

Michael J. McCabe
Mary S. Scott
Michelle P. Haines
Alexandra M. Amador
James A. Klempin
Geoffrey B. Dobson, Of Counsel



PONTE VEDRA BEACH | main office
111 Solana Road, Suite B.
Ponte Vedra Beach, Florida 32082

1600 Prudential Drive
Jacksonville, Florida 32207

T 904.396.0090
F 904.396.0088
www.jaxlandlaw.com

McCabeLawGroup

August 7, 2017

VIA E-MAIL

Eagle Creek of St. Augustine Homeowners' Association Inc.
c/o Board of Directors

Re: Memorandum – Lake Embankment Maintenance

Dear Board of Directors:

Thank you for your request for a Memorandum regarding who is responsible for maintenance to the lake embankments. This Memorandum of law (“Memorandum”) is effective as of the date above and may be relied upon solely by Eagle Creek of St. Augustine Homeowners’ Association Inc. (“Association”).

As you know, the duties and responsibilities of the Association and the Owners are set forth in the documents, including *The Declaration of Covenants and Restrictions for Eagle Creek of St. Augustine* (the “Declaration”), the *Articles of Incorporation of Eagle Creek of St. Augustine Homeowners’ Association Inc.* (the “Articles”), and the *Bylaws of Eagle Creek of St. Augustine Homeowners’ Association Inc.*, (the “Bylaws”), collectively referred to as the “Association Documents,” as well as the relevant statutes governing Condominium Associations, including but not limited to Chapter 720, Florida Statutes, by which the Owners and Association have agreed to abide by and are subsequently bound.

BACKGROUND

It is our understanding the Association has previously provided maintenance, including mowing and landscaping to the lake embankment areas. The Association has recently changed landscaping vendors. The new vendor is not willing to enter onto the Owner’s Lots to perform the mowing maintenance. The Association seeks guidance as to whether it is required to perform the maintenance on these lake embankments.

APPLICABLE LAW

Association Governing Documents

The following definitions are important to this maintenance discussion:

1.6 “Common Property” shall mean and refer to those tracts of land dedicated or conveyed to the Association for the common use and enjoyment of the owners and their guests and invitees and all improvements constructed thereon. All Common Property is intended for the common use and enjoyment of the Owners and their guests, lessees or invitees and the visiting general public to, the extent permitted by the Board of Directors of the Association subject to any rules and regulations adopted by the Association and subject to all use rights reserved by Declarant herein or prior to conveying any land to the Association.

...

1.8 “Lot” shall mean and refer to any plot of land together with the improvements thereon, shown on the recorded Subdivision Plat referred to herein and any subsequently recorded Subdivision Plat of any additional contiguous land made subject to this Declaration.

...

1.10 “Property” shall mean and refer to that certain real Property described on page 1 hereof, together with improvements thereon and any additional contiguous Property made subject to this Declaration.

1.11 “Surface Water or Stormwater Management System” means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

The Owners are charged with maintenance of the Lots as described below:

4.11 No Lot shall be used or maintained as a dumping ground for rubbish and trash. Garbage or other waste shall only be kept in sanitary containers. No mining or excavating operations of any kind shall be permitted upon or in any Lot. All lawns, grounds and landscaping shall be mowed and maintained by the Lot owner in a neat and orderly fashion free of all rubbish, trash, garbage and all unsightly weeds and underbrush.

4.12 In the event any owner fails to mow and maintain his Lot in the manner required by 4.11 hereof, or to maintain the structures and improvements on such Lot in a good and workmanlike manner, or in a neat and clean appearance, the Committee or the Board of Directors may, thirty (30) days after delivery of written

notice to such owner, authorize its agents to enter upon the Lot and perform any necessary maintenance at the expense of the Owner and such entry upon the Lot will not be deemed a trespass. Such expense shall be deemed a special assessment against the owner of the Lot and may be collected by the Association in the manner specified in Article VII hereof .

The Declaration requires the Association to provide Stormwater maintenance as follows:

6.3 The Association shall be responsible for the maintenance, operation and repair of the Surface Water or Stormwater Management System, Maintenance of the surface Water or Stormwater Management System(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other Surface Water or Stormwater management capabilities as permitted by the St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the Surface Water or Stormwater Management system shall be as permitted, or if modified, as approved by the St. Johns River Water Management District.

