation of motorized golf carts, other golf

equipment and course maintenance equipment) and for the purpose of a golf course pro shop and club house (which includes the preparation, sale and distribution of food to golfers and to the general public in full service dining facilities, licensed beverage rooms and outdoor facilities) as well as for the purpose of social events and gatherings and the provision of entertainment therefor in the said facilities and outdoors on the said premises (the said golf course and related facilities being collectively hereinafter referred to as "**the golf course facilities**").

E. The Grantor proposes to develop both residential housing lots and general commercial lots on respective portions of the servient lands (hereinafter referred to as "**the development project**") and has agreed for the benefit of the dominant lands and for Flowing Springs Golf Greens (Regina) Ltd. to encumber the use of the servient lands for so long as the servient lands or any part of them are used for the development project.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. For the benefit and protection of the dominant lands or any part or parts thereof and so as to bind the servient lands, the Grantor covenants and agrees that the Grantor, and each of its successors in title from time to time, will not use or possess any part of the servient lands, including the development project and each lot of the development project, whether residential or commercial, except on the following conditions:

- (a) The Grantor and each of its successors in title from time to time shall indemnify and hold harmless the Grantee, its employees, servants, contractors, agents, lessees and sub-lessees, successors and assigns ("**the indemnitees**") from and against all claims, demands, damages, losses, expenses, costs (including legal fees) actions, suits or proceedings by whomsoever made, brought or prosecuted in any manner against the indemnitees based upon, related to, occasioned by, arising out of or attributable to acts or omissions (including those that may give rise to a nuisance) of the Grantee, and each of its successors in title from time to time, as well as its and their lessees, sub-lessees, licensees, invitees, guests, contractors and agents in breaching the covenants, agreements, undertakings and obligations of the Grantee hereunder;
- (b) The Grantor and each of its successors in title from time to time shall not make any claim against the Grantee, its employees, servants, contractors, agents, lessees and assigns with respect to injuries, damages, losses, expenses, costs, including legal costs, claims, demands, actions, suits or proceedings by whomsoever made, brought or prosecuted in any manner, based upon, related to, occasioned by, arising out of, resulting from or attributable to the usual and ordinary operation and use of the golf course facilities by the Grantee, including but not limited to: damages or losses caused or occasioned by golf balls, golf carts or other equipment used by or in connection with the golf course facilities; and damages or losses caused or occasioned by bodies of water, vegetation and trees, or any other landscaping located on the golf course facilities, whether such injuries, damages or losses arise as a result of nuisance, negligence, or otherwise;

- (c) The Grantor and each of its successors in title from time to time shall indemnify and hold harmless the Grantee from any claims made by the occupants of the servient lands or their invitees against the Grantee, its employees, servants, contractors, agents, lessees and assigns arising from the usual and ordinary operation of the golf course facilities by the Grantee (whether for nuisance or damage to person or property), save and except for claims made by the Grantor and each of its successors in title and the occupants of the servient lands and their invitees arising from their own use of the golf course facilities as patrons;
- (d) The Grantor agrees to erect and construct a fence on the adjoining border of the golf course facilities and the development project, including residential Lots 1-7 inclusive of Block 1 and Lots 1 and MU1 of the General Commercial Zone. The fence will be a minimum of twelve (12) feet high, will be a chain link fence, and will not provide direct access onto the golf course facilities.
- (e) The Grantor and each of its successors in title from time to time acknowledges that the presence of the dominant lands immediately adjoining and adjacent to the servient lands enhances the value of the servient lands as residential and commercial building lots and will facilitate and aid the Grantor in the marketing of individual lots in the development project.
4. The covenants herein contained shall enure to the benefit of and be binding upon the Grantee and the Grantor and their respective successors and assigns, and shall be binding on all future owners of the servient lands or any part thereof, or any interest therein, and these covenants may be registered as annexed to and running with the servient lands and any lands that may hereafter be consolidated with the servient lands so that the said covenants will be a burden thereon.
5. The covenants herein contained shall be enjoyed, enforced or remedied by appropriate proceedings of the Grantee (or by the developer, Dakine Home Builders Inc., at the request of the Grantee) or any successors in title to the dominant lands from time to time, and the Grantor and its successors in title will pay all costs and expenses of the Grantee in any such proceedings, including legal costs on a solicitor and client basis.
6. The Grantor has the right to register an interest based on this Restrictive Covenant Agreement against the servient lands to protect its interests thereunder and to ensure compliance with all terms, conditions, provisions and covenants herein contained by the Grantor and any and all successors in title from time to time.
7. All covenants of the Grantor and its successors in title herein contained shall be joint and several where there is more than one successor in title to the lands comprising the servient lands.
8. The Grantor and the Grantee covenant and agree that they will execute all further deeds, documents and assurances in such form as counsel for the Grantee or counsel for the developer,

Dakine Home Builders Inc. may advise, and will do all acts and things which the parties may reasonably require, for the purpose of carrying out this agreement according to its true intent and meaning.

IN WITNESS WHEREOF the Grantor and the Grantee have hereunto affixed corporate seals duly authorized by the signatures of their respective proper officers in that behalf.

DAKINE HOME BUILDERS INC.

(C/S)

PER: _____

FLOWING SPRINGS GOLF GREENS (REGINA) LTD.

(C/S)

PER: _____