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May 10, 2019

VIA EMAIL – Joshua.schlie@gmail.com
Mr. Joshua Schlie
and
Woodcreek Board

RE: Duty of the Association to inspect and maintain septic system collector lines and natural drainage systems

Dear Joshua and Woodcreek Board:

Please accept this letter as my delayed response to your request regarding the duties of the Woodcreek Association and the Individual Owners to inspect, maintain and repair the septic systems, drain pipes, the septic system collector pipes, and the natural drainage systems.

Upon further review, and in order to address additional problems (namely the culvert issue), I have determined that there is a need for me to modify, to some extent, my earlier conclusion. Some of the reasons for this modification are as follows: (1) I was unaware that there were no buildings that contained a sewage disposal installation, and (2) it has become evident that the definition of System, as capitalized, is limited to the following meaning under Section 1.24 of the Declaration:

“System” means any forced aerobic waste disposal system constructed or existing on any Parcel from time to time.

This definition, as well as the usage and other parts of the Declaration, especially Section 8.2, distinguished an aerobic waste disposal system from the drain pipes and connecting pipes attached to the System.

The first paragraph of Section 8.2(a) of the Declaration provides that the Association must inspect the System, that is, the aerobic waste disposal system, on a periodic basis by a person or professional company providing such a service. This paragraph is set out fully below:

8.2 Sanitary Sewage System

(a) Inspection and Maintenance. The Association shall provide for the inspection, through a contract with a person or professional company providing such service, of any forced aerobic waste disposal system (System) which may from time to time exist on the Owners' Parcels. Such contract shall provide that the Systems are to be inspected on a periodic basis and recommendations made to the individual owners as to necessary and proper maintenance and repairs which should be performed for the proper chemical and mechanical functioning of the System consistent with the requirement of any governmental agency having the authority to regulate such Systems. In the event any owner fails to provide for such maintenance or repair, the Association shall have the right to do so in the Owner's name, charging all costs to the Owner.

The second paragraph of Section 8.2(a) of the Declaration provides the Association with a duty to inspect and to perform required maintenance so as to insure proper drainage through and from the collector lines. That duty is as follows:

As to any Parcel whereon the Developer has installed collector lines for any System, the Association shall provide for periodic inspection of such lines by a method which is subject to the approval of the Clermont County Board of Health. The Association shall notify the Clermont County board of Health of the chosen inspection method and if there is no written objection within thirty (30) days, the inspection method shall be deemed approved. An inspection is to be made on a periodic basis and required maintenance performed so as to insure proper drainage through and from the collector lines. In addition, the Association shall also provide for similar inspections of the natural drainage systems which exist on the Property, so as to insure proper drainage over and through the natural topography.

This duty contained in the last sentence of the second paragraph of Section 8.2(a) to provide inspections of the natural drainage systems may be distinguished from the duty of the Association to provide for an inspection **and required maintenance** of the collector lines. The Association has a duty to maintain the collector lines; it is not entirely clear to what extent the duty to maintain is a duty to repair, but that is not necessary or the subject of this response. However, with respect to the duty to provide for inspections of the natural drainage system that exist on the property, the second paragraph of Section 8.2(a) does not provide any duty to maintain the natural drainage systems. Therefore, the Association has a duty to inspect the

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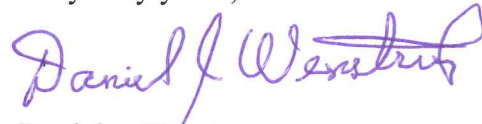
culverts that exist over and through the natural topography, but the Association does not have a duty to maintain those culverts, much less to repair them.

If the Association fails to comply with the duties contained in Section 8.2(a), it may be liable for the cost to determine the location of an obstruction, and to make repairs for any part of the collector lines that was not maintained. It may also be liable for any damages caused by a backup resulting from an obstruction. I have been advised that the County Health Board may have taken over this duty, but I still suggest that the Homeowner's Association should provide for reasonable periodic inspections of the septic system, the collector lines and the drain pipes. Those inspections might avoid problems similar to the recent backup problems that were the subject of this correspondence.

Finally, I am enclosing a copy of the Woodcreek Subdivision Declaration of Driveway Easements. This driveway easement will require the owners that are served by the driveway to maintain the driveway, including any culvert under the driveway.

Please feel free to contact me if you have any further questions regarding this matter. Best regards.

Very truly yours,



Daniel J. Wenstrup

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Enclosure