



MEMORANDUM

TO: Board of Directors, The Jonathan Association

FROM: David G. Hellmuth, Esq.

DATE: January 19, 2021

RE: Eitel House Property (Association Common Area)

FILE: 13237.0001 (General Legal Matter)

Board Members:

This Memorandum follows the request of the Building & Grounds Committee (“Grounds Committee”) of The Jonathan Association (the “Association”) for the Board of Directors to seek legal guidance as to the Association’s right to sell the property known as “Eitel House.”

I last evaluated several questions regarding the treatment of the Eitel House back on June 10, 2015. At the time, the Association had several question regarding the treatment of the Eitel House, including the Association’s rights with respect to the Eitel House property. Attached is a copy of my Memorandum dated June 10, 2015.

Question: As to the current inquiry, the question is: What options does the Association have to sell the property?

Answer: As noted in the Memorandum dated June 10, 2015, the Eitel House is Common Area, owned by the Association. The Articles of Incorporation of the Association contain restrictions on transfers of Common Area. Specifically, Section f. of Article II of the Articles of Incorporation provides that the Association’s purposes are limited, as follows. The Association’s purpose [is limited] to:

“f. dedicate, sell, grant, bargain, convey, or transfer all or any part of the Common Areas or any right, title estate or interest therein to any public or municipal agency, authority, corporation, or utility for such purposes and subject to such conditions as may be agreed to by the members. **No such dedications, conveyances, or transfer shall be effective unless assented to by two-thirds (2/3) of each class of members of the Association who are voting in person or by proxy at a meeting called for this purpose.**”

(Emphasis added).

Based on the foregoing quoted language, the Association would need to call a meeting of the members and obtain the affirmative vote of 2/3rds of the members to sell the Eitel House to a public or municipal agency, authority, corporation, or utility. There is no restriction on the sale of Common Areas to an individual. In fact, Section d of Article II of the Articles of Incorporation allows the Association the general right to "...convey, sell, lease transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association..."

By reading Sections d and f of Article II of the Articles of Incorporation together, it is clear that the Association can sell or convey the Eitel House to a private third party individual, but not to any public agency or authority or corporate entity.

In addition to my Memorandum dated June 10, 2015, I am attaching a copy of the Articles of Incorporation of The Jonathan Association for your information and review.