

*August 15, 2005 Letter to Memory Lake Estates I Owners' Association; Opinion on Covenants.*

Law Office of Richard Deuser  
Century Plaza Building  
1075 Check Street, Suite 206  
Wasilla, Alaska 99654  
(907) 376-9484 phone  
(907) 373-0404 fax

August 15, 2005

Memory Lakes Owners Association  
c/o Israel Nelson  
P.O. Box 4802  
Palmer, Alaska 99645

Re: Memory Lakes Estates One Owners' Association - Opinion on Propriety of  
Use of Lot for Model Home;

To Mr. Nelson:

I understand that you are acting President of the Association. In that capacity, you have been approached by Michael Dablemont (sp?). He is the owner of Lot 1, Block 1, Memory Lake Estates One, plat #72-58. As the owner of this lot, he has asked you whether the applicable covenants permit and allow the use of the lot to construct a model log residential home and to promote sales of the log construction kits by tours of the model home.

In analyzing this question, the amended covenants at Book 0146 Page 0135 provide, in amended Article VI, paragraph k-2, that "Lot 1 ... Block 1 ... may be used for commercial or four-plex or less residential." This phrasing, although not an ideal of clarity, would, in my opinion, be reasonably interpreted to permit and allow a commercial use, particularly a commercial use that has a nexus to residential use. I would offer the opinion that a model log home is within the permitted uses allowed by the amended covenant.

This opinion is slightly qualified by the fact that later events did "muddy" the situation. The above referenced amendment is from May 1985. Thereafter, in November 2000, there is a "Fourth Supplemental" amendment of the covenants. The November amendment served to effectively replace Memory Lake Estates Community Association with six new entities. The former large Association was split among the new entities to make smaller and more effective home owner associations. Of the six new entities, Memory Lake Estates I Owners' was the successor to the lot at issue. The November 2000 amendment that created Memory Lake Estates I Owners' Association expressly references the original covenants and three subsequent amendments. Noteworthy, there is no mention in the November 2000 amendment of the May 1985 amendment that is the basis of permission to use

the subject lot for commercial activity.

There could be several alternative implications drawn from the failure to reference the critical amendment (while expressly calling out the three other historical amendments). One explanation is that the November 2000 amendment did not want to adopt the May 1985 amendment. A second is that the November 2000 amendment did not need to reference the May 1985 amendment for its purposes and, by silence, it remained in effect. The third alternative explanation, and most likely, is that the drafters of the November 2000 amendment overlooked the May 1985 amendment - i.e., it is a drafting oversight.

In all events, there is nothing in the November 2000 amendment that would purport to limit the rights of an owner to assert rights granted by the recorded May 1985 document. Consequently, it is my opinion that the November 2000 amendment does not change the conclusion. That is, the May 1985 amendment is still operative to define the allowable use of the subject property. In my opinion, the allowed uses include use of the lot for purposes of building and showing a model home.

Call if this creates further questions.

Sincerely,

Richard Deuser