...

6.5 The Association shall manage and maintain the Common Property, including but not limited to those parcels dedicated to the Association on the subdivision plat of the Property, Surface and Stormwater Management Systems serving the property, amenity center, those portion of the recreation area, landscaped median and shelter, identification signs, landscaped buffer adjacent to U.S. 1, located on Common Property and all mitigation and jurisdictional areas.

...

8.2 The Association shall have a perpetual non-exclusive easement over all areas of the surface water or Stormwater Management System for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any lot which is a part of the Surface Water or Stormwater Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Surface Water or Stormwater Management System as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Surface Water or Stormwater Management System. No person shall alter the drainage flow of the Surface Water or Stormwater Management System, including buffer areas or swales, without the prior written approval of the St. Johns River

Water Management District.

In accordance with this maintenance obligation, the Declaration also states lake maintenance is included in the purpose of collecting common expenses:

7.2 The annual assessments levied by the Association shall be paid either in monthly or annual installments and used exclusively to promote the health, safety, welfare, and recreation of owners of Lots in the Property, and for the improvement and maintenance of all common roads, Common Property, landscaped areas and all areas required to be maintained under the St. Johns River Water Management District Permit pertaining to the Property, for the administration of the Association, for the establishment of a maintenance, repair and reserve account, for the installing and maintenance of street lighting and signage, for payment of taxes and Insurance on all Common Property and for such other purposes as are set forth or permitted in this Declaration, the Articles of Incorporation or By-laws.

Assessments shall also be used for the maintenance and repair of the Surface Water or Stormwater Management Systems including but not limited to work within retention areas, drainage structures and drainage easements.

ANALYSIS

A review of the maps on the property appraiser's websites shows that some lakes within the Association are owned exclusively by all the owners abutting such lakes. This includes the lake within Marsh Island Circle, the two lakes within the Inagua Drive, River Landing Drive, St. Thomas Street, and St. Croix Street circles. There appears to be two other lake features on the property—Island View Circle and Bamboo Street as well as behind Mango Circle. Based on the property appraiser's website, the Association owns a portion of the embankment surrounding the lake features. With that, lake embankments specifically included within a Lot is the maintenance obligation of the Lot Owner, as the Lot extends to the center of the lake. The Declaration requires said Owners to weed, landscape, mow, remove rubbish, and otherwise provide lake edge maintenance.

That said, Association has the maintenance obligation for all Common Property. The two remaining lakes and embankment are the responsibility of the Association. The Association is also responsible for all aspects of the stormwater management system components, including the lakes that are not owned by the Association. The Association has the obligation to ensure all permits pertaining to the lakes are complied with, including surface levels, water levels, and maintaining the proper drainage. If there is lake erosion that is causing damage to the surface or water levels in violation of the SJRWMD permits, the Association must perform the maintenance necessary to ensure it complies with the permits and the lake is preserved. With that, the

Association can use Association funds, including passing a special assessment, to preserve all of the lake embankment and remedy the erosion issues.

CONCLUSION

Some lakes embankment maintenance is the exclusive obligation of the Owners of Lots abutting the lakes. The Association would be responsible for lake embankment maintenance if required to comply with the SJRWMD permit. There are two lakes on property where the Association is solely responsible for all lake embankment maintenance including mowing.

The information provided this Memorandum is solely for the Association's use with regards to the above-referenced matter. Without our prior written consent, this Memorandum may not be used or relied upon by the Association for any other purpose whatsoever, except for the use of this Memorandum (i) in connection with review by the Association itself, (ii) in connection with the assertion of a defense as to which this Memorandum is relevant and necessary, or (iii) in response to a court order.

Please do not hesitate to contact our office if you have any further questions or concerns.

Sincerely,

McCabe Law Group, P.A.

If this memorandum pertains to a matter in dispute, then it is exempt from disclosure to members and should not be distributed to anyone who is not a member of the board and should be kept separate from other official records of the Association as attorney-client communication pursuant to Florida Statutes. Only after the matters in dispute have been resolved should this letter be made available to members requesting a copy of the official records.