

Owner Association Financial Responsibilities for the Ponds at Winslow Farm

Creation of Winslow Farm and the Ponds.

Winslow Farm was constructed in Bloomington, Indiana between 1992 and 2000. The completed Winslow Farm area of Bloomington includes 417 homes in 8 neighborhoods:

Bayberry	64	15.3%
Bent Tree	61	14.6%
Laurelwood	47	13.7%
Moss Creek	70	16.8%
Moss Creek Village	34	08.2%
New Bent Tree	38	09.1%
Olde Mill	40	09.6%
Sweetbriar	53	12.7%
TOTALS	417	100.0%

Prior to development in the 1990s, the area occupied by Winslow Farm (bounded on the east by Highand Avenue, on the west by Henderson Street, and on the south by Winslow Road) was largely a marshy area in its eastern portion just north of Winslow Road. The developer, Eric Stolberg, and builder, H. Timothy Wininger, obtained approval of the City of Bloomington to build Moss Creek, the first neighborhood in this environmentally sensitive area, by agreeing to construct drainage ponds.

One of the seven ponds they built is periodically fed by an ephemeral stream (most of the time a dry creek) that runs through the Olde Mill neighborhood from the City of Bloomington's Winslow Woods Park into pond #3. Another, pond #1, receives runoff from the City's Winslow Sports Complex to the east of Winslow Farm. Ponds 1-5 are surrounded by Moss Creek patio homes, and ponds 6-7, by Moss Creek Village patio homes. Overflow water from the ponds ultimately ends up in Clear Creek.

Common Areas of the Winslow Farm Community Association and the WF Homeowners Associations.

On June 2, 1992, **Winslow Farm Community Association, Inc.** (WFCA) was formed by developer Eric Stolberg as a nonprofit organization under Section 528(c) of the Internal Revenue Code. For at least the next 8 years, Mr. Stolberg retained control of WFCA. Recital E of the *Second Amendment to the Declaration of Covenants, Conditions and Restrictions of Winslow Farm (9/30/1998)* states that as of the date of the amendment, Mr. Stolberg was the Declarant and in control of the Winslow Farm Community Association, Inc. Eric C. Stolberg and H. Timothy Wininger are the only directors who signed the second amendment to the CCRs. Mr. Stolberg and Mr. Wininger were also listed as Directors when the Second Amendment to the Bayberry CCRs was signed on October 10, 2000. Subsequently, the Declarant must have turned over control of the Winslow Farm Community Association to members of the association (i.e., the owners of homes in Winslow Farm).

Section 8 of the original 1992 WFCA CCRs deals with Community Areas. Included in that section is 8.2 Ponds and Pumping Equipment which reads:

The ponds and pumping equipment located within Winslow Farm are Community Areas. The Community Association shall insure, maintain, repair and replace the ponds and pumping equipment to keep the waterscapes in a first-class condition. The Community Association will apply pesticides to the ponds if necessary to eradicate undesirable insects and weeds using commercially accepted treatments. All costs incurred by the Community Association in discharging its duties under this Section will be a Community Expense. (1)

The original September 10, 1992 “Declaration of Covenants, Conditions, and Restrictions for Moss Creek at Winslow Farm” created by “Wininger/Stolberg Group – Moss Creek, Inc.” confirms the existence of the **Moss Creek at Winslow Farm Homeowners’ Association, Inc.** It defined the “Common Area” therein as all the area in Moss Creek outside the boundaries of any lot and “Common Expenses” as including expenses for the upkeep, repair, and replacement of the Common Area. Section 5 further defined the Common Area as “. . . all area within Moss Creek, except the Lots, including, but not limited to the interior roads, sidewalks, parking areas, entrance signage, and ponds.” (2)

The original August 21, 1995 “Declaration of Covenants, Conditions, and Restrictions of Moss Creek Village at Winslow Farm, Phase I” created by “Wininger/Stolberg Communities, LLC” mentions the **Moss Creek Village at Winslow Farm Homeowners’ Association, Inc.** As in the Moss Creek document, “Common Area” is defined as all the area in Moss Creek Village outside the boundaries of any lot, and “Common Expenses” as including expenses for the upkeep, maintenance, repair, and replacement of the Common Area. It also further defined in Section 5 the Common Area as “. . . all area within Moss Creek Village, except the Lots, including, but not limited to the interior roads, sidewalks, parking areas, entrance signage, and ponds.” (3)

There is no mention of ponds in the CCRs of Bayberry, Bent Tree, Laurelwood, New Bent Tree, Olde Mill, or Sweetbriar. However, all of those have a clause indicating that owners of homes there are bound by the Winslow Farm CCRs, as do the CCRs of Moss Creek and Moss Creek Village. (4)

Exclusion of “Ponds” from the Moss Creek Village Common Area Section of Later Versions of Their CCRs.

