

Jerry Wright

From: Randy Herring <jrherring@chadwickwashington.com>
ent: Monday, August 12, 2024 4:39 PM
To: LeeAnn
Cc: Michael Sottolano
Subject: RE: Birkdale

CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED COMMUNICATION

LeeAnn,

We are writing to you on behalf of Birkdale Homeowners Association ("Association") and its Board of Directors ("Board") regarding the Association's ability to purchase the golf course swimming pool, tennis courts, and the land appurtenant to the Association (collectively, the "land").

After a thorough review of the Association's governing documents, which include its Master Declaration, Single Family Declaration, Articles of Incorporation and Bylaws, as amended, as well as applicable law, the Association has authority, but is not obligated to, purchase said land. Please consider the following:

General Authority to Purchase Real Property

1. Article I of the Articles of Incorporation states that one of the purposes of the Association is to "have and exercise any and all powers, rights and privileges which a corporation organized under the Nonstock Corporation Act of the Commonwealth of Virginia may by law now or hereafter have or exercise."
2. Section 13.1-826(A)(3) of the Virginia Nonstock Corporation Act provides that unless the Articles of Incorporation provide otherwise, the Association has the right to do all things necessary or convenient to carry out its business and affairs including the power to purchase, receive, lease, or otherwise acquire, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever location.
3. Additionally, Article III, Section 2 of the Bylaws provides that the Board shall have "all of the powers and duties necessary for the administration of the affairs of the Association and **may do all such acts and things as are applicable law, the Declarations, the Articles or by these Bylaws required to be exercised and done by the Association.**" (*emphasis added*)

Spending Authority for Purchase of Real Property

4. Article V, Section 5.2 Declaration provides that assessments levied by the Association shall be used for "the management, maintenance, improvement, care, operation, renovation, repair and replacement of the Common Areas and improvements thereon and **other property owned or acquired by the Association of whatsoever nature.**" (*emphasis added*)

Common Area Definition and Annexation Authority

5. The Declaration defines "Common Area" to include all real estate specifically designated as such or as "Open Space" on recorded plats, in any Supplemental Declaration or in any amendment to the Declaration and all other real property owned by the Association which is intended to be devoted to the common use and enjoyment of the Owners.
6. Article II, Section 2.7 of the Declaration provides, in pertinent part, that "[n]otwithstanding the provisions of Section 2.2 of this Article, the Association shall have the right, at its discretion, at such time or times

as it shall determine, to annex, and subject Additional Area, or such time or times as it shall determine, to annex and subject the Additional Area, or such portions thereof, or any other real property, as the Association shall determine in its sole discretion, together with improvements thereon and easements, rights and appurtenances thereunto belonging or appertaining, to the provisions of his Declaration in whole or in part. (*emphasis added*)

7. Article II, Section 2.1 of the Declaration defines Additional Area as meaning, "[t]he real estate which is subject to this Declaration as of the first date of its recordation in the Clerk's Office is described in Exhibit A hereto and constitutes the first phase of the community generally known as 'Birkdale.' Declarant contemplates the extension of this Declaration to the real estate described in Exhibit B hereto or portions thereof and the possible extension of this Declaration to other real estate from time to time hereafter designated by the Declarant and located within a one-half (0.5) mile radius of the real estate described in Exhibit B (the real estate described in Exhibit B and such other real estate hereafter designated by Declarant and within such one-half mile radius being collectively referred to as the 'Additional Area'). However, Declarant shall not be obligated to bring all or any part of the Additional Area within the scheme of development established by this Declaration, and no negative reciprocal easement shall arise out of this Declaration so as to benefit or bind any portion of the Additional Area until such portion of the Additional Area is expressly subjected to the provisions of this Declaration in accordance with Section 2.2 below and then subject to such additions, deletions and modifications as are made pursuant to Section 2.2."
8. We note that Article II, Section 2.2 of the Declaration, which provides the right of the Declarant to annex certain property is not applicable. Section 2.2 has a sunset provision of 15 years after the date of the Master Declaration. The Master Declaration is dated November 17, 1988. Therefore, it is our opinion that this renders Article II, Section 2.1 and Article II, Section 2.2 of the Declaration moot.

