

Dear Members of the Board:

e-mail

January 26, 2010

I have lived in Crestwood since May 1987 and am a former president of the Crestwood board. For some time, I have been concerned about the direction of the Crestwood Homes Association. I write this letter because I am now extremely concerned about the current board's handling of the proposed relocation of the Rockhill Tennis Club from its current location to the former Reed mansion at 5236 Cherry, just north of lower Crestwood.

For decades the property at 5236 Cherry was owned by the Reed family and was used as a private residence. A few years ago, the Reed family listed the property for sale, and David and Stacy Graves bought it with plans to convert it into a bed and breakfast. In 2006 and 2007, the Crestwood board held discussions with the Graves about their plans, presented those plans to the membership of the Homes Association, and negotiated a restrictive covenant that imposed certain restrictions on the use of the property, including among others limits on the type and quality of improvements to the property, requiring that all guests on the property must be "overnight guests," and specifying that "[m]eals may be provided only to overnight guests and residents." The restrictive covenant permits the property to be used for other events but establishes limits on the size ("no more than 60 guests"), hours (held between noon and 11:00 p.m.), noise ("limit live musical entertainment to non-amplified or electrified music inside the premises"), and parking (all guests must be parked on the property or off-street) of those events. The Graves signed the restrictive covenant on December 1, 2007, but they never had it recorded with the Jackson County Recorder of Deeds. And the Crestwood board has never taken any action to require the Graves to file that restrictive covenant with the Recorder's office.

It is an elementary principle of real property law that, in order to be clearly binding on subsequent purchasers or assigns of real property, restrictions on the use of property should be recorded with office of the Recorder of Deeds. Thus, the restrictive covenant negotiated by the Crestwood board in 2006 and 2007 and signed by the Graves in December 2007 should have been recorded to insure its enforceability against subsequent purchasers.

The failure to make sure that the restrictive covenant was properly recorded has recently taken on much greater significance for the neighborhood now that the Rockhill Tennis Club wants to acquire the property and remodel it for a private membership club with four outdoor, lighted tennis courts (two covered by a bubble) and a swimming pool large enough for swim meets.

Since the restrictive covenant was never recorded, its provisions limiting the use of the property and the potential nuisances (increased noise, traffic, and parking problems) associated with events held on the property may not be binding on any subsequent buyer. It is not too late for the board to take action requiring the Graves to file the restrictive covenant with the Recorder of Deeds.

My concerns about the Crestwood board's actions regarding the old Reed mansion do not stop with the failure to insure that the restrictive covenant was properly recorded. Recently, I have been very concerned about the Crestwood board's approach to the possibility of a sale to the Rockhill Tennis Club.

First, I question whether the Crestwood board or even the full membership of the Association has the power to take a legally binding position on the issue. The Crestwood Homes Association was created in April 1922 as a benevolent corporation when the founders filed with the Jackson County Circuit Court Articles of Agreement. The Association remains a benevolent corporation. Nothing in the Articles of Agreement or the Association's by-laws gives the Association the power to act on property issues outside the boundaries of Crestwood.

Second, even assuming for the sake of argument that the board or the membership of the Association has the corporate power to take a position on the issue of the relocation of the Rockhill Tennis Club to the Reed property, I am very concerned about the actions of the current board on this subject. My concerns are two-fold.

Initially, I am concerned that three members of the board (a majority) have conflicts of interest. Specifically, president Paul Sinclair's law firm, Polsinelli Shughart, represents the Rockhill Tennis Club regarding its proposed relocation to the Reed property, and two other members of the board (Ginger Hertenstein and Mary Mullins) are currently members of the Rockhill Tennis Club.

Officers and directors of corporations owe a duty of loyalty and other fiduciary duties to the corporation and its members. It makes no difference whether the corporation is a benevolent, a non-profit, or a for profit corporation. The law imposes these duties on all corporate officers and directors. I am very concerned that the majority of the current Crestwood board is saddled with significant conflicts of interest, which – as far as I know – the members of the board have never adequately disclosed to the membership of the Association. I believe these conflicted members of the board should step aside and take no further role in the consideration of or the decisions about the proposed relocation of the Rockhill Tennis Club.

In addition, I am concerned about the process that the current board has followed in addressing the proposed relocation of the Rockhill Tennis Club to the Reed property. In the past, when confronted with a potentially contentious issue (such as replacing curbs and sidewalks or hiring a private security contractor to patrol our neighborhood), the board collected and distributed information on the potential costs and benefits of the proposal and scheduled – in a forum large enough for the entire membership to congregate – a meeting at which the members of the Association could discuss the proposal and decide on a course of action.

In the present case, the Crestwood board has taken a different and far less open course. Rather than collect and circulate unbiased information to the membership of the Association, the current board has remained essentially mute. When it has held meetings that have addressed the subject, they have been held in venues that have been inadequate for a meeting of the entire membership of the Association. For instance, one such meeting was held at the home of a Crestwood resident, and the 2009 annual meeting was held at EggTC (5107 Main), which was not big enough for the size of the crowd. In the past, we have held meetings at Second Presbyterian or Central United Methodist. We should hold meetings in those locations because they provide room for everyone concerned.

The point of this is not to debate the legalities of corporate governance. I am interested in keeping Crestwood a harmonious place to live. When board members appear to have conflicts of interest, it undermines any decisions or actions the board may take.

Regarding the proposed relocation of the Rockhill Tennis Club, I urge the board to take the following steps:

- The board members with actual or perceived conflicts of interest should recuse themselves from any further involvement in the Rockhill Tennis Club proposal;
- The remaining two disinterested board members should assemble and distribute to member of the Homes Association information about the proposal (the site plan; the size of the current and proposed future membership of the Rockhill Tennis Club; the proposed number, time of year, and duration of events that would be held at the property; the likely impact of the relocation on the neighborhood in terms of noise, light, traffic, and parking); and

- The remaining disinterested board members should schedule an informational meeting for the membership of the Homes Association in a nearby venue large enough for the entire membership to attend.

Finally, I believe the proposed relocation of the Rockhill Tennis Club is far different in kind and impact from the other neighborhood issues I have seen in my years in Crestwood. In this case, the impact of the relocation would be felt much more profoundly by the neighbors within a block of the Reed property than by the people (like me) south of 55th Street. As such, I believe it would be inappropriate for either the board or the membership to take a formal position on this issue. The city has an established procedure for notifying nearby land owners of any proposed zoning changes or variances required by Rockhill's proposal. The city then holds a hearing on those changes. Any homeowner in the neighborhood could appear at that hearing and seek to be heard on the issues. There is no need for the Crestwood Homes Association to take a formal position on this contentious and divisive issue.

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