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Rivendell Community Association, Inc.  
 c/o Beth Miller  
 Lighthouse Property Management, Inc.  
 16 Church Street  
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May 14, 2019  
 Via Electronic Mail to [bethmiller@mgmt.tv](mailto:bethmiller@mgmt.tv)

Re: Rivendell Community Association, Inc.; Unit 2 Alley Maintenance Issue  
 OFN: 4782.002

Dear Beth:

As requested, I have reviewed the information provided regarding the question about maintenance of the alleys (“Alleys”) in Unit 2 of the Rivendell Subdivision. The Alleys in question affect approximately fifty lots in Unit 2, and four lots in Unit 3-A of the subdivision. All of these lots are subject to the Declaration of Protective Covenants, Conditions and Restrictions for Rivendell (“Master Declaration”). A number of these affected lots are also subject to the Declaration of Covenants and Restrictions for the Woodland Villas at Rivendell (“Woodlands Villas Declaration”). It is my understanding that the RCA has obtained conflicting legal opinions regarding maintenance obligations in this matter, and that the RCA is requesting another opinion to assist in resolving the issues. In order to provide a thorough review of the matter, I ordered and reviewed documents for the community from a title company that we use for our firm’s real estate closings. The title company provided copies of the recorded deed restrictions, amendments, as well as easements associated with Unit 2. I wanted to make sure that I had everything of record before providing input on the issue.

A review of the plats for the community establish that a portion of the Alley system is located on land entirely owned by the RCA. A portion of the Alley system is located entirely on privately owned lots in the subdivision (along the rear lot line of adjacent lots). Also, one of the Alleys appears to be partially located on RCA property and partially located on private lots.

It is my understanding that in 2003, when the RCA was turned over to the non-developer members, there was a reserve fund for the Alleys. Until 2007, the RCA continued to maintain this Alley reserve account. At some point in 2007, the Alley reserves were used for other purposes, and Alley reserves were no longer part of the budget.

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I have reviewed the following documents:

- Unit 2 Plat
- Unit 3-A Plat
- Master Declaration
- Other Development Documents Obtained from Title Company (easements)
- Woodland Villas Declaration
- Southwest Florida Water Management District (the "District") Plans and Permits for Unit 2

- **PLATS:**

- Unit 3-A. The Plat shows a 27' wide "Private Drainage, Utility, and Access Easement" (Instrument #1998160951). This portion of the Alley is located on four (4) lots (#22, 23, 24, and 25) of Unit 3-A, as well as Tract 612, which is owned by the RCA (Recreational Facility).
- Unit 2. The Plat shows a 24' wide "Private Drainage, Utility, and Access Easement" for lots 41 through 48 on Crane Prairie Way. The Plat appears to show that 12' of the easement is located on the private lots, and 12' is located on Tract 609, owned by the RCA. A boundary survey would be necessary to determine the precise location of the owners' lot lines in regard to the location of the paved Alley.

The plat also shows a 24' wide "Private Drainage, Utility, and Access Easement" on three separate blocks containing lots, and the Alleys on that property are entirely located on the privately-owned lots along Shadow Bay Way and Anna Hope Lane. The Alleys are not located on property owned by RCA.

- **MASTER DECLARATION/TITLE REPORT DOCUMENTS:**

Neither the easements nor the RCA documents I obtained from the title company specifically reference maintenance requirements for the Alleys. However, the documents contain several provisions regarding maintenance and definitions of common area.

- Section 3.02 of the Master Declaration states that the RCA is responsible for administration, operation, and maintenance of:
  - The Community Common Area
  - All easements conveyed or dedicated to the RCA
  - Community Common Area may include: open spaces, preservation, surface water management systems and related drainage appurtenances, roadways and entryways.
- Section 1.08 of the Master Declaration defines "Community Common Area" as portions of the community owned by, leased to, or the use of which has been granted to the RCA.
  - Section 720.301, *Florida Statutes*, defines "Common Area" as all property within a community which is owned or leased by the association, or dedicated for use or maintenance by the Association, regardless of whether title has been conveyed to the Association.
- Section 4.01(I) of the Master Declaration states that the RCA is responsible for the operation, maintenance, and regulatory compliance of the surface water

management system and all drainage, preservation, and conservation areas in accordance with Sarasota County's and the District's permitting requirements. Section 4.02(c) states that owners are responsible for maintaining their lawns to the water line of any lake or canal, the pavement edge of any street, the center line of any common area, and swales and easements separating two lots.

- Sections 4.02(a) and (b) require owners to maintain their lots free and clear of weeds, unsightly growth, trash, and debris, and requires periodic mowing by the owner. The owner is also obligated to maintain the exterior of all structures in a neat and attractive manner.
- Section 6.04 states that the community expenses to be shared by all owners including but not limited to the cost and expense of:
  - Maintaining the drainage system in the community
  - Maintaining the Community Common Areas.
  - Compliance with all applicable laws, statutes, ordinances, permits, governmental orders, etc.
  - Any other item not specifically addressed in the Declaration which is determined by the Board to be an appropriate item of Community Expense.

