

# **A Brief History of the Four Seasons at Charlottesville**

Researched and Compiled by Larry Miller

## **Foreword**

This is a summary of events for the Four Seasons at Charlottesville active-adult community. It is compiled based on reading many legal documents, the first-hand accounts of the earliest residents, and assorted other sources. The author first learned of a planned K. Hovnanian Four Seasons community somewhere in the Charlottesville area in 2005, signed a contract to build a home in April of 2006, watched the early construction of Phase I, and on January 11, 2007, went to settlement as a homeowner in the new community.

The intent of this history is to help current and future homeowners have a better understanding of the early history and struggles of the community. As with all histories, this one is both about the events of the past and the reflective bias of the present. Any assumptions by the author on the undisclosed, inside knowledge of the business practices or legal discussions of the corporations that have owned or controlled parts of the property may be just speculation. Anyone having additional or differing information is welcome to share their thoughts in a document to also be posted on the community website.

## **Property Acquisition and Zoning**

### **Senior Residential Zoning**

In 2004, the several owners of the 203.905 acre Reynolds/Deerfield properties (commonly referred to as the Fried Project) asked Greene County to approve a Senior Residential rezoning application for the properties to be known as Mountain Vu, an active adult community for only those 55 or older. The developer also submitted proffers, which stated that the property would follow the Reynolds Property Conceptual Plan by LandDesign of Alexandria, Virginia. There would be a limit of at most 650 family dwelling units (detached or attached units, villas, condominiums, or apartments) allowed on the property. A Declaration of Covenants, Conditions and Restrictions (DCCR) would be placed on the Property to facilitate private enforcement by the homeowners of imposed design and architectural guidelines. The DCCR would provide for forming a homeowners association (Association) as a non-stock corporation in Virginia for the care and maintenance of all common lands and improvements owned or entrusted to the Association by the DCCR. In addition, the applicant would prepay water and sewer connection fees to Green County for the planned dwelling

units.

The adjacent subdivision, known as Ruckersville Village, was zoned at the same time as a mixed-use residential and commercial development. The proffers for Ruckersville Village stated that a 50' buffer would be maintained on each side of the main thoroughfare (now Greenecroft Blvd.) from Route 33 to the Mountain Vu property line. The Fried Project (i.e., Mountain Vu) property would supply and maintain decorative landscaping along the buffer zone. In turn, no homes in Ruckersville Village would front onto the main thoroughfare which is "that certain 50' ingress/egress easement" referred to in deeds.



A memorandum of agreement between Ruckersville Village and the Fried Properties was recorded on May 13, 2004. The agreement provided for the sharing of costs for engineering and construction of the main thoroughfare, utility easements for both communities, and the provision for a sign easement on the Ruckersville Village property to benefit Mountain Vu and Ruckersville Village.

On July 13, 2004, the Mountain Vu Property was zoned Senior Residential (SR) by the Greene County Board of Supervisors. The gated subdivision was limited to homeowners 55 and older, and no children under 19 were allowed to live there. In Greene County, the SR zoning for the approximately 204 acres also requires that at least 20% (40.78 acres) must be open or common area and that at least 4% (8.16 acres) must be developed as a community clubhouse center or recreational facilities for the use of the residents.

### **Subdivision Plan**

The Preliminary Subdivision Plan dated March 15, 2005, was submitted by Urban Engineering and Associates setting forth an overview of the entire Mountain Vu



project consistent with the approved SR zoning. The plan was for 535 single-family dwellings, and showed 2.63 lots per acre, one recreation facility lot, and 17 open space lots. The total area of the lots would be 93 acres with 73.4 acres of open space, a 9.2-acre recreation area, and 28.3 acres of roadway. On April 7, 2005, the Deerfield LLC and others transferred title to the 203.905 acres to

Reynolds S. Corp, which was associated with Fried Companies, Inc. The Preliminary Subdivision Plan was approved April 20, 2005, by the Greene County Planning Department. Development of the project began with the preparation of Phase I for the 144 lots and common areas. The common area along the Lake Rucker shoreline was also graded and filled.

### **K Hovnanian Purchase Agreement**

On June 13, 2005, a purchase agreement was signed between Reynolds S. Corp and K. Hovnanian Homes of Virginia, Inc., with K. Hovnanian posting a \$3,300,000 "letter of credit" deposit. There was a Four Seasons groundbreaking that Mark Stemen of K. Hovnanian and Mark Fried, president & CEO of Fried Co. Inc, the land developer, attended on June 14, 2005.

The Reynolds S. Corp drew down \$2,200,000 of the deposit on July 15, 2005. The balance payable to Reynolds S. Corp at closing, under the June 13 Purchase Agreement, was just under \$20,000,000.

