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Subject: L'Esprit Neighbors - Dead Wrong
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L'Esprit Neighbors,

A significant threat to private property rights in L'Esprit is finally dead, but it took four years. There was never any structured LPOA communication or a membership vote, much less a signed attorney's opinion adopted by the board. Multiple tract owners secured their own legal guidance, and a lawsuit originally filed in 2023 was just settled.

Over two years ago, Circuit Court Judge Jerry D. Crosby II stated via court order that he had a "substantial question" about the claim by defendants (LPOA and others). If a jury had afterwards ruled in favor of the plaintiff, this court order pre-determined that "imposition of fines, assessments, or liens" is a violation of the plaintiff's "substantial rights" that "unnecessarily caused an immediate and irreparable injury".

Here's a recap of this 'prescriptive easement' issue. Bottom line, neither LPOA volunteers nor the board's attorney can require that your non-easement private property be made available for horseback riding. You can independently choose to provide access. But, LPOA shouldn't be involved in that decision, nor promote that non-easement private property as being a recorded L'Esprit bridle path easement. For more information, please visit www.ourspiritcommunity.com.

"Let me be absolutely clear on this: to the extent you may think LPOA has authority to simply declare new easements across the Underwoods' property, or even to expand the existing easement: you are dead wrong. Your lawyer, Mr. Thomas, is dead wrong. Ms. Rapaport is dead wrong. Even a cursory review of Kentucky law shows as much. A recreational use of private property owned by another does not, and cannot, create a prescriptive easement or any claim of right to access that

private property.” (February 16, 2024 Letter To Rollo Fox, LPOA President – Daniel E. Hancock, Esquire – Fultz Maddox Dickens PLC)

In an unsolicited email dated April 7, 2022, Elizabeth Rapaport (board member) self-proclaimed as follows to a tract owner regarding non-easement private property which was closed to horseback riding due to safety concerns about an eroding creek bank, **“[b]eing as familiar as I am with that area and easements. [sic] I believe that the closure is a violation of Ky Real Estate Law regarding Prescriptive Easements.”** This is non-easement private property concerning which LPOA possesses no ‘prescriptive easement’ for recreational horseback riding (KRS 411.190). Other board members immediately clarified that Rapaport’s statement wasn’t LPOA policy. In addition, LPOA didn’t have a signed attorney’s opinion that supported her personal assertion.

In an unsolicited letter dated April 25, 2023, LPOA board attorney Hal Thomas wrote to tract co-owners that, **“the bridal [sic] path easements are not only shown on recorded plats, but their use by property owners in L’Esprit Subdivision has long since created prescriptive easements which cannot be blocked or otherwise interfered with.”** L’Esprit bridle paths aren’t ‘prescriptive easements’. Further, the section of land that Thomas referenced is non-easement private property concerning which LPOA possesses no ‘prescriptive easement’ for recreational horseback riding (KRS 411.190).

In an email dated December 23, 2023, responding to an application to LPOA for a Declaration-permitted fence on non-easement private property, Architectural Control Committee Chairperson Trish Henrion wrote that the ACC, **“has denied your fence application because the erection of a fence in the proposed location transects and**

significantly encroaches on a path where Members of L'Esprit have been riding for decades.” This is non-easement private property concerning which LPOA possesses no ‘prescriptive easement’ for recreational horseback riding (KRS 411.190). In fact, Henrion and other LPOA volunteers came onsite to firsthand observe land survey stakes that confirmed this requested fence would only be erected on non-easement private property.

In an unsolicited letter dated December 23, 2023, LPOA board attorney Hal Thomas wrote to tract co-owners that, ***“L'Esprit has denied your request to build a fence which would partially block a well established bridle path used by the residents of L'Esprit for thirty (30) plus years.”*** This is non-easement private property concerning which LPOA possesses no ‘prescriptive easement’ for recreational horseback riding (KRS 411.190).

In a May 14, 2024 email response to a tract owner’s application for LPOA approval of a Declaration-permitted fence on non-easement private property, ACC Chairperson Henrion stated, ***“I am writing to inform you that your fence application as presented has been denied by the L'Esprit Property Owners Association (LPOA) Architectural Control Committee (ACC) based on the concern that if the fence in question is extended up to the edge of Harrods Creek (as indicated on your application) that fence would prohibit access to what may well be determined to be Bridle Path by prescriptive easement.”*** This is non-easement private property concerning which LPOA possesses no ‘prescriptive easement’ for recreational horseback riding (KRS 411.190). That ACC denial was immediately rescinded after the tract owner’s attorney sent correspondence to LPOA.

In a May 28, 2024 court filing concerning the referenced lawsuit that included a ‘prescriptive easement’ claim, LPOA’s legal counsel stated, ***“Riders have continuously used the***

Bridle Path along the North fence line since the mid-1980s.” Riders haven’t continuously used ‘the Bridle Path’ (recorded L’Esprit bridle path easement). Rather, this is non-easement private property concerning which LPOA possesses no ‘prescriptive easement’ for recreational horseback riding (KRS 411.190).

Last, the Underwoods received this important written feedback from an insurance agent, ***“you typically don’t know the skill level of individual riders and horses, nor can you reasonably enforce the proper use of safety equipment. These factors, combined with the inherent risk of horseback riding as a recreational activity, predictably will increase your liability exposure if you permit private property access.”*** If you, too, have a recorded L’Esprit bridle path easement on your tract, perhaps you should consider getting it re-surveyed to determine if horseback riders are accessing your non-easement private property.

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