Lake Side Terrace Maintenance Chart

Item	Owner's Responsibility	Association's Responsibility
Asphalt/Concrete		
1. Common Areas (RV Lot, Tennis Court, Clubhouse, Guest Parking)		X
2. Driveways (Paving/Patching Asphalt ONLY)		X
3. Walkways (Any cracks, settling, replacement)		X
Snow Removal/Sanding		
1. RV Lot (Funded by RV Lot Fees)		X
2. Driveways, Walkways or Within Lots	X	
Lawn Care		
1. Common Areas		X
2. Mowing (ONLY) Behind Lots (Including Back Yard On Lot)		X
3. Any OTHER Lawn Care\Within Lots (Includes watering)	X	
Groundskeeping		
1. Landscaped & Paved Areas outside of Owner's Lot		X
2. Landscape inside Owner's Lot (ALL except mowing back yard)	X	
Retaining Walls		
1. Retaining Walls (Common Area)		X
2. Retaining Walls (on Owner's Lot)	X	
Fences		
1. ALL Maintenance/Painting of portion enclosing one yard	X	
2. Party Fences dividing two ENCLOSED yards	Adjoining Owners*	
Building Exterior		
1. Paint (Exterior Surfaces per Reserve Schedule)		X
2. Siding Repair/Replacement		X
3. Doors/Windows/Trim (Including painting BETWEEN Scheduled Reserve dates)	X	
4. Framing/Structural	X	
5. Insulation/Vapor Barrier Issues	X	
6. Foundation/Crawlspace Issues	X	
7. Gutters and Downspouts (repair/replacement)	X	
8. Decks-ALL work, including planks/structure/staining	X	
9. Dryer Vents	X	
Roofs		
1. Exterior replacement per reserve schedule (Shingles, ice/watershield ONLY)		X
2. Roof Leak Repairs-NOT including interior sheetrock/underlayment damage		X
3. "Whirly Bird" Roof Ventilators	X	
4. All other repairs (including decking, insulation, ventilation issues)	X	
5. All Structural repairs beneath roof membrane (regardless of cause)	X	
6. Chimney inspection/cleaning/repairs	X	
Party (common) Walls and Fences	Adjoining Owners*	
Mailboxes		
1. Mailbox Maintenance/Replacement	X	
Water/Sewer Lines		
1. Lines or portions of lines serving MULTIPLE Units		X
2. Any portion of a line serving an individual Unit/lot	X	
Utilities (ALL except refuse, unless located on common areas)	X	

The association maintains overall control for all exterior modifications, regardless of expense allocations (i.e. owner cannot "repair" cedar fence with chain link). **ALL** exterior changes must be cleared with the board.

Board to Address additional items case-by-case basis with above examples as a guideline.

*Party wall/fence expenses are shared by the affected owners, subject to arbitration provisions in the declaration. The board is not responsible for party wall maintenance allocations.

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July 10, 2015

Pam Snow
Snow's Management, Inc.
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Re: Lakeside Terrace Townhouses, Inc.
Maintenance Issues
Our File No. 3847-0001

Dear Pam:

This letter will confirm our discussion regarding maintenance allocations at Lakeside Terrace. Specifically, you asked about changing the use of common areas, possible modification/allocations of Common Areas, gutter and deck maintenance, and applicability of the covenants to Seneca Avenue properties. The board also asked about possibly changing some use of the greenbelt areas to accommodate additional parking, possibly modifying the tennis court, and allowing individual owners to fence or pave part of the "common area" for their own use. The short answer is that the board may reasonably change the common areas, the board cannot allow individual owners to "take over" any portion of the common areas for their exclusive enjoyment, gutters (regardless of whether original construction or later additions by the individual owners) and decks are an individual responsibility, and the covenants unquestionably apply to the Seneca properties.

We have attached a maintenance spreadsheet which addresses the maintenance issues in greater detail.