On August 22, 2005, Ruckersville Village dedicated the 2.0289 acres consisting of the main thoroughfare that would become Greenecroft Blvd from Route 33 to the Mountain Vu property line as a public street including the sign easement and fifty-foot ingress/egress easement for Mountain Vu.

Also, in August 2005, a Preliminary Plan, Four Seasons, Phase I by Kevin P. O'Conner was submitted to Greene County.

### **The Option & Development Agreement**

An Option and Development Agreement (O&D Agreement) between CN Terra Nova Holdings LLC (DE) and K. Hovnanian's Four Seasons at Charlottesville, LLC (VA) and K. Hovnanian Holdings NJ, LLC (NJ) was signed on April 11, 2006.

Manufacturers and Traders Bank (M&T Bank) gave K. Hovnanian an \$11 million standby letter of credit to secure the O&D Agreement. Under the O&D Agreement, each lot subsequently purchased by K. Hovnanian came with a fractional share of the common areas within the whole development. It is stated in the O&D Agreement



under Section 7(a): "Upon each Closing, fee simple title to each Lot purchased together with an undivided percentage interest in the common areas of the Project equal to that percentage interest allocated to each Lot in the Preliminary Plan and Final Plat..." Thus, each lot that was sold conveyed with fee simple title and with 1/535th interest in the entire development's common areas, complying with the Greene County Senior Residential Zoning, Proffers, and the

Preliminary Subdivision Plan. As a note of interest, the development was originally projected to be named K. Hovnanian's Four Seasons at North Charlottesville.

The O&D Agreement (Section 25.1) states that all of the terms, conditions, provisions, obligations and indemnities contained in the agreement would survive the sale of any lot and the recordation of any deed. All obligations and indemnities in the O&D Agreement would survive the expiration, cancellation or termination of the agreement so that all such obligations and indemnities would continue to be binding upon the parties and their respective successors and assigns. M&T Bank was fully cognizant of the O&D Agreement and all its details. Even the Deed of Trust states that M&T Bank would not defer consent to any encumbrance with respect to the Property other than the O&D Agreement.

### **Phase I Startup**

Using the preliminary Phase I plan for sales, K. Hovnanian began promoting the development to the public in March 2006. The first contract to a future homeowner was signed on March 25, 2006.

On April 12, 2006, the Property was transferred with a deed of sale from Reynolds S. Corp to North Charlottesville Development, LLC (NCD). North Charlottesville Development was a wholly owned subsidiary of CN Terra Nova Holdings with one principle member. NCD made the purchase with a Purchase Money Line of Credit from M&T Mortgage Corp (part of M&T Bank) for \$24,000,000 signed the same date.

The Phase I Site Plan (by Kevin P. O'Conner) that was completed in August 2005 was approved as final by Greene County on May 11, 2006. The final Phase I plan was for 144 lots and a common area (Parcel A) comprising a total of 42.977 acres.

Water and sewer tap connection fees have been prepaid to Greene County for the 535 lots in the preliminary subdivision site plan. It is further acknowledged that the 535 dwellings in the Preliminary Subdivision Plan could be expanded up to 650 dwellings per the SR zoning. Any annexation of additional properties beyond the 204 acres could further expand both the number of dwellings and the size of the common areas.



## **K Hovnanian Construction**

### **Start of Construction**

Work began to build the main thoroughfare (Greenecroft Blvd.) into both subdivisions. Grading and filling for the Phase I section of the project had already started.

On July 12, 2006, NCD sold eight lots in the proposed Model Park to GMAC Model Home Finance LLC. Construction of the administration building, the sales office, and five other model homes began shortly thereafter.

On September 8, 2006, K. Hovnanian bought ('took down') the first six residential lots from NCD. The lots were number 24 through 27, 319, and 328. This is the first time that the K. Hovnanian Four Seasons at Charlottesville, LLC actually acquired title to any land on the property. Construction began on five of the six homes.

An Amended and Restated Purchase Money Line of Credit between NCD and M&T Bank for \$25,500,000 was signed on December 21, 2006, and recorded in Greene County on January 3, 2007. Only the 35 lots that were already purchased by either GMAC (as models) or K. Hovnanian were not secured by the lien. This amended line of credit would be cited in the DCCR that would be signed eight days later.

### **Homeowner Rights of Title**

Deeds of title to the eventual 120 lots sold under the O&D Agreement and per the SR zoning of the property guaranteed those homeowners in Four Seasons at Charlottesville the right to and pro rata ownership of all common areas within the entire planned development. Those rights are independent of any current, or future,



deed holder of the common areas of the property and of any DCCR that might be placed on all or any portion of the Property.