Hallmark Rentals and Management is the Management Agent for both Moss Creek and Moss Creek Village (and until 2007 for all of Winslow Farm). The latest version of the Moss Creek Village CCRs found on the Hallmark web site as of this writing is dated January 29, 2015 and resulted from a 100% positive vote of members of the MCV HOA on October 28, 2014. That document *excludes* ponds from the Section 5 definition of Moss Creek Village Common Areas. A phone conversation took place on October 3, 2018 between Gary Wiggins and a Hallmark representative about the missing “ponds” in the Moss Creek Village CCRs. The representative said that she did not believe the ponds were ever in Moss Creek Village’s definition of their Common Areas. When told that they were in the 2013 version of their CCRs, she replied that they are different now. The ponds seem to have simply disappeared from the Moss Creek Village CCRs, although their actual physical location is obvious to anyone who visits the area.

Transfer of Ownership of the Pond Areas to WFCA.

In 2008, WFCA hired MoCoTiCo, The Title Company to research the status of ownership of the land encompassing the seven ponds in Winslow Farm. Bonnie S. Frank, Senior Title Officer at MoCoTiCo,

summarized the muddled situation in her reply of July 22, 2008. She wrote, “We have found deeds recorded July 10, 2006 for common areas in various portions of Moss Creek and Moss Creek Village to various owner’s associations. When checking the parcel numbers on those deeds, the Monroe County GIS system and the various plats of Moss Creek, a lot of confusion develops.” There were references to parcel numbers that do not exist in the GIS system, and Ms. Frank concluded that she was not sure what WFCA really owns. It was previously thought that there was no legal description of the ponds, but recently Deckard Land Surveying, the company that did the surveys of all ponds, has stated that there is such a description.

The Monroe County GIS database shows parcel 015-70120-12 (encompassing ponds 1-3) deeded to WFCA in 2006 from “Wininger/Stolberg Group-Moss”. The Indiana Secretary of State Business Entity database shows that Wininger/Stolberg Group-Moss Creek, Inc. was a Domestic For-Profit Corporation created on 3/23/1992 and administratively dissolved, becoming inactive on 1/14/1998.

Another Limited Liability Corporation involving Eric Stolberg crops up in relation to Moss Creek Village and ponds 4-7. It is Moss Creek Village LLC, listed in the Indiana Secretary of State Business Entity database as having been formed on 5/1/1995, but inactive after 2/6/2001. Nevertheless, the Monroe County GIS records a transfer of ownership in 2006 of parcel 015-70120-06 encompassing ponds 4-7 to WFCA from Moss Creek Village, LLC. As stated earlier, ponds 4 and 5 lie within the boundaries of Moss Creek, not Moss Creek Village.

In 2006, Hallmark Rentals & Management, Inc. was the management agent for WFCA and all the homeowners’ associations in Winslow Farm. Hallmark no longer serves as management agent for WFCA and Bayberry. Carole Damon’s Capital Realty Co., Inc. has served as the management agent for WFCA since 2008.

Questions about the legality of the 2006 transfers of ownership of the ponds to WFCA complicate the process of finding acceptable solutions to the problems with the ponds. A controversial Proxy form was enclosed with the notice of a special WFCA meeting that was scheduled for November 13, 2008 to hear proposals to convert some of the ponds to creek beds. One question on the Proxy was “I vote to deed the ponds to Moss Creek and Moss Creek Village as per the original documents.” About November 3, 2008, the Board of Directors of WFCA received a letter from attorney Geoffrey M. Grodner on behalf of the Moss Creek and Moss Creek Village Home Owners Associations in which he threatens legal action “. . . should the Winslow Farm Community Association undertake any action in derivation of the rights of the Moss Creek Associations [i.e., MC and MCV] or the obligations of the Winslow Farm Community Association.” (5)

Attempt to Shift All Responsibility for the Wet Areas of the Ponds to WFCA.

