

MEMORANDUM

TO: Riverwood Community Development District; Riverwood Community Association
FROM: Silver Lakes Ad Hoc /Task Force Committee
DATE: January 15, 2016

RE: Riverwood Stormwater Management System/Surface Water Management System:
Lake Bank Erosion Project

Note: the terms Stormwater Management System and Surface Water Management System have been used in different documents; and, we believe that the terms are interchangeable for purposes of this memorandum.

The committee is offering these concerns on behalf of the Riverwood community and note that this is a community concern - it is not neighborhood specific and is not unique to Silver Lakes.

Over the past several months, the Silver Lakes Ad-Hoc/Task Force committee on behalf of the entire Riverwood community has raised a number of questions and concerns related to the RCDD Lake Bank Erosion Project. We have been given a number of opinion related responses at RCDD meetings, in e-mails, and via phone calls which, we assume, are intended as the rationale/justification for starting the RCDD Lake Bank Erosion Project. Statements have been made that reference documents and legal opinions which include: 1) fear of law suits or fines, 2) assumption of previous negligence in managing the Stormwater Management System/Surface Water Management System, 3) assertion that the SWFWMD permit takes precedence over all other documents (plats, covenants, article of incorporation, deed restriction, closing agreement) and the Covenants are 'secondary documents', 4) assertion that cost should not be considered a deterrent if the project is deemed to be necessary; and, 5) belief that an Inspection Report of the Stormwater Surface Management System was not conducted by an environmentalist; and, reports by certified engineering companies contracted aren't important and those contracted by the RCA were rejected by the RCDD.

In an attempt to address our concerns, the committee has continued to research this issue and offers the following:

1) Fear of law suits or fines: There is no credible information available that would support this statement. SWFWMD and other state agencies clearly state in their directives that a law suit is not the first or even the second solution to unresolved issues of oversight. They prefer to work on resolution if a problem is discovered to the system. To our knowledge, there are no issues raised concerning the Riverwood Stormwater Management System/Surface Water Management System by any state agency.

1. Summary: It is a disservice to the community to presume the possibility of threat or fear of law suits or fines as justification to become encumbered by years of an extensive program that has the potential of costing the residents millions of dollars when NO corrective actions are currently required.

2) Assumption of previous negligence in managing the Stormwater Management System/Surface Water Management System: The committee is unable to find any evidence that Riverwood (RCDD or RCA) has been negligent in their responsibility in managing this system. The RCDD board has reviewed this issue continually over the past decade and has filed the required inspection reports to SWFWMD in regards to the Environmental Resource Permit. They have also cleaned, maintained and repaired, as needed, the infrastructure that makes up the system.

Timeline

Mach 18, 2008 Inspection by David Franks – **this report is not included but is referenced in the 2010 report**

April 21, 2010 Statement of Inspection for Proper Operation and Maintenance received by SWFWMD by David Franks (licensed Professional Engineer).

May 4, 2010 SWFWMD District Staff conducted a site inspection and determined that the permitted system is in compliance with the permit. Next required report is due on **May 6, 2014**.

May 6, 2010: David Liston (Manager – RCA) receives copy of filed Statement of Inspection for Proper Operation and Maintenance from SWFWMD prepared and filed by David S. Franks – D. S. Franks & Associates, Inc. Permit No. 40006845.001.

Report covers Permit No's.: system is being property operated and maintained

40 6845.001 – below-ground facilities are being operated and maintained as authorized

49 6845.007 – below-ground facilities are being operated and maintained as authorized

40 6845.008 - below-ground facilities are being operated and maintained as authorized

40-6845.009 – below-ground facilities are being operated and maintained as authorized

49 6845.010 - below-ground facilities are being operated and maintained as authorized

49 6845.011 - below-ground facilities are being operated and maintained as authorized

MEMORANDUM

TO: Riverwood Community Development District; Riverwood Community Association
FROM: Silver Lakes Ad Hoc /Task Force Committee – on behalf of the Riverwood community
DATE: January 17, 2016

RE: Riverwood Stormwater Management System/Surface Water Management System:
Lake Bank Erosion Project

We note that the RCDD meeting scheduled for January 19, 2016 has an agenda item listed for discussion called: STAFF REPORT ON LAKE BANK RESPONSIBILITY. On behalf of the Riverwood community (this is not a neighborhood specific issue), we would offer the following points we feel are relevant to this agenda item for discussion and review by the Supervisors:

1. All governance documents should be carefully considered as they are relevant to this discussion including the RCA Covenants, closing documents, filed Plats, and RCA Modification Committee guidelines.
 - a. Residents have followed existing RCA Modification rules and guidelines to restore lake banks in RCDD owned ponds;
 - b. Residents signed acceptance of governance documents at closing;
 - c. RCDD signed a Joinder accepting the governance documents; and,
 - d. Failing to acknowledge the role of the RCA Covenants and other governance documents sets a dangerous governance precedent.
2. This is not a simple negligence issue requiring the expenditure of millions of dollars – particularly when detailed Inspection Reports submitted by certified Engineers and accepted by SWFWMD since 2008 indicate no corrective actions are needed; and, a recent review by a SWFWMD Engineer indicated that a 4/1 slope was a construction requirement that does not require restoration if it does not impede the Surface Water Management System.
3. At recent meetings, three former Supervisors have spoken to this issue; and, they all agreed that they had voted during their term of office that repair of bank erosion was not an RCA or RCDD responsibility – it was a homeowner responsibility.
 - a. Former Supervisor Bunker has said that she drafted the guidelines that were discussed and approved by the RCDD and were presented in writing to the RCA. The RCA adopted and implemented the policy guidelines and they are still in place;
 - b. We note that no meeting to discuss a change in this policy has taken place between the RCA and the RCDD;
 - c. One Supervisor indicated that although he voted and agreed that erosion repair was the homeowners' responsibility, he now feels he didn't have enough information; and, one said he would now support whatever the current board decides; and,
 - d. As the RCDD Supervisors have stated, they are not bound by any decision made by previous Supervisors; and, at any time it takes a minimum of three affirmative votes of the Supervisors to overturn a decision any former board has put in place. Advancing this restoration project prior to a Supervisor election this year could have consequences for a future board; and, would certainly impact future budgets.
4. We are not aware of any meeting where a SWFWMD representative met with both the RCA and the RCDD to discuss joint and individual governing entities and/or homeowner responsibilities for: the Storm Water Surface Management System; bank erosion; Inspection Reports and their findings; and, permits. This would seem to be a prudent step before advancing any further discussion or action regarding the Lake Bank Erosion Project; and, the type of joint cooperation and discussion that the community expects from our elected leaders in order to resolve issues; discuss policies and governance requirements; provide oversight and direction to management; manage fiscal requirements; and, plan for the future.

We would encourage the Supervisors to convene a joint meeting with the RCA to discuss this very important topic before any further action is taken by the Supervisors; and, if required, invite a representative from SWFWMD to participate.

- 49 6845.014 - below-ground facilities are being operated and maintained as authorized
- 49 6845.017 - below-ground facilities are being operated and maintained as authorized
- 49 6845.020 - below-ground facilities are being operated and maintained as authorized
- 49 6845.027 - below-ground facilities are being operated and maintained as authorized

Note: rip rap installation in Silver Lakes was referenced with photos from 2008. "The ground surfaces of the unprotected banks are at the same elevation as the ground surfaces under the rip rap. This implies that the banks have reached a point of equilibrium, and that additional soil loss will occur at a very slow rate, if at all."

- 44 6845.033 (Myakka Pointe) - below-ground facilities are being operated and maintained as authorized

Note: . . ."it appears that the vertical drop-off is the result of long-term settlement of the super-saturated sandy soils that form the banks of the lake, and not due to erosion or scour caused by wave action." A No Mow Zone was recommended; and, "installation of rip rap is not recommended at this time because of its expense and probable lack of benefit."

- 43 6845.038 - **below**-ground facilities are being operated and maintained as authorized
- 44 6845.040 - below-ground facilities are being operated and maintained as authorized

May 2013 Stormwater Management System Inspection Report prepared for RCDD by Bryan Zoller, BZ Consulting LLC (Civil Engineering).

This inspection report issued by a licensed engineering firm in 2013 certified to conduct such inspections was thorough and complied with the SWFWMD permit and reporting procedures. The 2013 inspection prepared by Zoller Engineering for the RCDD clearly stated that the lake banks did not require any corrective actions.