A DCCR is typically placed on all or some portions of the property to regulate the appearance, maintenance, and use of the property. A DCCR is most commonly drafted to be enforced by a homeowners association and often

restricts what the homeowners can do on their property. The association then manages the common areas that are jointly owned by the homeowners under the limits of the DCCR.

### **Home Owners, the Four Seasons DCCR, and the Association**

When the first two Home Owners in Four Seasons at Charlottesville went to settlement on January 11, 2007, there was no DCCR on file in Greene County and the Association was not yet incorporated by the state of Virginia. The Four Seasons DCCR was signed on January 10, 2007, in New York by Michael Sloan (CN Terra Nova Holdings, LLC, the sole member of North Charlottesville Development, LLC), and in Fairfax, Virginia, by Mark Stemen (K. Hovnanian Four Seasons at Charlottesville, LLC) sometime on January 11, 2007. Three additional Home Owners went to settlement the following week. K. Hovnanian then recorded the deeds for all five Dwelling Units and the DCCR with Greene County at the same time on January 17, 2007.

The homeowners association that was called for in the DCCR was established with the signing on January 16, 2007, of the Articles of Incorporation for the Four

Seasons at Charlottesville Community Association, Inc. The effective date for the corporation is January 29, 2007.

When the early homeowners received copies of the newly recorded DCCR, it was discovered that K. Hovnanian was in fact a co-Declarant along with NCD, and there was a deed of trust secured by all unsold lots and common areas. In addition, the eight model home lots were no longer included in Exhibit A of the recorded DCCR as



compared to the proposed version used by sales. The remainder of the Property outside of Phase I and the eight model homes were all listed in Exhibit B along with other properties that are adjacent to the subdivision. Any of the parcels of land in Exhibit B, and in particular what would be the

clubhouse parcel, could later be annexed into Exhibit A. Therefore, the scope of the new Association was the property designated in Exhibit A of the DCCR, which was the Parcel A common area and 136 lots.

### Clubhouse Construction

A groundbreaking ceremony was held for the start of the Clubhouse construction on February 22, 2007. K. Hovnanian was touting a Christmas 2007 opening for the Clubhouse.

The Clubhouse was built on common area Parcel B which was unimproved land outside of Phase I but within the whole Preliminary Subdivision Plan in the projected location of that plan. The Clubhouse Site Plan was approved by Greene County and the construction of the Clubhouse began. A very large quantity of dirt was scooped and moved to elevate the ground level for the Clubhouse Parcel and to build the embankment on the west side of Greenecroft Blvd. The dirt was scooped from a select area of Phase II as was designated on the Preliminary Subdivision Plan.

Parcel B and the Clubhouse should have been annexed into Exhibit A of the DCCR in 2008, but that was never done by K. Hovnanian and NCD. In fact, the site paperwork has never been completed in Greene



County. Having the Clubhouse Parcel B annexed into Exhibit A of the DCCR would have given full jurisdiction of the Clubhouse to the Association even without any conveyance of property deed. However, the homeowners' rightful claim to a share of

the Clubhouse parcel per title to their Dwelling Unit preceding the filing of the DCCR was in no way affected by this inaction.

The Clubhouse Grand Opening was held with Ara Hovnanian briefly in attendance on May 1, 2008. The interior was beautifully and elegantly done by the Hartman Design Group. The outdoor pool and other outdoor amenities were said to be under construction shortly. A week or so after the Clubhouse opened, the onsite Four Seasons at Charlottesville Community Manager was terminated by K. Hovnanian and not replaced. In addition, no construction was every started on the outside amenities.

## **Foreclosure and K. Hovnanian Control**

### **Market Slowdown**

By the end of 2007, there were 59 homeowners in the community; and by the end of 2008, there were 81 homeowners. Because of the downturn in the housing market and the economy, K. Hovnanian apparently was unable to meet the lot take down schedule that was in the O&D Agreement by the end of 2007 and into 2008. The take down price was \$138,382 per lot and all 535 lots were to be taken down by March 31, 2011. By the end of 2008, K. Hovnanian had taken down only 120 of the 235 lots specified in the agreement. This not only put K. Hovnanian about \$16 million behind in take down payments but the \$138,382 price tag was no longer reasonable for the depressed housing market. It could be supposed that some agreements and modifications may have been made by the parties for a while, but K. Hovnanian closed on less than two dozen houses by the end of 2008 after the Clubhouse was opened for use.



