

The board is sympathetic to homeowners in Waterside Estates that are attempting to resolve drainage issues. The Association has conferred with its attorneys to identify a solution to the issue of an owner installing his drainage pipe across Association common area. Unfortunately, the Governing Board does not have the authority to grant permission for the pipe to remain on the common area.

In order to give permission to any member for a member's drainage pipe to be installed across Association common area, the Association would have to grant an easement over the common area to that member. An easement is a right of one party to use the land of another party for some purpose.

Unfortunately, the board of directors does not have the authority to grant an easement over Association common area, unless 2/3rds of the entire membership vote to approve such an easement.

Section 2.09(g) of the Declaration of Covenants, Conditions, and Restrictions, provides as follows: (g) The Association shall have the right to dedicate, sell or convey all or any part of, the Common Properties and Facilities, or interests therein, to any public agency, authority, or utility or any utility district, or to any third party whomsoever, for such purposes and subject to such conditions as may be agreed to by a vote of the Members as hereinbelow provided. No conveyance of Common Properties other than the granting of utility easements upon the Common Properties, shall be made without such Member vote. No such dedication or conveyance (except granting of utility easements) shall be effective unless an instrument agreeing to such dedications or conveyance signed by Class A Members and Class C Members entitled to cast not less than two thirds (2/3) of the aggregate of the votes of both such Classes of Members has been recorded.

In real property law, an easement is considered a "dedication" of real property. Further, a resident is not a utility company that provides utility services to others, so the easement for a resident's pipe cannot legally be considered a utility easement. It is therefore, extraordinarily clear, that the Declaration does not permit the Board, acting alone, to grant permission for anyone to install a pipe or anything else over Association common area.

The board has a legal duty: 1) to abide by the governing documents of the Association, 2) to enforce those documents, and 3) to protect the common area of the Association. If the Board ignores its duty because of one circumstance, however noble it may be, and grants an easement over common area without authority, then it would be: 1) ignoring its duty to protect the common area of the Association, 2) setting a precedent that could be harmful to the Association and its common area in the future, and 3) exposing itself to liability (because only one member has to disagree with the board's decision, and file a lawsuit, and that person would win).

If a homeowner would like to take the task of obtaining the requisite 2/3rds written approval from the record owners of the entire Association, as required by the Declaration, then the board would consider granting the requested easement.

Finally, it is entirely inordinate for the board to reply to members about the situations surrounding one member, and as this communication is more than sufficient to explain the board's decision, there will be no more discussion or response from the board on this matter.