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March 25, 2015

Tall Timbers Homeowners Association  
Andrew Peek - President  
37295 Ivy Trail  
North Branch, MN 55056

Andrew Peak and Board of Directors:

At the 2013 annual meeting the homeowners association tasked the board with determining the responsibility for septic lines that cross through other lot owner's property.

A motion was made and passed "to *revise Covenant Article VII, Section 5, to incorporate changes regarding responsibility of septic lines that cross through other Lot owner's property.*" The new proposed revision is to be presented at the 2014 annual meeting.

You have asked me to address the following questions:

1. Is the TTHA responsible for septic lines outside of association owned property?
2. Is the TTHA financially responsible for the shared lift stations?
  1. Is the TTHA responsible for septic lines outside of association owned property?

I think it is not.

Covenant Article VII, Section 5, of the TTHA Declaration of Covenants, Restrictions and Easements, dated April 29, 2012, provides that "Each lot owner is responsible for maintenance and all related expense of the owner's respective individual septic collection tank, the drain line connecting the septic collection tank to the owners home, and the drain line from the owner's septic collection tank to the common area drain line.

A "common area drain line" is a main drain line usually located on or near a common area drain field, beginning where several drain lines connect to a common area drain line -- in contrast to an individual lot drain line even if joined by two or three other lines along the way to the common area drain line.

Some lot owners have questioned whether septic lines running from their individually owned septic tank to a *common area drain line* / drain field, become common area property upon crossing the yard of another lot owner on its way to the drain field, and/or upon joining the septic line(s) of two or three other lot owners.

Are there *drain field lines* or *common area drain lines* located on private property? Covenant articles 1 and 3, and Bylaw Article II, define Common area property and the rights and obligations of the Association:

Covenant Article 1, Section 7, definitions, and Bylaws Article II, Section 2, Definitions, each describe common areas as including land which is reserved by the Association as easements: "*Common Area*" shall mean and refer to any real property in which the TALL TIMBERS HOMEOWNERS ASSOCIATION shall have reserved certain exclusive and/or nonexclusive easements, rights or obligations for itself and/or specific Owners as more fully described in this Declaration."

Covenant Article 3, "Rights and Obligations of the Association", Section 3, provides that, "the Association...shall be responsible for the exclusive management and control of the common area and provide for maintenance, repair or replacement... of the common area improvements and any services or utilities, including septic drain field lines located thereon..."

*Drain field lines* located within the drain fields are common area property. Drain field lines located on privately owned property, if any, would be on easements reserved by the Association, and would also be common area property, and the responsibility of the Association for maintenance, repair or replacement.

Based on a design plan of the TTHA septic lines and drain fields, dated November 30, 1999, prepared by Glenn Rhebein Companies, Engineer W.A.T. Mc'Cully, in possession of Board members at a meeting in my Office on March 17, 2015, there are no *drain field lines* or common area drain lines other than those within the drain fields. None designated as such are shown on the drawing. The notation, "*Each lot shall have its own FM (force main) Line to the stilling tank.*" is printed on the front page of the septic design plan.

An FM. Line is "Force Main" line, which is defined at [www.Co.Thurston.Wa.US](http://www.Co.Thurston.Wa.US) as a smaller diameter sewage waste line used to move solid waste output from a grinder pump to a waste and wastewater treatment facility. Grinder pumps are used with "force main" septic systems to move waste products uphill to a private onsite wastewater treatment facility or in larger installations, to move sewage or black-water or waste products to a centralized treatment facility. Force

*mains used to carry sewage prepared by a grinder pump will generally be of smaller diameter than waste lines which work by gravity.*

Based on the above mentioned septic design plan, the TTHA system includes four force mains from four different lots connected to a single stilling tank.

*A stilling tank is a chamber used with a pumped effluent system, designed to slow the flow of effluent from the septic tank to the percolation system, or drain field, allowing solids to settle more.*

Since the *drain field lines* are not shown as easements across yards, they are understood as being within the drain fields. The lines across private yards are “force main lines” which run from individual septic collection tanks on each lot to the stilling tank. These are privately owned and would not be included as the improvements which the Association is responsible for, as specified in Covenant Article 3, Section 3.

This design of the TTHA septic system may be seen as a consideration in favor of keeping the system one of privately owned septic lines, (force main lines). It would be expensive to change. It would likely be more difficult with a system of private pipelines joined together in yards, or elsewhere, on their way to the drain fields, to measure the responsibility of individual owners for repair, maintenance, and upkeep, depending for instance on where a problem in the line was relative to the location of input of different owners.

**2. Is the TTHA financially responsible for the shared lift stations?**

Covenant Article IV, provides that owners on shared lift stations have financial responsibility for the shared lift stations, including repairs up to \$50.00 per year each, and additionally for special needs of repair, replacement, or re-design as may be determined by the Association and approved by vote of members.

Covenant Article IV provides the Association with broad discretion to increase assessments or add assessments. Article IV imposes upon the Association the obligation, authority and discretion, to provide for the health, safety, recreation and welfare, of the members as required. Each lot owner, upon the acceptance of its deed of ownership, has covenanted and agreed to the assessment authority of the Association over its respective lot.

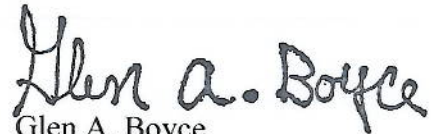
Article IV, Section 4 gives the Association the authority and duty to make *annual assessments for charges*, and *special assessments for capital improvements*. The Association may authorize a special election for

increased funds for necessary improvement, or replacement of the lift station system.

The Association is responsible for pumping and inspection of the lift stations annually, and provision of certifications every three years. Article III, Section 3 of the Covenants provides that, "the Association shall have the shared lift stations pumped and inspected annually...Every three years the association shall provide the City of North Branch a certification that the shared lift stations are operating properly."

Thus, the Association, while not itself financially responsible for the lift stations, is responsible to invoke procedures, including the assessment of members as necessary, and carry out responsibilities imposed upon it by the Covenants for the provision of recreation, maintenance, repair and improvement.

Yours very truly,

A handwritten signature in black ink that reads "Glen A. Boyce". The signature is written in a cursive, slightly slanted style.

Glen A. Boyce  
Atty. Reg. No.: 10352