

December 17, 2015

**PERSONAL & CONFIDENTIAL**

Susan Steinkraus  
N53 W16690 Prairie Dawn  
Menomonee Falls, WI 53051

RE: Creekwood Crossing at Menomonee Falls Homeowner's Assoc. v. Brzozowski, et al.  
Waukesha County Case No. 14-CV-1045

Dear Susan:

Unfortunately, during a conference call yesterday, we were informed that Judge Foster has ruled in favor of the Brzozowskis following our November 17, 2015 trial.

During the telephone conference, Judge Foster explained her reasoning and the process by which she arrived at her decision. First, she noted that after hearing the testimony regarding the potential verbal approval of the structure, she believed Mr. Brzozowski's account of inviting Troy to view the property and the brochure. However, this alone was not determinative in her analysis.

Judge Foster also indicated that she believed there was ambiguity within the paragraph of the deed restrictions prohibiting outbuildings. Despite only a single "definition" of outbuilding being presented at trial, she stated the term was ambiguous. She also described the deed restrictions as "general" and suggested that if the Association wished to prohibit certain structures such as the Brzozowskis', it should take action to amend the restrictions.

Finally, Judge Foster indicated that principles of equity prevented her from finding in our favor. Several factors influenced her decision, but she specifically referenced the other playsets and gazebos currently standing in the subdivision and the five-year time gap between the construction of the building and the complaint about the building. Interestingly, Judge Foster called the playhouse an outbuilding, but said it was a "slight violation" of the deed restriction that did not warrant removal in light of the other similar playsets in the subdivision.

At the conclusion of the call, Judge Foster stated that our request for removal of the structure was denied and that in accordance with typical practice, costs—not attorneys' fees—would be taxed against the Association. She also ordered that any special


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assessment levied against the homeowners in the subdivision exclude the Brzozowskis. Finally, she stated that the lien levied against the Brzozowski's property be released.

If you wish to file an appeal of Judge Foster's decision, the action must be initiated within 45 days of the entry of the final Order. At this point, there has not been a final Order entered, but I anticipate such an Order will be entered within the next few days.

I am sorry to provide you with this information. Please feel free to contact me regarding the Court's decision, to discuss your desire for moving forward with an appeal, and to address any other questions regarding this matter.

Very truly yours,



Michael R. Kruse  
1386841\_1  
MRK:mrk

cc: Troy Wagner (via email: [tcwagner@wi.rr.com](mailto:tcwagner@wi.rr.com))