May 21, 2013 Per minutes prepared by Severn-Trent of the RCDD Sewer Committee meeting Chaired by RCDD Supervisor Jim Martone with RCDD Supervisors Walt Powers, Henry Lackland and Doug Campbell in attendance, the RCDD contracted Engineer Bryan Zoller noted that the RCDD receives authority for the Surface Water Management System through the Riverwood Covenants:

"Stormwater Management System Inspection Report

Mr. Zoller discussed the stormwater management system inspection report. He has obtained and assembled a summary of the Environmental Resource Permits, with record drawings, from the Southwest Florida Water Management District and recommended they be uploading to the RCDD website. He also developed new utility maps that will include the potable, reclaimed, storm, and sanitary systems on one set of 3 map sheets. The report summarized all assets that require immediate improvements or maintenance with photos of deficiencies.

The covenants, which were developed in 1992, list the CDD as responsible for maintaining all stormwater management systems. The SWFWMD Environmental Resources Permits list the RCA as the entity responsible for maintaining the stormwater management system in Sawgrass. The CCU property appraiser's website lists the RCA as the owner of the roads and ponds in Sawgrass. The board recommended having the attorney make a determination of who is responsible for maintaining the stormwater system in Sawgrass".

April 15, 2014 Transmittal letter from D. S. Franks & Associates to RCA Manager, Connie Bittle;

Submitted Inspection Reports & Supporting Documents to SWFWMD: Permit No. 6845.038 and .040

Original documents of SWFWMD Inspection Reports prepared by David Franks for RCDD facilities covered by Permit Nos. 6845.001, .007, .008, .009, .010, .014, .017, .020, .027 and .033

Note from Information and Instructions on Transmittal Letter:

2. . . . **"There is nothing more that the RCA has to do.** SWFWMD will respond to RCA by letter acknowledging receipt of the documents and informing the RCA of the date that the next inspection report will be due in **April 2019.**"

3. "In accordance with the terms of our contract with the RCA, all ponds for which SWFWMD holds RCDD responsible were inspected and reports were prepared. The enclosed documents for those inspections are sufficient to meet all requirements by SWFWMD should the RCDD decide to submit them. **However, due to the ongoing controversy between the RCA and RCDD, no RCDD documents have been submitted to SWFWMD.**"

Note: RCA Manager Connie Bittle provided copies of previous inspection reports. She also noted that former manager Rod Slocum contracted with Mr. Franks for the 2014 Inspection that was completed after Ms. Bittle became the RCA Manager. She noted that a RCDD Supervisor objected to the Inspection Report work when it was being completed by Mr. Franks; and, Mr. Franks' comments in the Transmittal Letter as noted above reflect that only a portion of the Inspection that Mr. Franks completed and was paid for was filed with SWFWMD.

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December 28, 2015 A committee/task force member spoke with SWFWMD Environmental Engineer Dan Doluf and Mr. Doluf noted the following:

Not there

- a) he recently reviewed the RCA lake areas with the RCA Field Manager (William Veater)
- b) per Mr. Dulof, there are **NO** issues or problems requiring corrective actions on the RCA lakes
- c) the SWFWMD concern is whether the system is working
- d) bank erosion is not a problem if it isn't impeding the overall working system
- e) the permits require filing of covenants
- f) the SWFWMD permit only applies to the surface water system and does not supersede any governing documents
- g) in his experience, covenants are more restrictive then the permit
- h) the permit, covenants and deed restrictions, as well as, SWFWMD are all integral to the overall management of the system
- i) the RCDD is responsible for the Stormwater Management System/Surface Water Management System.

End of timeline

2. Summary: The 2013 certified engineering inspection report indicates that NO corrective actions are required with the Stormwater Management System/Surface Water Management System. In addition, the RCA Management contracted for a complete Riverwood five-year inspection report in 2014 (note: the report was rejected by the RCDD; but, per management, the report showed NO corrective actions needed); and, the RCA Field Manager walked the RCA lakes with an SWFWMD Environmental Engineer in December of 2015 with NO corrective actions noted.

