



Bellevue Neighborhood Mediation Program

425-452-4091

The Tiny Town Dispute

by Terry Leahy, Esq.

Washington's growth management policies have spawned thousands of "Tiny Towns", many right here on the Eastside. (And some aren't so tiny, either.)

These Tiny Towns will, in coming years, spawn many of the disputes which neighborhood mediation programs handle. To be effective in resolving such disputes, we mediators must understand something about what these Tiny Towns are, what rules govern them, and what group dynamics are often at play in the disputes which arise.

What is a Tiny Town? It's simply my shorthand for the more familiar phrase "Community Association." A community association is basically a bunch of property owners who are inextricably (for better or for worse) bound to one another through some property they all own together.

A community association comes in two sizes: (1) regular and (2) compressed. The regular association is typically a single-family residential neighborhood with some common amenities. Tam O'Shanter, Issaquah Highlands and Snoqualmie Ridge are all good examples. The compressed association is a condominium association. I call it compressed because it is basically your garden variety single family neighborhood with common amenities, only drastically shrunk to cram into an acre or less the number of "homes" and common amenities we used to spread over ten acres or more.

It is this "common amenities" piece that distinguishes a Tiny Town from what I'll call a "Covenanted Neighborhood." Many Bellevue neighborhoods have recorded restrictive covenants

containing restrictions against home businesses, trailers in the driveway, fences in the front yard, and various other eyesores. But these Covenanted Neighborhoods lack any common amenities (say a private park or pool) requiring maintenance and supervision, and so there's no need to create a governing body to oversee management of the amenities. (We see these neighbor-versus-neighbor disputes in our mediation program in part because no community association exists for a neighbor to call on for enforcement of a restriction.)

A word about "common amenities" and condominiums: Often, the condominium *is* the common amenity. Imagine a stripped down condo project, no pool, no cabana, nothing but a building containing condominium units. In that scenario, the *building* is the common amenity. That is, each "unit" is individually owned, but the *building* in which those units exist is owned "in common" by everyone. (It is the legal equivalent of a family home in which each member of the family "owns" his or her respective bedroom, but the home itself is owned by the entire family.)

Common ownership of property by an unwieldy number of owners poses the problem of how to care for the property. And that's where Tiny Towns come in. Why not let the masses democratically elect a handful of owners to handle the task of caring for the common property?

That common sense solution to the challenge of caring for the common property has gained

Continued

widespread acceptance over the years. And so now there are a bazillion of these Tiny Towns in existence to take care of these properties.

Only it didn't stop there. Somewhere along the way, the notion of "caring for the properties" took on a larger meaning. It came to include preserving and enhancing the aesthetics of the neighborhood and to include managing the rights and duties of individual owners in their relationships with their neighbors.

And, of course, performing these expanded tasks takes people, organization, time and money. What evolved over time is the community association industry which now exists, which looks something like this: Owners form a non-profit corporation; they make budgets and raise necessary funds through assessments; they spend those funds on caring for the property and on performing their other governance tasks; and, though the elected "Board" is all volunteer, they pay professionals - managers, lawyers, accountants, consultants - to help them perform these increasingly complicated governance tasks.

The most recent development in this ongoing evolution of Tiny Towns is a growing backlash by owners who are "Mad As Heck!" and are determined to fight back.

And that's where we - volunteer mediators - come in. Those are the fights we will be seeing. Indeed, they are already here. And if you haven't handled one yet, chances are good that you very soon will.

The subject matter varies a lot, but certain common themes tend to show up in these disputes. The four most common are: (1) my home is my castle, I can do what I want; (2) *your* home is part of *my* castle,

too (in that covenants restrict your conduct so that I may enjoy my castle in peace); (3) *they* (the association board, the manager) should take care of the problem, not *me*; and (4) *they* (the association board, the manager) should stop picking on me, since others are doing what I'm doing, and no one is bugging *them*. Being sensitive to these themes will improve your effectiveness.

Certain subject matters have unique dynamics. A design review dispute, for example, is almost *never* about the money. Effective mediation of this dispute often involves creating, in the mediation, the exchange of information about desired changes, costs of changes and impacts of changes which should have (but didn't) take place in the actual design review process.

A repair dispute, as another example, is almost *always* about the money. A unit owner wants everyone - i.e. the association - to foot the bill to repair damage to his unit. And everyone else wants him to pay for it himself. Or one group of owners want building repairs kept to the minimum absolutely necessary while another group is willing to spend whatever it takes to fix both the immediate damage *and* the underlying root cause of that damage.

Then there are collection disputes, which are quite often about a "failure to communicate," in which getting the owner, the treasurer, the manager and the lawyer to do the math and agree on the amount actually owed is vitally important. Once this is achieved, negotiating payment terms is a comparative piece of cake.

Terry Leahy is a lawyer and the founder of the Bellevue law firm, Leahy.ps. He has been guiding Eastside owner associations and property owners to sensible solutions of their disputes for over 20 years. Terry is also a volunteer mediator with the Bellevue Mediation Program.