Conclusion: Accordingly, the Association has authority to purchase the land and, if it complies with the procedures as set forth in the Declaration, make it part of the Common Area. The Association would need to declare the new property as Common Area and could annex the land in as additional property subject to the Declaration.

Please feel free to reach out to us if have any questions or require further assistance as you proceed with this matter.

Thanks,

James "Randy" Herring, Esquire | Chadwick, Washington, Moriarty, Elmore & Bunn, P.C.

201 Concourse Blvd., Suite 101

Glen Allen, Va 23059

P 804-346-5400 | F 804-965-9919 | E jrherring@chadwickwashington.com



CHADWICK
WASHINGTON
MORIARTY
ELMORE &
BUNN P.C.



I'm a CAI member.

Click here to find out why you should be one, too.



Earl Bishop <earlbishop8313@gmail.com>

RE: Birkdale - ATTORNEY/CLIENT PRIVILEGED AND CONFIDENTIAL COMMUNICATION

5 messages

Jerry Wright <jmwright@chadwickwashington.com>
To: Earl Bishop <earlbishop8313@gmail.com>

Wed, Mar 19, 2025 at 7:21 PM

ATTORNEY/CLIENT PRIVILEGED AND CONFIDENTIAL COMMUNICATION

Good evening Earl – Attached please find our Memorandum responding to the various questions regarding the possibility of purchasing or leasing the Pool Property at the Golf Club, which you provided to us in your prior email. I have also attached copies of our prior emails relative to these issues as well as copies of potentially pertinent documents we found during our cursory review of the Chesterfield County land records regarding the pool property and golf club ownership.

Bottom line from this Memorandum is that, as we discussed on the telephone last week, the first step to consider in our view would be to see (i) if Birkdale Golf is even in a position to carve out the Pool Property and sell it or (ii) whether the Pool Property is Recreation Area that is or can be subject to a Recreation Area Lease under the Declaration and whether Birkdale Golf or the current Declarant (Milhaus Corp.) has records of a Lease or can effectuate a Lease at this juncture. We note that Milhaus is “inactive” in the SCC but can reinstate.

If you have any addition questions, please do not hesitate to contact me.

Jerry M. Wright, Jr., Esquire | Chadwick, Washington, Moriarty, Elmore & Bunn, P.C. | Fellow, College of Community Association Lawyers
201 Concourse Blvd., Suite 101
Glen Allen, Va 23059
P 804-346-5400 | F 804-965-9919 | E jmwright@chadwickwashington.com

IMPORTANT CTA UPDATE: Corporate Transparency Act (CTA) UPDATE: on 2/27/25, FinCEN announced that failure to file a BOI Report by the current deadlines will not result in penalties. Instead, between now and 3/21/25, be on the lookout for FinCEN's revised "interim final rule" providing additional guidance and revised due dates. For additional details and information, please visit our website at <https://www.chadwickwashington.com/blog/>.



CHADWICK
WASHINGTON
MORIARTY
ELMORE &
BUNN P.C.



*** You may opt out of receiving further emails from us to this email address by replying with an email message that has the word 'STOP' in the subject line.**

*** This communication is from a debt collector.**

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From: Earl Bishop <earlbishop8313@gmail.com>
Sent: Tuesday, March 18, 2025 4:22 PM
To: Jerry Wright <jmwright@chadwickwashington.com>
Subject: Birkdale

Are we close? The natives are getting restless.