### **Foreclosure and the Association's Lawsuit**

On January 1, 2009, M&T Bank ordered a foreclosure of the property secured by the Purchase Money Line of Credit Deed of Trust. A "Substitute Trustee's Sale of Valuable Real Property in Greene County, Virginia" notice of sale was published in the local papers. Only the 120 lots owned by the residents, GMAC Model Home Finance, or K. Hovnanian were not a part of the secured property. The bank declared that the effect of the existing DCCR "shall be terminated by operation of law".

The specific purpose for which the Association was formed was "to establish a flexible and reasonable procedure for the overall maintenance and preservation of the Properties subject to the Declaration of Covenants, Conditions and Restrictions for Four Seasons at Charlottesville". If the DCCR were in fact terminated, the Association would have no properties to manage as specified in Exhibit A of the no longer valid DCCR. Therefore, the Association would be defunct. M&T Bank was thus making the claim

that the Four Seasons Association no longer had any common property including the streets. Of course, the homeowners by title still had common ownership of and easement on the streets. What M&T Bank was asserting is that the K. Hovnanian written DCCR and the corresponding Association was no longer valid after the foreclosure. A new developer buying the undeveloped portions of the property would be able to record a new DCCR for the Property and incorporate a new homeowners association for the planned community that was zoned SR.

By order of the Board under Declarant control by K. Hovnanian, the Association attorneys, Rees Broome filed a "Memorandum and Notice of Lis Pendens" on January 14, 2009, to counter the claim by M&T Bank that the operation and effect of the DCCR was "terminated by operation of law". This lawsuit was also to post notice to any buyers that the Association was challenging the termination of the current DCCR.

The foreclosure auction of the secured property took place at 11 am, Thursday, January 22, 2009, on the steps of the Greene County Circuit Courthouse. The bidding started at 3 million dollars and went to 4.5 million. The high bid was 4.5 million dollars at which time there was a pause and it was announced that the bank would exercise its option to keep the foreclosed property for 5 million dollars. Thus, M&T Bank assumed the deed to the secured properties.



M&T Bank informed the homeowners that it was their desire to find a purchaser to complete the build-out of the community. However, K. Hovnanian continued to assert that they were the Declarant and that the DCCR was not terminated. In the DCCR, NCD had been the developer of the

project and K. Hovnanian was the builder. Without any of the monetary resources that NCD had provided, K. Hovnanian would no longer develop the property, but they did still own 39 lots and had full control of the Association as the remaining Declarant. K. Hovnanian had drafted the DCCR in such a way to protect them both monetarily and as the Declarant. It can only be speculated that K. Hovnanian wanted to strike a deal with M&T Bank to continue the project, but that never happened.

### **Stay Order for the Lawsuit**

On February 10, 2009, a Stipulation and Consent Order Staying Complaint for Declaratory Relief was signed by Greene County Circuit Court. The Order would allow time for the lawyers to obtain additional information and continue settlement discussions. Rees Broome was still counsel for the Association, the plaintiff. There were five defendants listed: M&T Bank, Gordon P. Peyton (Trustee), K. Hovnanian's



Four Seasons at Charlottesville LLC, North Charlottesville Development, LLC, and John Doe (any buyer of the property).

### **HC Land Purchase and a New Deed of Trust with M&T Bank**

M&T Bank was not succeeding in finding a new developer to purchase the property. They negotiated with HC Land Company, L.C. (a Northern Virginia company specializing in the acquisition and redevelopment of land for residential use) to secure deed to the property. The HC Land Company established the Charlottesville Land Development Group, LLC (CLDG) and the Charlottesville Land Investment Group, LLC (CLIG) as the legal entities to buy the Four Seasons property.

On May 27, 2009, M&T Bank transferred the property deed in two parts. One part was the 24 vacant lots in Phase I that K. Hovnanian had not purchased. The other part was the remainder of the property not owned by the homeowners, GMAC, or K. Hovnanian. CLDG secured the deed to all the common area in Phase I (known as Parcel A), the Clubhouse, and all of the remaining land in the project. CLIG secured the deed to the 24 unsold lots in Phase I. With the transaction,



the parties also signed a Deed of Trust, Assignment and Security Agreement by CLDG and CLIG to trustees for Manufacturers & Traders Trust Company for \$3,900,000. This was for an Agreement of Sale contract dated April 1, 2009, between the two parties. The Deed of Trust gave M&T Bank strong veto control over CLDG and CLIG transactions. Among the requirements spelled out in the May 27, 2009 Deed of Trust, was the requirement that CLDG and CLIG pay taxes, carry insurance policies, *'preserve and maintain the Trust Property and keep the Trust Property in good and substantial repair and not commit, permit or suffer any waste thereof; not tear down or materially change any improvements on the Trust Property or permit them to be torn down or materially changed without the written consent of M&T Bank.*