3) Assertion that the SWFWMD permit takes precedence over all other documents: This statement contradicts the SWFWMD guidelines of their Basis of Review for Application for permit in SWFWMD District. In Section 2.6.2.2.1 of this document titled legal operations/maintenance requirements it states the following: **The application for permit shall include Articles of Incorporation, the Declaration of Covenants, and deed restrictions which contain enforcement guidelines.** It goes on to say any amendments of protective covenants and deed restrictions affecting the surface management of the operation of maintenance shall have written prior approval of the District. This clearly states that the covenants/deed restrictions are an important part of the management of the Stormwater Management System. In fact, our Covenants indicate that the RCDD is charged with the authorization to manage the Stormwater Management System. Section 6.6.3 states that pursuant to a Surface Water Plan approved by SWFWMD the Surface Water Management System shall be owned and maintained by the RCDD. The Covenants Section 6.6.4 also state that the Association, SWFWMD, and the RCDD all have authority equal and independent rights to enforce any and all of the covenants and restriction set forth in this Declaration which apply to or are designed to protect the Stormwater Management System/Surface Water Management System.

3. Summary: Our understanding of documents for both state and local on bank erosion is that the RCDD is **only** responsible for what is contained in the Surface Water Management Permit. This is in-line with our findings regarding the Riverwood Covenants and closing documents which state that the owner of a property adjacent to or on a wetland is responsible for any erosion. The Covenants also state that a homeowner is responsible for maintaining all property to the water's edge. The EPA and Department of the interior provide Federal guidelines on wetlands; and, their policy states that golf course ponds and manmade ponds in developed areas are considered wetlands. It is our assumption verified by Mr. Dulof of SWFWMD that the deed restrictions and Covenants play an important role in the enforcement of the surface water system; and, that they are not superseded by the Permit.

4) Assertion that cost should not be considered a deterrent if the project is deemed to be necessary:

4. Summary: If it is deemed that the RCDD and/or the RCA is legally responsible for major repairs to the Stormwater Management System/Surface Water Management System, then all reasonable care would be required of our governance officials to provide fiduciary assurance that a project would be bid; managed; and, constructed under industry standards and a financially responsible plan.

5) Belief that Inspection Reports of the Stormwater Surface Management System were not conducted by an environmentalist; and, therefore, the reports by certified engineering companies aren't important: As stated above, inspection reports by certified engineering companies that are recognized and accepted by SWFWMD should be

sufficient findings regarding the status of the Riverwood Stormwater Management System/Surface Water Management System. To comment that previous engineering reports weren't appropriate and were tossed out (per a Supervisor); and to imply that any report is now faulty because the Engineer isn't considered an Environmental Engineer is a comment that any engineer providing a report would probably find disturbing; i.e., the RCDD is prominently listed on the Zoller Engineering website; and, the RCA used a licensed Engineer to produce more than one Inspection Report accepted by SWFWMD. In researching documentation regarding our concerns, it is frustrating to realize that RCA Management was acting under what they assumed to be due diligence under what we as residents can only assume that at least three managers concluded needed to be completed per the daily operational tasks under MOU guidelines. It can be referenced above from reports from 2008, 2010 and 2014 that RCA Management contracted for Inspection Reports of the entire Stormwater Management System. It is unfortunate that even an outside contractor notes in his Transmittal Letter in completing his contracted tasks that there is a **conflict between the RCA and the RCDD**. As stated above, all previous reports were accepted by SWFWMD. Further, SWFWMD Environmental Engineer didn't find anything to contradict in the inspection reports with his own recent walk of areas with the RCA Field Manager.

5. Summary: The SWFWMD Environmental Engineer current review of the Riverwood Stormwater Management System/Surface Water Management System should be acknowledgement that the system does not need any corrective actions; there is no requirement by SWFWMD for the RCDD to address any lake bank erosion; and, that neither the RCDD nor the RCA has any current or pending obligation to do any expensive, extensive or protracted work/repairs. Routine maintenance and inspections are all that is currently required.

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In our review of documents and information, it appears that some are attempting to use the existence of the SWFWMD permit and inspection requirements as justification to proceed with a costly and extensive RCDD Lake Bank Erosion Project: per SWFWMD, lake bank erosion is not an issue **unless** it is impeding the Riverwood Stormwater Management System/Surface Water Management System – which is **not** the case per several certified and accepted inspection reports. It is our belief that the RCA is empowered to enforce the Covenants; that the RCDD is proceeding with the Lake Bank Erosion Project by saying that the Covenants are 'secondary documents'; and, that the SWFWMD permit is what is being referenced as justification for the RCDD Lake Bank Erosion Project. In our committee non-legal review, we note the following:

- The RCA modification rules that were agreed to by a previous RCDD Board of Supervisors currently state that lake bank erosion is a homeowner's responsibility; the rules provide guidelines for homeowners to follow for corrective action; and, the rules have served as the authority and policy to be followed in the community;
- No resolution has been brought to the RCA or the RCDD for discussion to change the above governance;
- The RCDD previously had contracted for engineering studies that were not referenced above including review by former RCDD engineering firm PBS&J;
- The SWFRPC Resolution on Stormwater definition describes what we believe is in place in Riverwood are constructed wetlands; the term wetlands is used in our closing documents; and, the definition illustrates that all of our governance documents relate to each other;
- The RCDD has no authority to overrule/override RCA governance and policies regarding neighborhoods and homeowners on any issue – including lake bank erosion;
- The RCA has the authority to enforce the Covenants including Section 6.6.4;
- The governing documents clearly state that the RCA is responsible for all neighborhoods as the Homeowners Association;
- There is no SWFWMD requirement for the RCDD to get involved in lake bank erosion unless it is impacting or impeding the Riverwood Stormwater Management System/Surface Water Management System surface water system - which is not the case;
- The RCA Board has the responsibility to protect all residents through implementation and enforcement of all RCA Homeowner Association policies and governance documents; and,
- The RCDD appears to be in violation of interfering with RCA standing policies and governance documents in regards to the RCDD Lake Bank Erosion Project.

As residents of the Riverwood community, it is our (non-legal) conclusion after reviewing documents and speaking with a representative from SWFWMD that **the Covenants are an integral and important part of the governance for our community**. Per the governance documents that all residents should be aware of and should have signed acknowledgements of at closing and that have been referenced: 1) the ownership of the lakes, ponds, wetlands/preserves is shared between the RCDD and the RCA; 2) the task of management of the Riverwood

Stormwater Management System/Surface Water Management System falls to the RCDD; 3) liability insurance coverage is required; 4) maintenance and repair of the banks falls to the homeowner; 5) enforcement of the existing guidelines and Covenants falls to the RCA; and, 6) per SWFWMD acceptance of inspection reports, **NO** corrective actions for the Riverwood Stormwater Management System/Surface Water Management System are currently required or anticipated in the near future.

We encourage on-going discussion and review:

- of the Bank Erosion Project with the RCDD and the RCA that would clarify governance and authority;
- in regards to the possible use of public funds for repair and maintenance that may encroach on private property;
- of maintaining the Riverwood community according to established industry standards and within the guidelines of permits and other governance regulations while remaining diligent regarding potential financial exposure;
- of all aspects of what may be deemed 'negligence' against the requirements noted in the Covenants and Plat dedications and other documents that we as residents signed when we purchased our homes and assumed would be in effect; and,
- before committing to a project that is not a one-time project and will set a precedent that will: 1) require on-going maintenance in perpetuity; 2) require on-going repair in perpetuity, and 3) require on-going financial commitment in perpetuity that is both undetermined and unimaginable.

As noted in our letter of December 21, 2015 regarding the revised request by this committee (first request dated November 23, 2015), the focus was on the legal justification regarding the Riverwood Community Development District Bank Erosion Project. As a timely response was not forthcoming and information was not provided, the committee proceeded to search out documents and research governance relevant to our concerns. Please note that our purpose was to bring focus to the Lake Bank Erosion Project to **encourage a review process and discussion** by the RCDD Supervisors.

Although the Riverwood community as a whole should deserve complete disclosure, we believe that our findings provide relevant documentation; and, therefore, we will no longer expect to receive an answer to our previous request from the RCDD. We will leave that to others to pursue.

- ~~1. an explanation of the disregard of the Riverwood covenants that indicate owner maintenance responsibility;~~
- ~~2. an explanation of the apparent disregard of results noted in the Stormwater Management System Inspection Report of 2013;~~
- ~~3. an explanation of the use of public funds for the CDD Bank Erosion project and the potential for long term increased financial exposure to all Riverwood residents including an allocation for assessments that are not limited to those who purchased a home on water/pond/lake front access — homeowners who should have received at closing documents that require said homeowner to maintain their property; and,~~
- ~~4. an explanation of the significant event that has brought about the Riverwood Bank Erosion Project~~

Therefore, we believe that our research findings are pertinent to the Lake Bank Erosion Project; and, we believe that this information is relevant to our former request for information from the RCDD. We also have noted that it would be beneficial if the RCA and the RCDD would meet to work together to clarify governance and authority; and, to be cautious in regards to the possible use of public funds for repair and maintenance that may encroach on private property.