Earl Bishop

804-639-5915

804-339-5981 mobile

6 attachments

- Memorandum - Pool Aquisition Issues.pdf**
197K
- Birkdale - 08.12.2024 Email - Pool Purchase.pdf**
109K
- Birkdale - 08.27.2024 Email - Pool Lease.pdf**
98K
- Deed of Common Areas.recorded 07.17.1990.pdf**
168K
- Memorandum of Lease.recorded 07.17.1990.pdf**
332K

 **Declaration for Golf Property AND Birkdale.Fairways Group L.P. and Crimson Birkdal Limited.dated 12.6.1993.pdf**
1601K

Earl Bishop <earlbishop8313@gmail.com>

Wed, Mar 19, 2025 at 8:20 PM

To: Miriam Hoebelheinrich <mstough@vt.edu>, Mark Fink <Markfink63@gmail.com>, Ryan McCord <rmccord0001@gmail.com>, Sabra Quinn <sabraquinn@mac.com>, Sue Prill <sjprill@me.com>, "Betsy@martellofamily.org" <betsy@martellofamily.org>, Christopher Brooks <ChristopherFBrooks@outlook.com>

I have not read it myself but I think it is interesting that the first point he mentions is whether the property can be separated from the rest of the club. The conversation he mentions was when he asked me if I had seen anything about the Memorandum of Lease from 1990. This is privileged communication so we should not copy it and we should be aware of this in our meeting tomorrow.

Meeting at the library has its limits; they close at 8:00.

For the record and for recording minutes, I will have a short agenda. We will have Members Voice, then I will give some history, and Miriam can give some history of her activity, then we will start discussion. If anyone has particular issues, let me know so we can stay in order,

Earl Bishop
804-639-5915
804-339-5981 mobile

[Quoted text hidden]

6 attachments

 **Memorandum - Pool Aquisition Issues.pdf**
197K

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1601K

Miriam Hoebelheinrich <msh8810@gmail.com>

Wed, Mar 19, 2025 at 8:41 PM

To: Earl Bishop <earlbishop8313@gmail.com>

Cc: Miriam Hoebelheinrich <mstough@vt.edu>, Mark Fink <Markfink63@gmail.com>, Ryan McCord <rmccord0001@gmail.com>, Sabra Quinn <sabraquinn@mac.com>, Sue Prill <sjprill@me.com>, "Betsy@martellofamily.org" <betsy@martellofamily.org>, Christopher Brooks <ChristopherFBrooks@outlook.com>

Thanks for sending! I've done a quick overview and look forward to discussing the findings tomorrow. May I ask why this information is confidential? This all seems to be info relevant and accessible to the entire community.

[Quoted text hidden]

Earl Bishop <earlbishop8313@gmail.com>

Thu, Mar 20, 2025 at 8:57 AM

To: Miriam Hoebelheinrich <msh8810@gmail.com>

Cc: Miriam Hoebelheinrich <mstough@vt.edu>, Mark Fink <Markfink63@gmail.com>, Ryan McCord <rmccord0001@gmail.com>, Sabra Quinn <sabraquinn@mac.com>, Sue Prill <sjprill@me.com>, "Betsy@martellofamily.org"

<betsy@martellofamily.org>, Christopher Brooks <ChristopherFBrooks@outlook.com>

Attorney client communications are private privileged communications. The comments are unique to Birkdale.
We can choose to release it or just discuss it.

Earl Bishop
804-639-5915
804-339-5981 mobile
[Quoted text hidden]

Earl Bishop <earlbishop8313@gmail.com>
Draft To: Lee Ann <leeann@acswest.org>

Thu, Mar 20, 2025 at 1:18 PM

Earl Bishop
804-639-5915
804-339-5981 mobile

----- Forwarded message -----

From: Jerry Wright <jmwright@chadwickwashington.com>
Date: Wed, Mar 19, 2025 at 7:22 PM
[Quoted text hidden]
[Quoted text hidden]

6 attachments

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The Parcel Viewer User Guide

Main Page

Pop-Up Windows

Basemaps

Draw Tool

Print Menu

Print Results

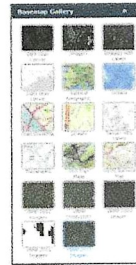
Select Tool

Parcel Buffer Tool

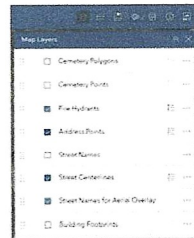
Tab >

Basemap Gallery

There are many different basemaps to choose from in the Basemap Gallery. Some of them display better than others. The VBMP Aerial imagery won't display when zoomed in too far, when this happens, zoom out until they appear.

