



ATTORNEYS AT LAW

FERGUSON LAW

October 27, 2020

Hallmark Rentals and Management, Inc.
ATTN: Board of Moss Creek at Winslow Farm Homeowners' Association, Inc.
1205 North Walnut Street
Bloomington, Indiana 47404

RE: Winslow Farm Community Association, Inc. ("Winslow Farm")
Pond No. 3

Dear Board Members:

I am writing in response to Pat Murphy's email alleging that Winslow Farm bears sole responsibility for the maintenance of the ponds at Winslow Farms. Based on the recorded deeds, plats, boundary survey, and Declarations of Covenants, Conditions, and Restrictions (CCRs), it is our opinion that Winslow Farm and Moss Creek at Winslow Farm Homeowners' Association, Inc. ("Moss Creek") each have responsibility for the portion of the ponds that lies on their respective land.

That being said, I share our findings with you with the expectation that you will help us reach a formal agreement to simplify the current pond responsibility structure. We believe all parties involved wish only the best for their residents, and Winslow Farm proposes a straight-forward structure to prevent future disputes regarding the ponds in Moss Creek.

I. Plats and Deeds

Moss Creek consists of ten subdivision plats recorded in the Monroe County Recorder's office between September 10, 1992 and January 24, 1995. Four of those Moss Creek subdivision plats include portions of Pond No. 3, as shown on the attached boundary survey. Winslow Farm was later conveyed the common area for only one of those sections: Section V. Therefore, Moss Creek is responsible for the portions of the pond that are within the three sections never conveyed to Winslow Farm: Section I, Section III, and Section VI which includes Terry Halloran's lot.

As the current owners of the common area in sections I, III, and VI, Moss Creek is currently responsible for properly maintaining the portions of the pond within the bounds of its property.

II. Declarations of Covenants, Conditions, and Restrictions (CCRs)

Common area is defined in the Bloomington Municipal Code as any portion of a development that is neither part of a lot or tract nor dedicated to the public and is designed and intended for the common usage of the residents of the development. Maintenance of such areas shall be set forth by the development association in the form of restrictive covenants, which shall guarantee the maintenance of these areas.

Moss Creek's CCRs state that the Common Area shall be owned, operated, and managed by Moss Creek, and maintenance of the Common Area shall be furnished by Moss Creek. Moss Creek's CCRs state that the Common Area includes "all area within Moss Creek, except the Lots, including but not limited to . . . ponds."

Moss Creek and Winslow Farm's original CCRs were recorded on the same date and both indicate that they are responsible for pond maintenance. A record search of the common area in Winslow Farm revealed that the common area for only one of the sections of Moss Creek was conveyed to Winslow Farm. Other common area contained in the plats was never conveyed to Winslow Farm, including sections of Moss Creek's plat that contain portions of Pond No. 3. The only other deed revealed in our record search that conveyed Moss Creek common area to Winslow Farm was from Moss Creek Village, LLC, not Moss Creek or the developer.

III. Pond No. 3 and Terry Halloran's Lot Responsibility

Based on our analysis, Moss Creek is responsible for maintenance of the portions of Pond No. 3 that are within Moss Creek's property boundaries. Because Terry Halloran's lot is within Moss Creek's property boundaries, Moss Creek is solely responsible for Terry Halloran's lot.

IV. Winslow Farm's Proposal

Despite evidence that the responsibility for maintenance of Pond No. 3 is divided between Winslow Farm and Moss Creek, Winslow Farm agrees that sharing this responsibility may not be practical. Winslow Farm proposes the following:

- (1) Winslow Farm shall maintain Ponds 1-5, excluding the banks surrounding Ponds 1-5.
- (2) Moss Creek shall maintain the banks surrounding Ponds 1-5, including any landscaping used to maintain the banks.

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- (3) Moss Creek shall maintain the banks surrounding Ponds 1-5 in such a way that would (a) reasonably prevent mud and debris flowing from the banks into any Winslow Farm ponds, and (b) reasonably suppress erosion of the Winslow Farm ponds' banks.
- (4) Each party shall grant the other an easement across their respective lands to accomplish such maintenance.

Additionally, Winslow Farm is willing to attend a mediation with the Moss Creek Board to discuss this matter further.

Sincerely,



David L. Ferguson
FERGUSON LAW