

# COBB & GONZALEZ, P.A.

## MEMORANDUM ATTORNEY-CLIENT PRIVILEGED / WORK PRODUCT

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TO: Deesa Armstrong

FROM: Bill Cobb

SUBJECT: Amelia Bay Pond Maintenance

CLIENT NO.: 0332.000

DATE: August 21, 2023

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### ISSUES PRESENTED AND ADDRESSED

- I. Who owns and is required to maintain the ponds in Amelia Bay Homeowner's Association.

### ANALYSIS

Ownership and maintenance may be two separate issues. Generally speaking, the Association is required to maintain the stormwater systems located within a community, subject to the oversight of the St. Johns River Water Management System and are generally considered Common Elements.

Article 1, Section (a) of the Declaration of Covenants, Conditions, Restrictions and Easements for Amelia Bay ("Declaration") defines "Association," in pertinent part as:

. . .The Association shall **own**, operate and **maintain** the Common Areas; enforce the easements set forth in this Declaration; collect and disburse the assessments hereinafter created; . . . (emphasis added)

Article 1, Section (e) defines "Common Area" or "Common Areas" as follows:

(e) "Common Area" or "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association which is intended for the common use and enjoyment of all the owners within the Property. To the extent such facilities have been constructed, the Common Areas shall include, without limitation, parks, walkways, signage, utility and **drainage easements, and related facilities**. **Specifically excluded**

**however, are any lakes, ponds or watercourses which are part or parcel of any residential lot or parcel not owned by the Association.** (emphasis added)

Article 1, Section (j) defines “Parcel” as follows:

(j) “Parcel” shall mean and refer to any plot of **land** intended as a site for a House. Upon construction of a House, the term “Parcel” as used herein shall include **the House and Yard.** (emphasis added)

As you can tell, the terms of the Declaration referenced above are disjunctive. The definition of Common Area specifically excludes lakes, ponds or watercourses which are part and parcel of any residential lot, but “Parcel,” defining a lot, includes only the House and Yard, making no reference to a water feature. It appears the question would then become whether or not the body of water in question is or is not a part of the Surface Water or Stormwater Management System, which is defined in Article 1, Section (q), in pertinent part as:

. . . a system consisting of Ponds which are 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, over drainage, environmental degradation, and water pollution . . .**

To the extent the body of water in question is within the Surface Water or Stormwater Management System, regardless of who owns the body of water, Article VIII, Section 6 of the Declaration is dispositive regarding who is responsible for maintenance, providing:

**Section 6. Surface Water or Stormwater Management System. *The Amelia Bay Homeowner’s Association, Inc. 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. (emphasis added)

Accordingly, regardless of ownership, if the body of water in question is a part of the surface water or stormwater management system to control drainage, storage or conveyance of surface water, the Association is responsible for the maintenance and repair of the body of water, subject to the permit and approval of the St. Johns River Water Management District.

Article V, Section 1 of the Declaration provides, in pertinent part:

. . .the Association may take such measures and perform such services which ***in the judgment of the Board of Directors*** are necessary or desirable to enforce the covenants, conditions restrictions and limitation set forth in the Declaration . . . (emphasis added)

Article V, Section 4 of the Declaration provides:

Section 4. The Association ***may employ or contract*** with one or more third parties for the performance of ***all or any portion*** of the Association's management, ***maintenance and repair activities***, as the Association Board of Directors may choose. The Association shall be billed by its independent contractors, and the cost thereof shall be included within the General Assessment or Parcel Assessment, as the case may be. (emphasis added)

Accordingly, the Board of Directors has the right to contract for all or part of the maintenance and repair of the stormwater management system and to pass the costs along to the general membership or to the specific parcel if the maintenance and repair is associated with a specific parcel.

Ownership is not the issue. Maintenance obligations are the issue and the Association is responsible for the stormwater management system maintenance and repair, whether or not a portion of the system is physically located on a Parcel, and pass the expenses associated with the maintenance and repair along to the general membership or specifically to the Parcel owner where the maintenance or repair is directly associated to that Parcel.

We trust this responds to your inquiry. Should you have questions or comments or require additional information, please do not hesitate to contact us.