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February 25, 2004

Mary Lou McNulty
Trailer Estates Park and Recreation District
P.O. Box 6298
Bradenton, FL 34281-6298

Re: Improvements to Canal Sea-Wall

Dear Mary Lou:

This relates to your inquiry whether concrete walkways or landscaping abutting the sea-wall in Trailer Estates are "improvements" pursuant to the deed restrictions and whether said improvements must be approved by the architectural review committee (ARC). You have advised that there are no easements which run along the rear property line of the lots where the sea-wall exists. You have also advised that the property line continues to the sea wall and that each homeowner is responsible for maintenance and repairs to the sea-wall abutting their property. This responsibility is not within the deed restrictions, but part of an agreement Trailer Estates has with Manatee County. If any of these facts are inaccurate or change, please so advise as our analysis may change accordingly.

It is a violation of the deed restrictions to place "any construction improvements on any lot" without the approval of the ARC. It is also important to note that the deed restrictions affirmatively state that no "improvement" may be placed within the set back requirements. We have been advised that the subject lots are within the first, third and fourth additions to Trailer Estates. Pursuant to the controlling deed restrictions, the rear set back requirement is five (5) feet.

As we previously discussed, the primary issue in analyzing your inquiry is the definition of "improvement." Pursuant to paragraph one, it could be argued that an improvement is generally defined to include the erection, addition, or alteration of any building exterior, fence, exterior wall, or other structure. However, the deed restrictions do not specifically define the term "improvement" versus "construction improvement." Based upon the lack of definition and the use of two different terms, the deed restrictions would most likely be considered ambiguous as to this issue. When a term is considered ambiguous, the courts will look to the party's intent in drafting that term. The intent in this case could be determined from meeting minutes,
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discussions that took place regarding the definition of improvement with your lawyers, or any other document or testimony which would demonstrate what Trailer Estates meant in using either term. If any such evidence exists, that intent will likely control and answer our question.

However, if no evidence exists as to intent, the courts may look to how the term "improvement" is defined in other similar situations. Particularly, I would anticipate that a court would look to construction lien law which holds that a contractor possesses a lien on real property he or she improved. The term "improvement" is defined by statute in this context to mean any building, structure, construction, demolition, excavation, solid-waste removal, landscaping, or any part thereof existing, built, erected, placed, made, or done on land or other real property for its permanent benefit.

Absent evidence of Trailer Estates' intent in defining the term "improvement" and "construction improvement," the definition of improvement would most likely be consistent with construction lien law's interpretation above.

With respect to the second inquiry as to what must be approved by the ARC, again the evidence of intent would control. According to the construction lien law definition, it would appear that both the proposed concrete walkways and landscaping would be improvements that need approval from the ARC. However, the fact that it would be highly impractical and burdensome if the ARC had to give an approval each time a resident wanted to make a landscaping change would support the position that landscaping projects need not be approved.

An important issue to note is that the deed restrictions unambiguously state that the placement of any improvements within the set back requirement would constitute a deed restriction violation. I would presume that any concrete project or landscaping project abutting the sea-wall is within the five foot set back requirement. Accordingly, it would appear that any such project would constitute a deed restriction violation which can not be waived. To complicate matters, you have advised that the owners may contend that the concrete walkways are needed to support the sea-wall and are therefore required pursuant to their duty to repair and maintain the same. If their contention is accurate, the restriction from placing any improvement within the set back requirement could interfere with their duty to repair and maintain the sea-wall.

To alleviate the complexity of these inquiries and the potential for future litigation, I would strongly suggest considering amending the deed restrictions to include a specific definition of "improvement" and "construction improvement." I would also consider amending the deed restrictions to specifically identify the owners' obligations with respect to the sea-wall and whether said owners would have the ability to make certain limited improvements within the rear set-back requirement for the purpose of support, maintenance or repair of the sea-wall.

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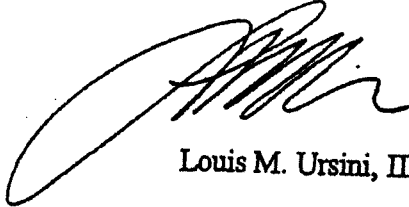
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Should you have any questions or comments, please do not hesitate to contact me

Sincerely,



Louis M. Ursini, III

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