



To: Hamiltons Crossing Homeowners Association, Inc.

From: Brianne Wingate, Coulter & Sierra, LLC

Date: April 14, 2025

Re: Common Property Maintenance – Detention Pond

Overview & Background

The Board of Directors ("Board") of Hamiltons Crossing Homeowners Association, Inc. ("Association") has requested that our office review that certain Declaration of Covenants, Restrictions, and Easements for Hamiltons Crossing, recorded in Deed Book 9143, Page 627, *et seq.*, of the Gwinnett County, Georgia land records (hereinafter, as may be amended and/or supplemented from time to time, the "Declaration") to analyze the provisions related to maintenance of the Common Property and the procedures and policies related to assessments to fund the same.

There is a detention pond located on the Association's property that falls under the County's mandated stormwater management requirements. It recently came to light that the original Declarant for Hamiltons Crossing signed a Maintenance Agreement with Gwinnett County that permanently binds the Association, as successor owner of the subject property, to keep the pond in good working condition. This arrangement is not unique to Hamiltons Crossing. Counties often require regular maintenance and upkeep of detention ponds to ensure that they function properly and effectively manage stormwater runoff. Properly maintained ponds mitigate flooding risks, prevent property damage, and reduce environmental impacts such as erosion and water pollution.

The detention pond is in a secluded location that is not readily visible from street view. As a result, it has been historically overlooked and is now in a state of neglect. The Board became aware of this on or around September 26, 2024, when Gwinnett County issued a formal Notice to Comply following an on-site inspection of the detention pond. The inspection report reflected an inspection score of "zero." It also identified multiple urgent issues that need to be addressed, including erosion damage, pipe failures, vegetation overgrowth, sediment buildup, and compromised drainage. The Notice made clear that failure to complete the required work may result in enforcement actions, including fines, or the County performing the work on the Association's behalf and at its expense. Such penalties could represent a significant expense that would ultimately become a shared burden among all Owners. Therefore, the Board must bring the detention pond into compliance in order to avoid such an unnecessary cost to the community.

Assessments and the Association's Obligations

As stated above, the Maintenance Agreement between the Declarant and Gwinnett County binds the Association, as the Declarant's successor, to maintain the detention pond in a condition acceptable to the County. In addition, two specific provisions of the Declaration establish the Association's obligations related to maintaining the Common Property, which includes the detention pond. Article II, Section 2.7 states that the Association must maintain all Common Property. Article III, Section 3.09 reinforces this

obligation by clarifying that the Association must maintain property it owns as well as property it controls through a permanent easement. These sections collectively establish that the detention pond falls within the scope of the Association's maintenance duties, since it was constructed by the Declarant and is either owned by or subject to an easement in favor of the Association.

Article IV of the Declaration provides a framework for how these obligations are to be funded. By accepting title to a Lot, each Owner agrees to pay assessments properly levied by the Association. These include the annual assessment, any special assessments for unanticipated or capital expenses, and specific assessments for costs that benefit fewer than all Owners. Article IV, Section 4.02 provides that the purpose of these assessments is to serve the common good of the community, which includes the maintenance, repair, and improvement of Common Property. These funds are intended to keep the neighborhood functioning safely, legally, and in a manner that complies with applicable laws.

Routine operating expenses are funded through annual assessments. Article IV, Section 4.04 sets forth the procedure for determining the amount of annual assessments. Article IV, Section 4.04(b) expressly provides that the Board may, without a vote of the Membership, increase annual assessments up to the greater of thirty percent (30%) or the rate of inflation. Similarly, Article IV, Section 4.05 allows the Board to levy special assessments for unforeseen expenses without a vote, so long as the total amount of the special assessment does not exceed the amount of the then-current annual assessment.

In light of the foregoing, the Association must resume its responsibility to maintain the detention pond. It serves the Association's best interests keep these costs as low as possible. The Board has reported that it is currently reviewing quotes from different vendors and is actively seeking the most cost-effective approach to address the detention pond. Gwinnett County has expressed a willingness to be flexible and work with the Association on a practical plan of action in an effort to spread out the expense over time and identify opportunities for more efficient solutions.

Conclusion

Increases in assessments can be frustrating, especially when the work involved is not readily visible to the community. However, the detention pond is an official stormwater facility, and it is essential to ensure that it functions properly. Failure to act would expose the Association to additional penalties, including costly fines. Therefore, the Board has a responsibility to take prompt action to bring the pond into compliance.