I. Ownership/Lot Boundaries/Properties Encumbered.

The Restated Declaration (recorded November 23, 1994 in Book 789 at Page 207) covers all 84 lots in the project, in addition to common elements designated as "Block 1" of Plat No. 78-120, "Block 2" of Plat No. 93-77 and "Block 3" of Plat No. 2004-57 (The covenants reference "Block 3" by the original plat, however, as Plat 2004-57 was created ten years later). Plat 78-120 originally divided the project into 84 lots, although the dimensions of Lots 49-60, Block 2 were slightly re-aligned and modified by Plat 93-77 (which renumbered these lots from "Lots 49-60" into "Lots 49A-60A"). Similarly, the twenty lots on the south side of Seneca Avenue were realigned by Plat No. 2004-57 (which renumbered these lots from "Lots 65-84" into "Lots 65A-84A"). Our guess is that the subsequent replatting and renumbering is what

created confusion about the Seneca lots—they are mentioned in the covenants, but the legal description uses the old plat information because the new plat did not exist in 1994.

Basically, the lots are all parts of 4-plex buildings fronting the streets, and the open yard/greenbelt areas behind/between each cluster (4-plex) are "common area" (depicted as Block 1, Block 2, and Block 3 on the plats, exclusive of the designated lots). In 1991, the FDIC quitclaimed the lots south of Seneca Avenue (and the 8 lots west of Yakima Street next to Bogard Road) to the association, presumably in the wake of the developer losing the project to Alliance Bank and the FDIC taking over Alliance. Lake Side Terrace later sold the Seneca lots to Steve Norton Enterprises in 2003. So the association still owns the final 8 lots neat the Yakima/Bogard intersection, although there is some question whether this property is buildable. The association would also own/control the remaining "common area," which entitles it to add guest parking or convert the tennis court to some other purpose which better serves the membership.

We understand some questions arose about the applicability of the covenants to the "Seneca Avenue properties." The recorder's office website only indexed the restated covenants under the legal descriptions for Lots 49A-60A (the "Block 2" lots of Plat 93-77), although this was an indexing error—the restated covenants ALSO encumber Lots 1-48 and 61-84, as specified in Article III.

The "Seneca Avenue properties" existed as Lots 65-84 at the time the restated covenants were recorded. These Seneca lots were later realigned and designated as Lots 65A-84A under Plat No. 2004-57 at the time of construction. The new plat explicitly lists all the restrictive covenants in note 3 on the plat itself, however, and these properties remain encumbered by the covenants. We suspect the confusion in this regard arose either because the recorder's office indexed the covenants incorrectly or because these lots are now deeded according to the new 2004 plat (which plat did not exist in 1994 and created "new" Lots 65A-84A ten years after the covenants). The replat did not invalidate the covenants, however, simply because those lots were identified by a different plat without the "A" suffix back in 1994. The Seneca Avenue properties have always been part of the Planned Unit Development.

II. Maintenance.

The declaration requires the association to maintain "all of the Common Elements" (Blocks 1, 2 & 3, Per Article V and Section 7.1 of the declaration), plus all costs of the shared septic system (exclusive of any "individual" certifications per Section 7.2 of the declaration), plus very limited exterior maintenance on individual Lots (per Section 7.3).

We are told that the common septic system has since been abandoned, and all lots are connected to city sewer. This probably creates some new problems, as the declaration establishes responsibility for the shared "septic system" which no longer exists. In place of that, however, we assume there is now a shared portion of "septic (sewer) line" running from each 4-plex building to the city sewer connection. This does not exactly fit the declaration terms, but we assume each owner would therefore maintain the section of line serving only "their individual unit," the association would maintain that section of line carrying sewage from "multiple combined units out to the city connection," and the City would have responsibility for

all points downstream of the connection. We should verify these assumptions. We doubt the city would address problems on the individual lots, however, and no individual owner should be independently fixing/replacing lines (or portions of lines) that serve the neighboring Units. We drafted the attached maintenance chart with the above assumptions, treating the shared portion of private lines (upstream of the city connection) as the original shared "septic system."

Per Section 7.3, the association's maintenance on lots (stated in the terms "at a minimum") includes:

1. "Building siding from the studs out, but excluding glass and anything attached to the exterior of the building;"
2. "Painting of the building exterior;"
3. "Roofing and flashing;" and
4. "Asphalt driveways."

