To:	Howard Cihak, General Manager
From:	Stephen H. Moriarty, Chadwick, Washington, Olters, Moriarty & Lynn, P.C.
Re:	Acquisition of Lots in Section 8A and subsequent Water & Sewer installation
Date:	July 18, 2000

This is written in furtherance of our conversation this morning and for the purpose of addressing the potential issues raised in it.

The long-range plan that you described entailed the following:

a. Taking advantage of the desires of some owners - specifically in section 8A - to convey their lots to LHCC;
b. Combining those acquisitions with the many lots in that Section already owned by LHCC;
c. Running water and sewer ("W&S") lines throughout Section 8A;
d. Selling the improved lots at substantially higher prices than the current values would justify;
e. Charging hook-up fees to the new owners (when they built homes); and, finally,
f. Using the profit on the sale of the lots to provide for the needs of the Association, in particular the roads and clubhouse.

First, there appears to be no legal barrier to pursuing this path.

Second, there are several issues which relate to *how* this is accomplished that must be evaluated by the Boards of Directors.

1. Is there sufficient water supply to accommodate these prospective new homes? This is more of an engineering question than a legal one.
2. Will the improved sewage treatment facility be able to handle the additional homes at some time in the future? (Presume that the balance of the current W&S lot owners all build homes.) Once again, this is an engineering question.
3. Will there be any expense to current owners for the W&S extension? (I gather that the plan is for a construction loan to be secured on the basis of ownership of the lots, with the debt to be repaid from the sale of the lots after the extension is done.) Charging present owners for development efforts could be considered beyond the appropriate duties and powers of the LHCC Board.
4. How will the Boards address the question of who gets the W&S? (Many lot owners have been awaiting the services for years; some may have even paid assessments.) Since the purpose of this enterprise would not be to advance W&S for its own sake but to finance the repair of the roads and completion of the clubhouse - projects that benefit every owner regardless

of where his or her lot is situated – this discretion can be supported. Like on every other issue, the Directors must exercise their best judgment in furthering the best interests of the Association at large and not certain individuals in particular.

5. The biggest concern I have is how to handle the disclosure of this plan. If the Boards keep this confidential, those giving up lots (in the belief that the property is worth little) might be upset to find that LHCC took them with the plan to upgrade them for sale in order to create substantially higher values and possibly reap higher purchase prices. Certainly, if the Board approaches lot owners and attempts to convince them of the futility of waiting for W&S, and then after acquiring their lots installs it for the sake of the profit of LHCC, complaints are more predictable and valid.

On the other hand, if the purpose of this venture is to maximize the benefit to LHCC by acquiring land cheap and selling it high, the public disclosure of this plan would jeopardize its full potential. Owners within Section 8A might be inclined to hold onto their lots, or other individuals might offer to pay a small price for some of them in order to take advantage of the proposed extension of W&S. (My suspicion is that most 8A owners would take advantage of the opportunity to get rid of their lots regardless of what is proposed, but speculators might step between LHCC and the owners.) The attendant risks, therefore, arise from not telling potential conveyors of the lots about the future plan (risking charges of fraud later if the W&S is installed and the lot values climb), or from telling them (and risking the diminution of the rolls of potential conveyors because they want to take advantage of the W&S extension).

The law of fraud in Virginia, especially as it pertains to the value of real estate, emphasizes that representations of present or past fact are to be scrutinized: false statements about such facts, made with the intention that someone will rely upon them to their detriment, will support a claim for fraud. But representations of future facts tend to be seen as guesses and speculation which will not support such a claim. At this juncture, LHCC is in the process of attempting to make a plan for the future, and a variety of hurdles may arise creating enough doubt about the result that the intentional withholding of this information is not likely to support allegations of fraud. (The past 30 years at LHCC certainly bear that out.) In addition, in the conveyance of land, there is no authority for the proposition that the purchaser owes a duty of disclosure to a seller. Such duties typically run the opposite direction. What complicates this situation is that both seller and purchaser are members of the same community association, with the "buyer" being represented by directors who owe a fiduciary duty to the seller.

At the outset of this venture I recommend that the Board do the following: calculate how many lots are needed in order for this project to be

successful. This can only be done by knowing (within the realm of reason) how much the lots will command once W&S is installed, how much the extension project will cost, and how much is necessary to be spent on roads and other necessary (and fairly immediate) repairs. Depending on whether any more (and if so, how many more) lots than LHCC already owns are necessary in order to make the plan work, the Boards can then return to the issue of how, if at all, to reveal this plan to the public at large. Under any circumstance, however, I suggest that the Board consider that the biggest conflict will arise in the political arena. The issues enumerated, above, will likely be factors in it. In addition, at some point, the LHCC membership will have to vote on whether to permit the sale of common property (which is what the lots are or will be upon acquisition). The recent amendments to the Articles of Incorporation make this less burdensome than in the past, but if a substantial part of the membership has been alienated by this venture it might not win approval when it comes time to sell the lots. (That would be a calamity, if the LHEUC had already paid for the W&S extension with borrowed money that it could not later sell, as it the plan now.) Finally, I suggest that the Boards of LHCC and LHEUC presume that the acquisition and extension project will become public knowledge and plan accordingly.

For these reasons I suggest that the Board do ***all*** of its homework well in advance so that the community will understand and appreciate the benefit it will receive if this plan is brought to fruition.

Quite frankly, this enterprise strikes me as a brilliant way to take advantage of assets it already possesses in order to address problems that will not go away. To the extent that the current administration can finally use the lots that ILC surrendered to LHCC as part of the settlement in 1984 to (at least in part) address ongoing capital needs without assessing additional costs to the dues-paying members of LHCC it should be encouraged and applauded.

Please let me know the outcome of the meeting and what, if any, other issues arise. If necessary, I will endeavor to address any legal issues in time for next week's Board Meeting.