



**DC Ranch Association
Board Report 3-2-2020 #3**

Subject Matter: Pioneer Neighborhood Assessment

Background: On February 24, 2020, a Pioneer neighborhood meeting was held at Desert Camp Community Center. The purpose for the meeting was to inform Pioneer owners that the Ranch Association Board was contemplating the creation of a neighborhood specific assessment for the Pioneer neighborhood owners. I presented at that meeting. The following encapsulates the material presented.

The Ranch Master CC&Rs provide that all neighborhoods are subject to neighborhood assessments.

- *2.18 "Neighborhood Expenses" are defined as the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods.*
- *8.2 The Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred.*

Unlike all other DC Ranch neighborhoods (15) and sub-associations (10), the Pioneer neighborhood has not paid a neighborhood specific assessment since its inception, more than 20 years ago.

DMB never set a neighborhood specific assessment for Pioneer; meaning that all DC Ranch owners via the Ranch Master assessment have paid the Pioneer Neighborhood expenses (operations and reserves) over the years. Pioneer owners have always paid the same Ranch Master assessment everyone else pays (now \$87.65) and the Community Council assessment (now \$52). The question at hand is, should the Pioneer Neighborhood owners be required to pay a neighborhood specific assessment?

The matter was visited by the Ranch Association Board on October 15, 2012. The Board, by a 4-1 vote decided not to impose a neighborhood specific assessment for Pioneer. Among other considerations, the following input provided some guidance to the Board.

- In an email from DMB's Melinda Gulick at the time, she commented as follows "The neighborhood assessments were established based on restricted access - specifically gates. For obvious reasons, neighborhoods with sub-associations do not have neighborhood assessments since the Ranch Association does not maintain anything within their gates. Pioneer Village is the only neighborhood in DC Ranch without restricted access. I cannot recall any documentation for the decision other than the annual budgets for DC Ranch. Pioneer Village was the first neighborhood within DC Ranch - so the very first budgets will indicate the decision. In addition, I assume the road was included in reserve studies which would confirm that the Ranch Association was aware it was a private road."

- Two attorneys opined on the matter stating that the Board could set a neighborhood specific assessment.
 - Augustus Shaw (Shaw and Lines) and Lisa Borowsky (Davis, Miles, McGuire, Gardner)

Not dissimilar to all other neighborhoods and sub-associations, Pioneer incurs operating and reserve expenses. Our best estimate shows \$22,000 in annual operating expenses and \$17,700 in annual reserve contributions starting January 1, 2021. Operating expenses are composed of administration, landscape, maintenance, utilities and security. Reserve funding addresses walls, roads, common mailbox center, landscape and irrigation. The related total monthly neighborhood specific assessment is estimated at about \$67.

Pioneer's Supplementary Declaration provides the following language in the section titled *Sub-Declaration Neighborhood Assessments: The residential lots depicted on the Plat (the "Lots"), alone or together with certain other property within the Development may be designated by the Ranch Association as a Neighborhood, and may thereafter be subject to one or more Neighborhood Assessments levied by the Ranch Association with respect to relevant Neighborhood Expenses, including without limitation expenses associated with facilities now or hereafter located within the Neighborhood. The amount of any such levy would be established by the Ranch Association in accordance with the terms of the Ranch Declaration.* The point here is that the language says *may be subject to*...rather than *shall*. It is important to note that there are two other neighborhoods that maintain the exact language in their supplementary declaration; these neighborhoods have always paid a neighborhood specific assessment.

Comments from Pioneer members at the February 3 board meeting suggested that the governing documents should be amended to forever excuse Pioneer from paying a neighborhood specific assessment. Following that meeting, I received many emails from Pioneer owners supporting that position.

In order to amend the CC&R's and Supplementary Declaration, written consent of DMB and the Community Council, along with 75% of voting members, is required per the Ranch Master Declaration. The following sections apply in this case.

- *Section 1.3: Nothing in this Section shall preclude Recording a Supplemental Declaration or other instrument applicable to any portion of the Ranch containing additional restrictions or more restrictive provisions. However, any Person who seeks to Record any instrument applicable to the Ranch must obtain Declarant's written consent so long as Declarant owns any property Described in Exhibits "A" or "B" of this Declaration and that of the Community Council thereafter.*
- *Section 19.2: Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing 75% of the total Class "A" votes.*
- *Section 19.1 By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state or federal governmental agency.*

Any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. So long as Declarant owns property described in Exhibit "A" or "B" for development as part of the Ranch, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

At the February 24 neighborhood meeting, Pioneer owners commented that being an ungated neighborhood justifies not having a neighborhood specific assessment. Although Market Street Condominiums is also ungated, it does pay a neighborhood/sub-association specific assessment. Another position was that since Pioneer was the first DC Ranch Association neighborhood and because it is ungated, outsiders and realtors often tour the neighborhood to see if they like DC Ranch...setting Pioneer apart from other gated neighborhoods/sub-associations. A final sentiment was that if a neighborhood specific assessment was to be approved by the Board, could the monthly assessments be phased in over a couple, or a few years.


Recently, as the Board discussed this matter with its legal counsel, Alexis Firehawk (Carpenter, Hazlewood, Delgado, Bolen) opined in support of the two 2012 legal opinions...the Association can establish a neighborhood-specific assessment for Pioneer.

This Pioneer situation has been a long-standing one and the decision to either establish a neighborhood specific assessment, or continue with the current practice, rests with the Board. As the Board considers the appropriate decision it must reflect on its fiduciary duty not to the members, or the Pioneer neighborhood, but to the corporation itself. That decision should be one the Board feels is equitable to all DC Ranch Association members and that the position can be defended.

Should the Board decide to establish a neighborhood specific assessment for Pioneer, one final consideration is the allocation/separation of reserve funds from Ranch Master in which Pioneer is commingled. The commingled reserve is currently fully funded. Putting both entities in a position to remain fully funded should be the intent and will be considered when separating the reserves, should the Board decide to impose a neighborhood specific assessment on the Pioneer neighborhood owners.

Finally, if the Board, its Budget and Finance Committee, or Pioneer members should be interested in reviewing supporting data behind the proposed operating budget and reserve plan proposal, we stand ready to take part in that review.

Recommendation: I am not making a recommendation on how to proceed as this is a governance related decision the Board must make.



Darren Shaw, Executive Director