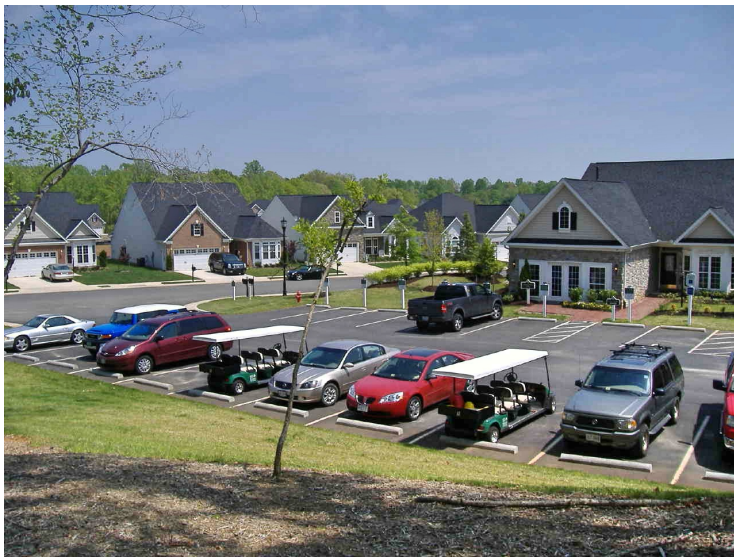
On January 22, 2009, and on May 27, 2009, the deed holder of the common areas of the Property changed. However, the homeowner rights to and shared ownership of the common areas of the property regardless of any declarations recorded on the property did not change. CLDG and CLIG purchased the remaining unsold lots in a residential development encumbered with a SR zoning and with a Preliminary Subdivision Plan, all of which existed prior to April 12, 2006, when NCD purchased the Property. CLDG also acknowledged that the Four Seasons at Charlottesville

Association had filed a legal claim (the Lis Pendens) asserting that the Association had a right to own, possess, operate, manage, and maintain the Clubhouse per the DCCR.

HC Land indicated their intention to seek buyers who would develop the property adhering to the Subdivision Plan for the entire property. However, there has never been any direct dialog between the Four Seasons resident community and HC Land since they took title to the properties. Virtually all communications between the Association and HC Land has been indirectly through the Association's Managing Agent.

### **K. Hovnanian Holds on as the Declarant of the DCCR**

K. Hovnanian allowed the payments of operating expenses to be late during much of 2009, however on September 27, 2009, the Board of Directors (Board), that was still controlled by K. Hovnanian,



finally committed to covering the operational shortages for 2009 with K. Hovnanian funds. At a meeting of the Members of the Association on December 8, 2009, held at the Clubhouse, it was announced that K. Hovnanian, as the Declarant, had formally elected to pay monthly assessments based on lots owned instead of paying the shortages in operating expenses for the 2010 fiscal year. However, they did agree to pay any shortages in monthly operating expenses

while K. Hovnanian remained the Declarant. The DCCR required the Declarant to choose between paying assessments or shortages for the upcoming fiscal year.

A Supplemental Declaration to the DCCR was approved by the Board and recorded in Greene County on February 26, 2010. It annexed the eight (8) Model Park lots belonging to GMAC Model Home Finance into Exhibit A of the DCCR. This brought the number of Phase I lots in the Association to the full 144 lots of the Final Phase I Plan.

## **Settlement of the Dispute over the DCCR**

### **HC Land Gets Involved**

After a year of being neutral and failing to find a developer, HC Land (CLDG and CLIG) filed a motion in Greene Count Circuit Court on May 18, 2010, to intervene as the "John Doe purchaser due to the foreclosure" in the Lis Pendens suit.

In June 2010, HC Land offered some concessions to the Association in order to resolve the litigation. There would be no payment of base assessments on their lots until the lots were sold to homeowners. CLDG would have the Association continue to use the Clubhouse but the Association would solely pay all operating and maintenance costs. The Association would reimburse CLDG for real estate taxes paid in connection with the Clubhouse. HC Land also stated that they would not become a Declarant along with K. Hovnanian, but that they might become a Declarant under an amended DCCR. The offers were rejected by the Board, which was still under K. Hovnanian control.