The original “Declaration of Covenants, Conventions, and Restrictions of Winslow Farm” is dated September 9, 1992. The ponds are clearly included in “Winslow Farm Community Maintenance and Common Area Map” found as Exhibit F of the 1998 Second Amendment to WF Covenants, Conditions, and Restrictions (CCRs). Furthermore, a May 19, 2000 document authored by the WFCA Board of Directors aimed to amend the Winslow Farm Rules and Regulations to include this statement:

Ponds and Pumping Equipment – WFCA is responsible for all maintenance of the ponds, pumping equipment, weirs, lining, overflow, spillway and fountains. Any landscaping around

the ponds will be the responsibility of Moss Creek Homeowners' Association or Moss Creek Village Homeowners Association.

The five WFCA Board members in 2000 all lived relatively close to the ponds (two in Bent Tree, one in Moss Creek, one in Moss Creek Village, and one from Olde Mill), with Hallmark then being the Management Agent for MC, MCV, and WFCA. Although the revisions to the WFCA Rules and Regulations were mentioned in the April 28 and May 19, 2000 WFCA Board meeting minutes, no formal vote was apparently taken, and the amendments to the Rules and Regulations were never formally recorded. The WFCA Board at its January 14, 2020 meeting voted unanimously to rescind the Winslow Farm Community Rules and Regulations, but the document on which they acted did not include the statement about sharing of pond maintenance. The 2020 Board members (one from Moss Creek, one from Moss Creek Village, one from Olde Mill, one from New Bent Tree, and one from Sweetbriar) felt that the rules were no longer relevant since each of the 8 neighborhoods in Winslow Farm has its own Covenants, Conditions, and Restrictions in addition to the overarching WF CCRs that apply to all of the 8 neighborhoods. (6)

Alternatives: Shift Pond Ownership to the County, Share Responsibility with the City, or Share Costs with MC and MCV HOAs.

There was a very active Pond Committee around 2009-10. One e-mail exchange had subject line "Can we donate the pond system to the drainage board?" The answer was apparently "yes," provided 5 conditions could be met. At least one of the criteria (a four-foot wide crushed limestone walkway at the high-water line entirely around the body of water) could be met only with further construction. It is not known whether this option was pursued beyond the original investigation, nor is it known if the City of Bloomington has any interest in helping financially with the ponds, even though substantial runoff into the ponds occurs during heavy rains from the City's Winslow Farm Sports Complex and a karst outlet in the City's Winslow Woods park.

Whether Monroe County or the City of Bloomington could be counted on to help with the ponds at any point in the future is anyone's guess, but those entities should be approached for consideration. The combined total tax valuation for the 40 homes in Olde Mill alone, through which the ephemeral stream runs into pond #3, was \$12,006,900 on 3/20/2020. Surely the combined valuation for tax purposes of all 417 homes in Winslow Farm gives us reason to expect assistance from the City of Bloomington or Monroe County in the maintenance of this critical drainage system.

The WFCA Board has had no recent discussions with the Boards of the MC/MCV HOAs to see if they might contribute on an ongoing basis to the maintenance costs of the ponds. The current versions of the CCRs of both Moss Creek and Moss Creek Village HOAs contain a section on Common Expenses that *excludes* "... expenses assumed or incurred by the Community Association." The "Community Association" in both cases is defined as the Winslow Farm Community Association, Inc. (7) If this prohibition is strictly applied, and the narrow view that the ponds are totally the responsibility of WFCA is maintained, then clearly there will be no cost sharing with either the Moss Creek or the Moss Creek Village Homeowners Association. Nevertheless, there have been indications in recent years that at least some residents of Moss Creek and Moss Creek Village lean toward financial support for the ponds by their HOAs.

Notes

1. Winslow Farm CCRs can be found at: <https://www.winslowfarmcommunity.com/ccrs-bylaws>.
2. Two versions of the Moss Creek Declaration of Covenants are publicly available. The original can be found at: https://f0ccbf61-3c27-4580-879f-13394a6c70b0.filesusr.com/ugd/fd0d6d_429c1785a9f54ceabf6d606c4287b0c2.pdf.

