

**POLICY RESOLUTION NO. 2018-1**

**Of the**

**Board of Directors**

**Of**

**Penn Forest Place Homeowners Association, Inc.**

**Gutters, Downspouts, and Underground Downspout Drain Lines  
Ground and Driveway Drains Serving Only One Homeowner  
Developer Defects**

**WHEREAS**, the Penn Forest Place Homeowners Association, Inc. (Association), DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS state in:

1.10 "Common Maintenance Areas" shall mean the areas to be maintained by the Association which shall include all Association Property and the exterior of all Lots. The exterior to be maintained shall include all shrubbery, grass, wooded areas (maintained in same state as conveyed by Developer), sidewalks, decks, railings, if any, door lights (except owner to be responsible for light bulb replacement), if any, exterior railings, exterior steps or stairs, patios, balconies, porches, outside walls (excluding glass), outside trim, roofs, carports (excluding pull down attic stairs) and garage exteriors, if any.

**WHEREAS**, the Penn Forest Place Homeowners Association, Inc., BYLAWS OF PENN FOREST PLACE state in:

1.2.10 "Common Maintenance Areas" shall mean the areas to be maintained by the Association which shall include all Association Property and the exterior of all Lots. The exterior to be maintained shall include all shrubbery, grass, wooded areas (maintained in the same state as conveyed by Developer), sidewalks, decks, railings, if any, door lights (except owner to be responsible for light bulb replacement) if any, exterior railings, exterior steps or stairs, patios, balconies, porches, outside walls (excluding glass), outside trim, roofs, and garage exteriors.

**WHEREAS**, neither document mentions **Gutters, Downspouts, and Underground Downspout Drain Lines, Ground and Driveway Drains Serving Only One Homeowner, and Developer Defects**, as areas to be maintained by the Association, the Board of Directors sought the opinion from the Association's attorney.

**WHEREAS**, the Association attorney rendered an opinion dated September 19, 2017 (see attached) regarding the above issues.

**NOW THEREFORE** the Board of Directors of Penn Forest Place Homeowners Association, Inc. will follow the attorney's advice until such time as the Association documents are changed. The Association will do the following:

- 1) Continue cleaning homeowner's gutters and downspouts twice per year; Spring after the seed drop of trees, and Fall after the leaves have dropped. Any other cleanings will be the responsibility of the homeowner.
- 2) Take no responsibility for cleaning underground downspout drains or driveway/yard drains serving only one homeowner.
- 3) Take no responsibility for correcting any builder defects.

**Penn Forest Place Homeowners Association, Inc.**

**RESOLUTION ACTION RECORD**

**Resolution Type: Policy No. 2018-1**

**Pertaining to:** Gutters, Downspouts, and Underground Downspout Drain Lines, Ground and Driveway Drains Serving Only One Homeowner, and Developer Defects

Duly adopted by the Board of Directors of the Association on October 23, 2018.

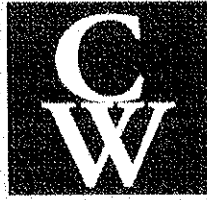
Motion by: Gail Albert Seconded by: Tom DeHart

NAME	TITLE	YES	NO	ABSTAIN	ABSENT
Charles Spencer	Director	X			
Stuart McGhee	Director	X			
Gail Albert	Director	X			
Tom DeHart	Director	X			
Mary Vogt	Director	X			

Attest: Charles R. Spencer (Officer)

Date: 10/23/2018

**Resolution effective as of date distributed to owners.**



CHADWICK  
WASHINGTON  
MORIARTY  
ELMORE &  
BUNN P.C.

## MEMORANDUM

**To:** Board of Directors, Penn Forest Place Homeowners Association, Inc.; c/o  
Chrissy Greene and Nikki Pritt, Hall Associates, Inc.

**From:** Stephen H. Moriarty and Andrew J. Tureaud

**Re:** Maintenance and Repair Questions

**Date:** September 19, 2017

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*- Attorney-Client Communication -*

This is a response to the questions posed by Penn Forest Place Homeowners Association, Inc., regarding maintenance and repair responsibilities and its obligations (or not) for correcting developer defects. To be more specific, the Board of Directors has asked:

- (1) Whether the Association is responsible for maintenance, repair, or replacement of gutters, downspouts and drain lines serving only one homeowner;
- (2) Whether the Association is responsible for maintenance, repair, and replacement of ground and driveway drains serving only one homeowner; and
- (3) Whether the Association is responsible for correcting developer drain line defects.

We address each of these questions in turn.

### **Analysis**

- (1) Whether the Association is responsible for maintenance, repair and replacement of gutters, downspouts and drain lines serving only one homeowner.