### Settlement Agreement Process

On November 17, 2010, a proposed settlement agreement between the Association, K. Hovnanian, M&T Bank and Charlottesville Land was presented to the residents at the Association's annual meeting of Members. After a presentation and a spirited discussion period with the homeowners, the Board voted 4-0-1 to accept the settlement. The attorney for K. Hovnanian (Bill Matson) noted that HC Land was pushing for a quick resolution. It should be noted that the Board had control of all the votes per Section 3.3 of the DCCR "*During the Declarant Control Period, all of the voting rights of the Owners at any meeting of the Members of the Association or otherwise shall be vested exclusively in the Declarant, and Owners other than the Declarant shall have no voting rights.*"



Accepting the proposed agreement would have amended the current DCCR and according to Section 16.2 of the DCCR, the DCCR "*may be amended only by the affirmative vote or written consent, or any combination thereof, of sixty-six and two thirds percent (66-2/3%) of the total votes in the Association, and the consent of the Declarant during the Development Period*". Since K. Hovnanian as Declarant, controlled all of the votes, the vote could have been 144 to 0 to amend the DCCR. However, it was clear that many homeowners were not happy with the deal as the meeting concluded.

As reported by Michael Avery in his "History of the 4S Action Group LLC" published on the Association's website, many residents decided to form the 4S Action



Group LLC (4S LLC) to have a voice at any negotiation and to obtain a more favorable agreement. Eighty-one households initially became members of the 4S LLC with an initial member contribution of \$300 per household. Over time, legal fees resulted in a need for additional funding of \$100 per household and some members elected to not participate any longer. A Motion for Leave to Intervene in the

legal dispute over the DCCR between the Association, M&T Bank, K. Hovnanian,

Charlottesville Land, et al, was filed by homeowners Michael Avery and Catherine Millian in response to the Board approved settlement agreement on November 23, 2010. This was a court intervention from a property owner, and not the Association that possibly kept K. Hovnanian from finalizing the agreement. The motion to intervene by Avery and Millian was later granted by the court on April 11, 2011. The 4S LLC executive committee held many meetings to evaluate and offer changes to the settlement agreement. During this time, there were multiple meetings with the members of the 4S LLC, executives of K. Hovnanian, representatives of HC Land as well as multiple emails and phone calls to discuss changes to the agreement.

During the same period, other homeowners, not party to the 4S LLC, met with a different local attorney to evaluate the conditions of the proposed settlement agreement and had conversations with K. Hovnanian attorneys and personnel. Some of the homeowners were even willing to support K. Hovnanian in having the Lis Pendes case to go to trial without a settlement agreement.

A series of many court filings by the Association's legal counsel, by HC Land, and by the 4S LLC occurred from November 2010 until May 2011. Negotiations involving HC Land, M&T Bank, K. Hovnanian and the 4S LLC led to a rewrite of the proposed amendment to the DCCR so that CLDG, or any subsequent buyers, would be the Declarant of a Master DCCR; and that the Association would be a member of the master association established by that Master DCCR along with the other homeowner associations to be formed on other sections of the property in Exhibit B of the DCCR. HC Land insisted that they would not contribute any money to the Association, but that the Association would manage the Clubhouse, unless it no longer wanted to exercise that option. On March 24, the members of the 4S LLC voted 53-16 to approve the revised settlement agreement.

At a special meeting of the Members of the Association held at the Clubhouse on April 16, 2011, many of the residents still objected to the revision of the proposed settlement agreement much as they had done with the one that had been offered in November. The Board sought the verbal approval from at least two-thirds of the Members considering that the 4S LLC had negotiated changes to the agreement. However, there was not a clear preponderance of approval and the meeting ended without an approval of the revised agreement.

### **Consent to Amend the DCCR**

Shortly after the meeting, each homeowner received a letter from the Board, with a form to be signed and witnessed consenting to amending the DCCR in accordance with the terms of the proposed settlement agreement. K. Hovnanian was willing to add additional funding of the deficit spending by the Association up until the homeowners could make the transition to their own elected Board. In addition, K. Hovnanian offered to give the Association \$140,000 towards operating expenses for the remainder of the 2011 fiscal year. The President of the Board stated that the date of the transition had been delayed and that if there were not enough consents to the settlement, then the Board would act to cease operating the Clubhouse for residential use starting in June.

The consent form clearly emphasized that CLIG and CLDG would not contribute any money whatsoever to the Association as assessments, fees, or any of the expenses for the maintenance or operation of the Clubhouse. Even though CLDG would be responsible for paying property taxes on the Clubhouse in Greene County, the agreement committed the Association to reimbursing CLDG for the amount of any real estate taxes that CLDG would pay Greene County.