An October 20, 2003 version at Hallmark Rentals & Management, Inc. can be found at: <https://hallmarkrentals.com/wp-content/uploads/2018/01/moss-creek-declarations.pdf>

The Hallmark version does not include the wording of the September 21, 1992 Second Amendment to the original Moss Creek CCRs, which amended the wording of Section 3.1.3 to read:

“The Common Area” in each phase of Moss Creek shall be conveyed to or owned by the Association at the time of conveyance of the last Lot in the particular Phase of Moss Creek; provided, however, that expenses relating to the maintenance of the Common Area within each Phase are to be included within the Association budget from the time of conveyance of the **first** Lot in the particular Phase of Moss Creek.” https://f0ccbf61-3c27-4580-879f-13394a6c70b0.filesusr.com/ugd/fd0d6d_4ff7c9ad4ec54840a41185af6f95d661.pdf There is no Section 3.1.3 in the original MC CCRs, nor are there numbered subsections of Section 3 in the Hallmark version.

3. There are also multiple versions of the Moss Creek Village document. The original (1995), amendment 1 (1996), and Restated (2013) CCRs can be found at: <https://www.winslowfarmcommunity.com/ccrs-bylaws>. Amendment 1 (1996) deals with retaining walls and retaining wall easements. The 2013 Restated CCR document contains amendments approved by more than 75% of the MCV HOA members on November 12, 2012. Section 5 of that document defines “Common Area” as “. . . all area within Moss Creek Village, except the Lots, including, but not limited to the interior roads, sidewalks, parking areas, entrance signage, and ponds.” The document signed on July 30, 2013 is found at: <https://hallmarkrentals.com/wp-content/uploads/2019/03/moss-creek-village-declarations-update.pdf> The 2015 document that omits the word “ponds” was signed on January 29, 2015.
4. See the Bayberry CCRs at: <https://irp-cdn.multiscreensite.com/91778552/files/uploaded/Bayberry-Second-Amendment-CCR-First-Amendment-By-laws.pdf>
5. The law firm of Mallor Grodner had a hand in the preparation of all the legal documents signed by Eric Stolberg and Tim Wininger throughout the period of their involvement with Winslow Farm. <https://www.lawmg.com/>
6. The Winslow Farm original CCRs and Amendments 1 and 2 can be found at: <https://www.winslowfarmcommunity.com/ccrs-bylaws>.

Amendment 1 of June 6, 1996 replaced Section 1.7. Community Maintenance Area. It changed the original 1992 definition from:

“. . . the Entrance Signage, the ponds and pumping equipment; and the pedestrian walkways to Winslow Woods Park located within Winslow Farm”

to:

“Community Maintenance Area” means the Entrance Signage; the ponds and pumping equipment; any fencing originally constructed by *Declarant* including but not limited to the stone stacked fence erected by *Declarant* within the Neighborhoods or undeveloped areas deeded to the Community Association by the *Declarant*; any areas dedicated for the use of all Owners in Winslow Farm as a Community Area in any subsequent Deed or Plat; and, the pedestrian walkways to Winslow Woods Park located within Winslow Farm.”

Amendment 2 of September 30, 1998 reads as follows:

“Community Maintenance Area” means the Entrance Signage; the ponds and pumping equipment; any fencing originally constructed by *Declarant* including, but not limited to, the stone stacked fence erected by *Declarant* within the Neighborhood; any sidewalk entrance not constructed with concrete; any woodlands or undeveloped areas deeded to the Community Association by the *Declarant*; any areas dedicated for the use of all Owners in Winslow Farm as a Community Area in any subsequent Deed or Plat; and, the pedestrian walkways to Winslow Woods Park located within Winslow Farm; the landscaped islands in the streets of Winslow Farm; and the right-of-way owned by the City of Bloomington, Indiana along Henderson Street. The Community Maintenance Area is depicted on the map attached and labeled Exhibit F.”

7. Section 1.7 Common Expenses in the Moss Creek CCRs at: <https://hallmarkrentals.com/wp-content/uploads/2018/01/moss-creek-declarations.pdf>. Section 1.5 Common Expenses in the Moss Creek Village CCRs at: <https://hallmarkrentals.com/wp-content/uploads/2019/03/moss-creek-village-declarations-update.pdf>

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