**Aerial Imagery**

When using aerial imagery, the "Street Names for Aerial Overlay" in the layer list may need to be checked on to view them more clearly in the map. In addition, the "Building Footprints" layer can be turned off in the layer list to be able to view the overhead images of the buildings instead.

[Click here to Download the User Guide](#)

Mailed to Birkdale Comm Assoc
7-18-90

22753
14.50

BOOK 2100 PAGE 1848

THIS MEMORANDUM OF LEASE (this "Memorandum") is made as of June 1, 1990 between SPRING RUN ASSOCIATES, a Virginia general partnership, and BIRKDALE COMMUNITY ASSOCIATION, INC., a Virginia nonstock corporation.

Pursuant to Section 55-57.1 of the Code of Virginia (1950), as amended, the parties have executed this Memorandum in lieu of recording the hereinafter described lease:

1. Lessor. The name of the lessor is Spring Run Associates, a Virginia general partnership ("Lessor").

2. Lessee. The name of the lessee is Birkdale Community Association, Inc., a Virginia nonstock corporation ("Lessee").

3. Lease. The lease for which this Memorandum is recorded is the deed of lease dated as of June 1, 1990 between Lessor and Lessee (the "Lease").

4. Addresses. The following addresses are set forth in the Lease, but either party may by notice to the other specify a different address for notice purposes:

(a) Lessee: Birkdale Community Association, Inc.
c/o Associated Resources
Suite 102
5104 West Village Green Drive
Midlothian, Virginia 23112

(b) Lessor: Spring Run Associates
4312 Grove Avenue
Richmond, Virginia 23221

5. Leased Premises. The leased premises are described as (i) a parcel of land in the "Birkdale" community in Chesterfield County, Virginia, located at the intersection of Royal Birkdale Parkway and Birkdale Drive, more particularly described in Exhibit A attached hereto, (ii) the improvements to be constructed thereon by Lessor consisting of a 20-meter, six-lane competition swimming pool with side diving well, a men's and women's bath area, a cabana on the terrace, four competition tennis courts and such other recreational facilities as Lessor may construct thereon, and (iii) such equipment and other personal property as Lessor may provide to Lessee for the use, operation or maintenance of such improvements (collectively, the "Premises").

6. Term of Lease.

(a) Commencement Date. The initial term of the Lease (the "Initial Term") shall commence on a date specified by Lessor

(the "Commencement Date") which shall be not later than 30 days after the initial improvements to be provided by Lessor have been completed and a certificate of occupancy (if required) or other applicable permits have been issued authorizing their use for the intended purpose.

(b) Termination Date of Initial Term. The Initial Term of the Lease shall terminate at the end of the fifth "lease year". The term "lease year" as used herein shall mean a period of 365 (or 366 during any leap year) consecutive days. The first lease year shall begin on the Commencement Date or, if the Commencement Date is not the first day of a month, on the first day of the month following the Commencement Date. Each succeeding lease year shall commence upon the anniversary date of the first lease year.

(c) Rights of Extension or Renewal. Unless terminated in the manner provided below, the term of the Lease shall automatically be renewed for successive periods of five years each. Notwithstanding the foregoing, Lessee may, at its option, terminate the Lease at the end of the then current term by so notifying Lessor at least three months in advance.