Pursuant to the Association Bylaws, the Association is responsible for maintenance, repair and replacement of all "Association Property and Common Maintenance Areas." *Bylaws, Art. 5, Sec. 5.6.* "Association Property" means all real property owned by the Association. *Bylaws, Art. 1, Sec. 1.6.* The "Common Maintenance Areas" includes "Association Property and *the exterior of all Lots*" specifically,

"shrubbery, grass, wooded area . . . sidewalks, decks, railings . . . exterior railings, exterior steps, patios, balconies, porches, outside walls . . . outside trim, roofs, etc." *Bylaws, Art. 1, Sec. 1.10. (Emphasis added.)*

While the Common Maintenance Area does not specifically mention "gutters" or "downspouts," it is clear that the Association is responsible for the maintenance, repair and replacement of the exteriors of the Lots. The Bylaws even go so far as to say the Association is responsible for the "roofs" and "outside trim." This must, by implication, include the exterior gutters and downspouts on each Lot.

The downspout drain lines are less certain. If they are on the exterior of a Lot, then the Association is responsible for their maintenance, repair and replacement. If underground, then they are not on the exterior of the Lot and the Association is not responsible for their maintenance, repair, or replacement.

If, however, the drain lines cross through Association Property (land owned by the Association itself) underground, then the Association is responsible. Knowing whether a drain line passes under and through Association Property may be difficult to determine. If these drain lines only serve one Lot, it is likely that they do not. It is our opinion that the Association is responsible for drain lines serving a single homeowner's Lot, but not if they are submerged underground on the Lot.

The Association's responsibility for the gutters and down spouts requires "maintenance" pursuant to Section 5.6 of the Bylaws. This includes periodic cleaning and servicing to ensure they operate effectively. Furthermore, because the Association has already assumed gutter and down spout cleaning responsibilities, it is unwise to stop that practice.

(2) Whether the Association is responsible for ground and driveway drains serving only one homeowner.

The analysis of this issue parallels the one above: the Association is responsible for all exterior maintenance, repair and replacement. One difference, however, is that "driveway" is explicitly referenced in the Bylaws but omitted in the Declaration. Article 5, Section 5.6 of the Bylaws states that the Association

shall be responsible for all maintenance, repair and replacement . . . of the Association Property and Common Maintenance Areas *including driveways as described in the Declaration, or as may be determined by the Association.*

(*Emphasis added*). But there is no mention of “driveways” anywhere in the Declaration, contrary to the Bylaws’ assertion. The Declaration simply states that the Association is responsible for “Association Property” and the “Common Maintenance Areas,” both are defined terms that do not include “driveways.”<sup>1</sup>

This creates a conflict between the governing documents. The Declaration holds overriding authority when there is a patent ambiguity or conflict between them. The Association, therefore, has no responsibility for box-type drains on a Lot driveway.

Another distinction is that the drain lines for a box-type drain are completely underground. The Association has no responsibility for drain lines that are submerged beneath a Lot. The drain grate, however, sits on the open portion of the exterior of the Lot. It is our opinion that the Association is responsible for maintenance, repair and replacement of the grate of the drain if it is in the yard, but *not* if it is in the driveway.

(3) Whether the Association is responsible for correcting developer defects.

The Association is not responsible for correcting the drainage defects nor should it, under the present governance structure. Article 5, Section 5.8 of the Bylaws provides the Association’s responsibilities regarding additions, alterations or improvements. This states that

[n]o Member or Association shall have the right at any time to make architectural, *engineering*, landscaping or decorative changes of any nature to any portion of the Association Property or Common Maintenance Areas and the same shall be maintained in such a fashion to reserve the original architectural, *engineering* and decorative design in every aspect.

(*Emphasis added.*)

This prohibition, while not included in the Declaration, is still binding on the Association. The section broadly proclaims that the Association *shall not* make any sort of engineering changes to the Association Property or Common Maintenance Area. As stated above, the term “Common Maintenance Area” speaks exclusively to the exteriors of Lots. Association Property is all real property owned by the Association. The Board’s question regarding Developer defects indicates that they occur where the drainage line is underground.

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<sup>1</sup> As we noted in our 2011 correspondence (see attached) there is no obligation on the part of the Association to maintain more than what is described in Article I, Section 1.10.

The defect is not Common Maintenance Area simply because it does not lie on the exterior of the Lot, although it is possible that these underground drainage lines pass through Association property. A more likely scenario is that these drain lines are submerged under a single Lot – an area where the Association has no repair or replacement obligations. Section 5.8 also states, explicitly, that the Association shall not make any engineering changes. Correcting a drainage slope in these lines would require a new design and construction and would fall within this section prohibiting engineering changes.

### **Conclusion**

The foregoing sets out our understanding and review of the issues presented.

The Association is engaged in the process of revising its Declaration and Bylaws. We suggest that these same issues may be resolved by the revisions so that, going forward, any unsettled or unsatisfactory points such as these can be put to rest. The objective is to achieve clarity and promote the values of the properties within the community and good governance.

We trust that this memorandum has adequately answered the Board's inquiry. Please let us know if further questions arise or you would like to discuss this opinion in more detail. As always, we can be reached by phone at 703-352-1900, 540-857-0600 or by email at [shmoriarty@chadwickwashington.com](mailto:shmoriarty@chadwickwashington.com) or [atureaud@chadwickwashington.com](mailto:atureaud@chadwickwashington.com).