### **Settlement of the Disputed DCCR**

The Board approved both the final version of the settlement agreement and the amendment to the DCCR (4-1) at a Board meeting in Chantilly on June 8, 2011, claiming that there had been enough commitments received from homeowners to support the Board's action. As a result, six documents were recorded in Greene County on July 26, 2011:

- 1) The amendment to the DCCR
- 2) Title to the Parcel A common area conditionally deeded to the Association
- 3) Release of the Parcel A common area from the Deed of Trust between CLIG/CLDG and M&T Bank
- 4) Release of the Clubhouse and the Clubhouse Parcel from the Deed of Trust between CLIG/CLDG and M&T Bank
- 5) Granting of construction easements to CLDG, or a future developer, by the Association
- 6) K. Hovnanian assigned certain Declarant rights to CLIG and CLDG.

The Clubhouse is the recreational center for the 204-acre project and the deed to it will eventually pass to the homeowner association managing the whole subdivision. Much of Parcel A was delineated as the "Joint Phase One Common Areas"; and that common area will also convey to the homeowner association managing the whole subdivision per the amended DCCR.

The Association had brought the lawsuit challenging M&T Bank's claim that the existing DCCR was terminated. With the settlement to amend the DCCR, that lawsuit was dismissed with prejudice, as recorded on July 21, 2011, by Order of Greene County Circuit Court. Thus, the long legal dispute over the DCCR was ended. However, the homeowners were now going to gain control of an Association operating with an increasing deficit because of reduced income and the added property tax burden from reimbursing CLDG up to \$40K annually.

### **New Status of the Association**

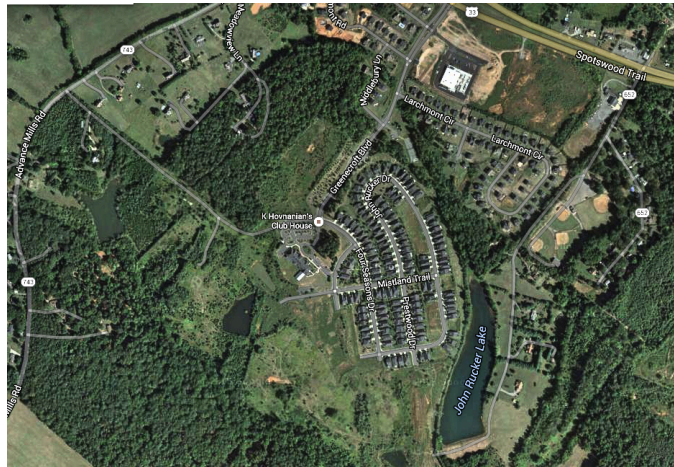
With the amended DCCR, the Association retains oversight of the property that is in Exhibit A of the DCCR and it manages the Clubhouse as long as it chooses to before a homeowner association managing the whole subdivision is ready to take over. Whenever a master association does take over, much of the Association's common area will transition to the master association. With the amended DCCR, CLIG does not pay any base assessments on their lots; and only when the lots have homeowners will the Association get payments. In addition, CLDG was relieved from contributing any

funds at all for the expenses of the Association or for any of the costs of operating and maintaining the Clubhouse for residents.

## **Transition of the Association to Home Owner Control**

### **Home Owners Take Charge**

Homeowner control of the Association started on July 31, 2011, at a meeting of the Members of the Association. K. Hovnanian still owned 6 lots, but they gave notice that the Declarant Control Period was ended. However, K. Hovnanian did retain certain Declarant rights that went with development. The homeowners elected a new seven-member Board and work began to trim expenses and to get control of operations. K. Hovnanian had been running operations in the community with a monthly deficit of about \$20,000, not including any payments to the Replacement Reserves. The new Board faced a daunting task, but the operating deficit was greatly erased so that by the end of 2012 the Association had a manageable annual shortfall. These efforts of the Association were somewhat inhibited by the incompetence of the Managing Agent. In fact, the Association filed a complaint against Legum & Norman with the Virginia Department of Professional and Occupational Regulation in 2012; violations were sustained and the Association received a cash settlement from the former Managing Agent in June 2015. When K. Hovnanian transitioned control to the homeowners, they had contributed \$140,000 to the Association to help with operating expenses. A portion of that leftover cash is being used each year to cover any operating shortfall for the fiscal year. The Association has fiscally managed its assets well since the homeowners assumed control; however, the additional cash on hand will eventually diminish and other revenue sources will be needed for the long-term. Mechanical and other systems at the Clubhouse are aging and will be requiring additional maintenance. None of the 24 lots that CLIG owns has been made available for the construction of new homes; the assessment income from those lots is sorely missed. However, the use of the Clubhouse for a fee still remains a promising source of additional income to the Association whenever that option does reach a consensus.