- **WOODLAND VILLAS DECLARATION:**

The Woodland Villas Declaration does not have any provision requiring the Woodland Villas Association to maintain Alleys. It appears that the purpose of the Woodland Villas Association is limited to providing lawn landscaping maintenance on the lots in Woodland Villas as required by Sections 4.02(a) and (c) of the Master Declaration.

- **SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT PLANS AND PERMITS FOR UNIT 2**

While the Master Declaration does not specifically address maintenance of "Alleys", it does specifically require the RCA to maintain the surface water management system. I reviewed District permit documents to see if there were any references to the Alleys and/or if they contained any minimum maintenance obligations for the RCA, the party responsible for maintenance of the system pursuant to the permit.

A review of overhead photos shows that the Alleys contain drain grates that indicate that the Alleys are an integral part of the community's surface water management system. I contacted the District and requested access to all plans and documents that are available for public review for Unit 2. All available plans/documents were uploaded to their website.

- Rivendell Unit II, Permit Number 4410445.02 (with revisions in 4410445.03, and 4410445.05).
  - RCA is the Operation and Maintenance Entity that is responsible for making sure that the surface water management system is constructed, operated, and maintained in accordance with the application, approved drawings, plans, and other documents provided to the District as part of the approval for the development.
  - The permit is valid only for the specific designs and operations indicated on the approved drawings submitted in support of the permit application.

Any substantial deviation from the approved drawings requires approval of the District.

- The construction plans show the location of the underground pipes under the Alleys that convey surface water under the Alleys, lots and public roadways into the lakes.
- The plans submitted for the permit contain construction and grading requirements for the surface and subgrade of the Alleyways in Unit 2.

• **CONCLUSIONS:**

Without a clear and specific provision in the Master Declaration obligating owners to maintain the pavement on the Alleys on their lots, and in light of the RCA's ultimate responsibility for the function of the surface water management system, it is my opinion that the RCA should maintain/repave the Alleys when necessary, as a common expense. It is my opinion that there is significant legal authority in the RCA documents that I reviewed that supports a conclusion that the RCA is required to perform the maintenance on the Alleys and repave them when necessary, regardless of whether they are located on property owned by the RCA or if they are located on private residential lots within drainage easements. Because the documents do not use specific terminology about maintenance obligations for paving the Alleys, it can certainly be subject to interpretation. However, in my legal opinion, reading the documents regarding RCA maintenance obligations as a whole, it makes both legal sense and practical sense for the RCA to perform maintenance and periodic repaving to ensure the Alleys are constructed of proper materials, that they are properly graded, and that they continue to remain a part of the fully functional surface water management system as required by the District. Proper and consistent maintenance is necessary to avoid drainage/flooding/water quality issues with the District.

The Master Declaration provides that the "Community Common Area" consists of easements conveyed or dedicated to the RCA, as well as the surface water management system. The surface water management system benefits the entire community, and the expense of such maintenance is sufficiently defined by the Master Declaration as a community common expense to be shared by all members. The construction plans submitted by the developer to the District contain specific references and construction specifications for paved Alleys as a part of the surface water management system. The RCA, as the responsible operational entity of the applicable surface water management permit, is required to make sure that the surface water management system is functioning in a manner that adequately collects and conveys the surface water, and in manner that does not adversely affect the water quality in accordance with the District's permit. The Master Declaration requires owners to maintain their lawns to the "pavement edge", but it does not place a specific obligation on the owners to maintain the Alley pavement located on their lots that is part of the surface water management system.

In addition to the language in the Master Declaration, it would not be practical or advisable, in my opinion, for the RCA to require individual lot owners to maintain the paved portion of the Alleys located upon their lots, or to somehow coordinate a proper re-paving when the Alley surface reaches the end of its useful life. The sheer number of owners that may have differing opinions about the timing of the repairs or repaving would certainly lead to inconsistency and maintenance issues that could adversely affect the collection and conveyance of surface water, and potentially affect the water quality (potential debris, pollutants, etc.). Based on my experience with the District, and after a previous discussions with District engineers, if the District perceives any problems with the flooding or water quality that violates the permit, it will hold the RCA responsible for any issues and subject the RCA to administrative/compliance action and potential fines, not the individual homeowners.

Also, based on the information provided to me, the developer of the community established reserves for the maintenance, repair, and replacement of the Alleys when it turned the community over to the non-developer members. To my knowledge, there is no history of the RCA requiring individual owners in Unit 2 to repave or make repairs to the portions of the Alley located upon their lots. While these factors are not necessarily dispositive if there was a legal challenge to the Board's decision, they tend to support a conclusion that the developer intended for the RCA to perform maintenance on the Alleys.

For all of the reasons stated above, I do not see a strong legal argument for the RCA to require individual owners to maintain the paved portion of the Alleys on their lots. Instead, it is my opinion that the RCA has the obligation to ensure proper maintenance, repair, and replacement of the Alley surfaces and sub-surfaces.

Please let me know if you have any questions or need any additional information.

Sincerely yours,



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