7. Incorporation of Lease. All of the terms, conditions and covenants of the Lease are incorporated in this Memorandum by reference. In the event of any inconsistency or conflict between the provisions of this Memorandum and the provisions of the Lease, the provisions of the Lease shall control.

WITNESS the following signatures.

SPRING RUN ASSOCIATES

By: Richard P. Pouligny

Title: GENERAL PARTNER

BIRKDALE COMMUNITY ASSOCIATION,
INC.

By: Richard P. Pouligny

Title: PRESIDENT

STATE OF VIRGINIA

BOOK 2100 PAGE 1850

~~CITY/COUNTY OF~~ CHESTERFIELD

The foregoing instrument was acknowledged before me this
21ST day of MAY, 1990, by RICHARD P. BUCKINGHAM as
GENERAL PARTNER of Spring Run Associates, a Virginia
general partnership, on behalf of the partnership.

My commission expires: JULY 31, 1993

[SEAL]

[Signature]
Notary Public

STATE OF VIRGINIA

~~CITY/COUNTY OF~~ CHESTERFIELD

The foregoing instrument was acknowledged before me this
21ST day of MAY, 1990, by RICHARD P. BUCKINGHAM as
RESIDENT of Birkdale Community Association,
Inc., a Virginia nonstock corporation, on behalf of the
corporation.

My commission expires: JULY 31, 1993

[SEAL]

[Signature]
Notary Public

E:\4331\SRAD001.CLM

**J. K. TIMMONS & ASSOCIATES, P.C.**

ENGINEERS • ARCHITECTS • SURVEYORS • PLANNERS

711 NORTH COURTHOUSE ROAD • RICHMOND, VIRGINIA 23296-4099 • (804) 794-3500

**Legal Description
"Club House Site"**

Beginning at a point on the face of curb of the Club House site parking lot, said point being S 80° 05' 13" E 465.88' from the intersection of the north line of Royal Birkdale Parkway and the west line of Royal Birkdale Drive; thence leaving said face of curb N 45° 00' 00" E 67.55' to a point; thence Due North 127.59' to a point; thence N 45° 00' 00" E 19.48' to a point; thence Due East 137.00' to a point; thence Due South 15.00' to a point; thence Due East 290.78' to a point; thence S 28° 24' 38" W 308.16' to point; S 69° 38' 25" W 75.26' to a point; thence Due South 51.51' to a point; thence Due West 194.38' to a point on the face of curb of the Club House site parking lot; thence along the face of curb N 09° 37' 25" W 56.61' to a point; thence along a curve to the left having a radius of 140.92' and a length of 9.88' to a point; thence along a curve to the right having a radius of 5.00' and a length of 7.77' to a point; thence N 74° 23' 44" E 13.00' to a point; thence along a curve to the left having a radius of 158.92' and a length of 133.15' to the point of beginning and containing 2.735 acres of land.

*K. M. Cox By CLK*J. K. Timmons & Associates, P.C.
Kenneth M. Cox, C.L.S.

VIRGINIA:

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF CHESTERFIELD COUNTY, THE 17 DAY OF JUL 1990, THIS DEED WAS PRESENTED AND WITH THE CERTIFICATE.... ADMITTED TO RECORD AT 14:50 O'CLOCK. THE TAX IMPOSED BY SECTION 58.1-802 IN THE AMOUNT OF \$1.00 HAS BEEN PAID.

TESTE: RONALD P. LIVINGSTON, CLERK

CORPORATE HEADQUARTERS:

711 NORTH COURTHOUSE RD. • RICHMOND, VIRGINIA 23236-4099 • (804) 794-3500

FAX # (804) 794-7639

BRANCH OFFICES:

6803 STAPLES MILL ROAD • RICHMOND, VIRGINIA 23228-2014 • (804) 262-7396

FAX # (804) 266-7219

4411 CROSSINGS BLVD. • PRINCE GEORGE, VIRGINIA 23875-1455 • (804) 459-8685