### **Clubhouse Real Estate Taxes**

Before the settlement occurred in 2011, CLDG had filed a challenge over the amount of real estate taxes already paid and/or payable for the Clubhouse and Clubhouse Parcel in Greene County. A trial on the dispute was held on October 24,

2011, in Greene County Circuit Court, with CLDG, as Petitioner, v. Board of Supervisors of Greene County, Virginia, as Defendant.

Typically, when a locality assesses the property of a subdivision that has common interest assets (land and facilities) the value of those common assets is distributed proportionally to the value of each homeowner's property. Although Greene County does this for other subdivisions, they did not do it for the Four Seasons development. In fact, the undeveloped Additional Land outside of Phase I was

assessed by Greene County as a farm with a large commercial building on it. CLDG challenged that assessment in Greene County Circuit Court after failing to have Greene County change their method. The court ruled against Greene County based on the fact that the tax assessor had disregarded the effect of the proffered rezoning of the property as a planned Senior Residential community. The



conceptual development plan that was already approved made use of the property for a residential subdivision at the planned density reasonably probable and not speculative. The Court also found that, because the Clubhouse is a part of the project as a whole, its value should not be assigned separately, but should be reflected in the value of the individual subdivision lots having a right to its use.

The Final Order in favor of CLDG was signed on November 17, 2011. This was a major ruling for the Association given the impact of the adverse conditions placed on the Association with the amended DCCR. According to the amended DCCR, the Association would have been required to reimburse CLDG for any property taxes that they paid to Greene County for the Clubhouse, as long as the Association was managing the Clubhouse. Since the taxes were about \$40K per year, this would have seriously impacted the operating expenses for the Association.

### **End of the Development Period**

K. Hovnanian continued to market their remaining houses and to satisfy construction bonds with Greene County. On June 17, 2012, K. Hovnanian sold one of the former model houses that was their last property, thus ending the Development Period.

## Phase I Lot Ownership

End Year	Homeowners	KHOV	Models	CLIG	NCD
2007	59	n/a	8	-	n/a
2008	81	31	8	-	24
2009	95	17	8	24	-
2010	114	3	3	24	-
2011	116	1	3	24	-
2012	120	0	0	24	-
2015	120	0	0	24	-

## Unresolved Issues

### **Clubhouse Parcel Site Plan and Plat**

The Final Plat for the Clubhouse Parcel B common area was submitted in August 2007 to Greene County by Urban Ltd in Chantilly, Virginia. Neither K. Hovnanian nor North Charlottesville Development signed off on the Final Plat. As a result, the Clubhouse Parcel was not recorded as a separate plat in Greene County. Therefore, it could not have been annexed into Exhibit A of the DCCR before the foreclosure occurred, so it did not become common area for the Association.

Even though several documents recorded in Greene County now refer to the Clubhouse Parcel, the plat has yet to be finalized. The Clubhouse Parcel is often referenced in the 2011 amended DCCR. The Clubhouse Parcel has no lien on it as it was removed from the Deed of Trust between CLIG/CLDG and M&T Bank. Finishing the process of recording the site plan and plat would allow M&T Bank and CLDG to know where the boundary is for the Deed of Trust.

Likewise, the homeowners and the Association would have the needed definition of that portion of common area.



CLDG should work with Greene County to finish the paperwork so that the Clubhouse Parcel will have its own plat and accurate property card. Getting the plat recorded would be to the advantage of all parties.



## Wetland Study

K. Hovnanian has not released the requested complete wetland study by Williamsburg Environmental Group to the Association. This information would aid in identifying any underground springs that might potentially affect the stability of homes in the future.

## **Current Status**

As of mid 2016, the homeowners of the Four Seasons at Charlottesville are still waiting for a developer to continue the build-out of this lovely active adult community. The homeowners have shown that they are more than capable of managing the Association status quo given the limited income from 120 owners in a community endowed with a magnificent Clubhouse that is planned for 600 plus, or minus, homeowners. However, the Clubhouse is aging and will require maintenance and some replacement of its mechanical and structural systems that will impact operating expenses. The Association does have the option of offering memberships to senior residents living outside of the community or of making the Clubhouse available on a limited basis to outside groups for a fee in order to generate income for operations.

Having a developer to help with its upkeep would certainly be welcomed. It is still the dream of most, if not all, for a full-fledged active adult community with many amenities. Although CLDG has proposed rezoning a portion of the development to allow market-rate housing, there is virtually unanimous opposition within the community to the proposal and most likely little to no support from the residents of Greene County. To date, none of the 24 lots owned by CLIG have been sold to a builder. Many senior adults and their relatives regularly visit the community and ask how they can build a house here. Unfortunately, we must tell them that there is currently no builder.