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August 27, 2015

VIA EMAIL
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**PRIVILEGED AND
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Ms. Sharon Stokes
May Management Services, Inc.

Re: Hidden Lakes of St. Augustine Homeowners Association, Inc.
Our File No.: 2-14-024

Dear Sharon:

This letter is to summarize the options available to the Association concerning the issue of maintenance responsibilities for the alley and access roads.

One option is that the Board asserts that the provisions of Section 10.16(b) of the current Declaration control, which mandate that the 12 alley owners are tasked with the cost of maintaining the alley and access roads. The alley and access roads are distinguished from the roadways in Hidden Lakes (which are owned by the Association and the maintenance of which is the Association's responsibility) in that the alley and access roads are located on the properties of the 12 owners, and there are signs located on or near the access roads and alley which specifically state that use of those areas is restricted to the owners of the 12 properties in question.

There are potential challenges to this first option. One is an argument that the 2007 Easement Agreement between Rolling Hills Master Homeowners Association, Inc., and Cottages at Hidden Lakes Homeowners Association, Inc., establishes a different maintenance scenario. The two associations who were parties to that Easement Agreement, however, subsequently agreed to and adopted the current Declaration as a part of the 2013 merger, and therefore the Association can take the position that a novation has occurred such that "new" agreement (the Declaration) trumps and extinguishes the "old" agreement (the Easement Agreement).

Another possible challenge to the first option is that an argument could be made that assigning the expense of the maintenance of the alley and access roads to the 12 alley owners results in an increase in the proportion or percentage by which those owners share in common expenses of the Association, and thus would require, under Section 720.306(1)(c), Florida Statutes, the consent of the affected record parcel owners and all record owners of liens on those parcels. However, in reviewing the Declaration of Covenants, Conditions and Restrictions for the Cottages of Hidden Lakes (the "Declaration"), there is no specific mention that the alley and access roads are a common expense or maintenance obligation of the Association. Further,

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Article VI, Section 3(a) of the Cottages Declaration provided that “Each Owner at his expense shall maintain in a good order and repair... all portions of his Lot...including without limitation the ...driveways and other equipment, structures, improvements, additions, or attachments located on the Lot. Each Owner of a Lot in which a Unit has been constructed shall maintain the lawn and other landscaped portions of his Lot and that portion of the public right-of-way and Common Areas, if street in a neat and attractive condition [sic].” While some portions of that provision are perhaps not entirely clear, one conclusion is that it required Lot owners to maintain the alley and access roads since those easement areas are located within the boundaries of those owners’ Lots. Thus, the argument can be made that the current Declaration did not alter the proportion or percentage by which the alley owners share in payment of the Association’s common expenses, since the Cottages Declaration designated those owners as being responsible for maintenance of their Lots, and maintenance of the alley and access roads was not a common expense.

The plat for Cottages at Hidden Lakes provides in the “Adoption and Dedication” section that “All easements shown on this plat, other than those specifically dedicated herein, are and shall remain privately owned and the sole and exclusive property of the undersigned owners [Swal, Inc., and Bestcon, Inc.], their successors and grantees, if any, of said easements. The owners retain the obligation for maintenance of all easements shown on this plat for drainage, landscape, sidewalk or lake purposes; provided however, the undersigned owners reserve the right to assign the obligation for maintenance of said easements to an owners’ association or other such entity as will assume all obligation of maintenance and operation thereof.” Not stated in that maintenance clause are access easements, and Article V, Section 20(c) of the Cottages Declaration recites that “Each Owner shall maintain the swales as now exist for proper drainage.” I note that Article VI, Section 2(b) of the Cottages Declaration states that the Association shall maintain the “pedestrian access easement”, but I do not see that easement depicted on the plat.

A second option is to deem Section 10.16 of the Declaration to be unenforceable given Section 720.306(1)(c), Florida Statutes, and have the Association assume responsibly for the cost of maintaining the alley and access roads, allocating that expense to all Association owners. Should the Association elect that course of action, it is subject to challenge from owners asserting that Section 10.16 should apply and that maintenance charges connected with the alley and access roads are not properly categorized as a common expense to be borne by all owners in Hidden Lakes. Further, I do not see that maintenance of the access easements in question was specifically designated to the Association under either the Cottages Declaration or the plat for Cottages at Hidden Lakes, and therefore the allocation of that maintenance expenses to the 12 alley owners, arguably, did not alter the proportion or percentage by which those owners share in the common expenses.

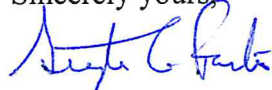
While either option is subject to potential challenge, my recommendation at this time, given the foregoing, is that the Board take the position that Section 10.16 of the Declaration is applicable, and that the maintenance costs connected with the access easements in question be the obligation of the 12 alley owners. Although the access easements are the routes those owners use to access their residences and garages, unlike other owners in Hidden Lakes the access is

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located on those owners' properties and use of the access easements and alley is limited to the 12 alley owners.

Please contact me if you should have any questions concerning the foregoing.

Sincerely yours,



Stephen A. Faustini

SAF/dbf

cc: Jim Lorentson (via email)