Study H-858 February 5, 2013

First Supplement to Memorandum 2013-7

Commercial and Industrial Subdivisions (Public Comment)

The Commission has received an email from Edward Weber, commenting on Memorandum 2013-7. It is attached as an Exhibit.

Mr. Weber's letter expresses his appreciation for the attention paid to his comments in this study, but makes clear that he will "continue to challenge any use, in the proposed law, of the terms "residential" or "nonresidential." See Exhibit p. 1.

Mr. Weber goes on to make critical comments about the attorneys and court personnel who were involved in litigation addressing the legal status of R-Ranch. *Id*. (In late December 2012, the Siskiyou County Superior Court found that R-Ranch is not a CID and is not governed by the Davis-Stirling Common Interest Development Act. See *R-Ranch Property Owners' Association v. Bullock et al* (Super. Ct. Siskiyou County, 2012, No. 12-000132).)

Mr. Weber concludes by reiterating a suggestion that he made in an earlier letter (which is attached to Memorandum 2013-7 at pp. 3-4). He suggests that the Commission study whether to broaden the existing scope of the Davis-Stirling Act, by redefining "common interest development" to mean "any corporation, validated by a federal, state or local government agency, purposed to manage and maintain property held in common by any group of California citizens, for any purpose, but especially for permanent or casual residence." See Exhibit pp. 2-3. He also proposes that such an entity be controlled directly by the membership, through majority votes. *Id*. at 3.

When Mr. Weber first made that suggestion, the staff noted that it was beyond the scope of the current study, but that it could perhaps be added to the list of possible future CID study topics that the staff is maintaining. See First Supplement to Memorandum 2012-48, p. 5.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

While the staff suspects that Mr. Weber's specific proposal would not be workable, the Commission has previously expressed its intention to examine whether any changes should be made to the scope of application of the Davis-Stirling Act. That general inquiry might address some of Mr. Weber's concerns.

Respectfully submitted,

Brian Hebert
Executive Director

EMAIL FROM EDWARD WEBER
(1/31/13)

Thank you very much for your forthright attention to the expanding concern over the commission's proposed use of the term "residential" as it struggles to redefine commercial and industrial uses, within and without the DSA. You can be sure that we will continue to challenge any use of the terms "residential" or "nonresidential" in this context. I suspect it is likely that if the commission simply dropped use of the terms "residential" or "nonresidential" from the proposed language and focused on most clearly defining commercial or industrial purposes to be exempted, our protests would end. On the other hand, as the commission struggles toward clarifying definitions of "residential" and "nonresidential," I endorse the process, as needed clarification of DSA which, in my own experience, would end much of the opportunistic abuse of the law in this regard. Existing ambiguity has already cost my association over a quarter million dollars in litigation fees in the past few years.

Let me further explain my focus and passion: Clifford Stevens, an attorney of the firm of Neumiller & Beardslee, a subordinate of Duncan McPherson of the same firm, without my prior knowledge or approval, has accessed tens of thousands of dollars of my property owner association assessment funds to finance his now 3 year old attempt to destroy, subvert and reduce my legal protections under DSA. Neumiller & Beardslee's argument relies on a pretentious surgical parsing of the undefined legal use of the term, "residential," and he has argued to the little respected or experienced Siskiyou County Superior Court that our environmentally preferred use of a small portion of the common area of R-Ranch in Hornbrook CA along the Klamath River for property owner camping, rather than for the full construction of permanent subdivision housing structures, is cause to remove DSA protections from we property title holders. This, even though property owners voted decades ago to actually include the language of DSA in our own governing documents, as they are now written. Stevens has claimed that DSA is only "Condominium Law." An understaffed and naive county court might be persuaded to concur with that deception. Then, what will other courts do? This matter should thus be as important to you as it is to we 10,000 or so California shareholders in R-Ranch properties.

A few communiques back I suggested language to prevent such matter from occurring ever again, so that opportunism does not attempt to trump the intent of the law. Please reconsider its clarifying idea once more.

Weber draft#2 Alternative Definition of a Community Interest Development

It is the intent of the California Legislature to extend the protections of the Davis-Stirling Act (DSA) to any and every California property owner who demonstrates a need for such protections.

Therefore, in the best interest of the citizens of California, a Common Interest Development is declared to be any corporation, validated by a federal, state or local

government agency, purposed to manage and maintain property held in common by any group of California citizens, for any purpose, but especially for permanent or casual residence. The corporation defined herein is declared to exist at the pleasure of said property owners, who control its activities by simple majority ballot; and that the governing corporation exists solely as a mechanism to provide and supply services determined as necessary by members, to maintain common areas, to enforce CC&Rs and governing documents, and to collect assessment fees as approved by its members/title-holders.

Thanks for your focus on these expressed concerns.

--
Mr Ed
Ed Weber