Section 7.3 further states that each Unit Owner is responsible for "removing all snow, leaves and debris from all patios and balconies which are attached to his or her Unit."

There are a few other exceptions. Party Wall maintenance is governed by Article VIII. And if an owner (or the association) causes damage by failing to fulfill their maintenance obligations, the party at fault has to pay for resulting damage. Specifically, Section 7.5 states that if an owner causes damage to common areas or other units "intentionally, negligently or by the Unit Owner's failure to property maintain, repair or make replacements to his or her Unit," then the association can assess the resulting repair costs after "Notice and Hearing." Conversely, Section 7.6 renders the association liable if damage to Units is caused "intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements."

We need to admit there is some debate in other associations (and courts), arising from this language. In most situations, the effect is obvious. If an owner backs their car into the side of the building, that owner cannot say "the neighbors need to pay for this, because siding is an association responsibility." The association would repair the siding, but assess costs against the owner after Notice and Hearing. Similarly, if an owner negligently failed to repair a leaking pipe and caused water damage to adjacent units, the cost would be assessed against them.

Where the language causes problems is in the absence of any "fault." A strange weather pattern, for example, may cause ice damming and create roof leaks. In most cases, our response would be that, in the absence of negligence, interior damage would remain an individual expense. The association does not have "absolute liability" (absent some degree of "fault") where it pays all associated damages simply because the roof leaked. We have experienced a few cases, however, where owners argued that the "failure to maintain" imposed a duty of absolute liability. We disagree with this position, although the language could be subject to such interpretation. This appears to be an unfortunate choice of words in this particular form declaration that was used.

We understand some debates have occurred about deck and gutter maintenance, particularly because some units were constructed with rain gutters, some lack gutters, and some have "retrofitted" gutters that were added by individual owners after construction. Regardless, Section 7.3 specifies that "anything attached to the exterior of the building" is an individual expense. This should address any gutters "attached to the exterior of the building," regardless of who attached them.

Finally, we noted the declaration states the association must maintain certain items "at a minimum." The original project was established in 1978, at which time the Alaska Horizontal Property Regimes Act defined "common expenses" to include any "expenses agreed upon as common expenses by the association of apartment owners." This definition was carried over in Section 1.6 of the restated declaration. So the owner could "agree upon" adding a bulk cable television package to the entire neighborhood as a "common expense." We suppose the association might similarly "agree upon" adding decks or gutters as a shared maintenance cost. We strongly recommend against adding any shared maintenance items, however, unless the association is certain that all affected units will receive similar maintenance levels, that funding exists, and that the affected item would benefit from the "economies of scale" associated with association involvement. The association might choose to clean all the gutters each fall, for example, if all units have gutters and they are about the same. Deciding to add "deck" maintenance, in contrast, would be a problem because buildings have much different ages/deck construction, and making the change would penalize owners who previously replaced their own decks. We advise associations against using the "agreed upon" language as a general catch-all, although it does help sometimes when a new category of expense arises.

Again, the attached maintenance chart should address most questions that commonly arise. The exact language of the declaration governing maintenance is cited above, primarily Section 7.3.

III. Use Of Common Areas.

Lakeside Terrace is a Planned Unit Development, meaning that all property is either part of an individually owned "Lot" or part of the "Common Elements" owned by the Association for shared general use. Unlike a condominium, there are no "Limited Common Elements" where a particular owner has exclusive use rights. Basically, all owners have a shared non-exclusive right to use the Common Elements, subject to the board's right to "regulate the use, maintenance, repair, replacement, and modification of common elements." AS 34.08.320(a)(6).

The board may establish schedules, for example, if multiple people wish to access the tennis court or book the clubhouse for an event. The board lacks authority, however, to sell, convey or allow somebody to "take over" a portion of the common elements without garnering 80% owner approval as required by Article VI of the declaration (which parrots the requirements of AS 34.08.430).

So the board has authority under AS 34.08.320(a)(6) to replace or modify the common elements in the best interests of the members. If nobody uses the tennis court, the board may change it to a basketball court. The board may pave part of the greenbelt if additional parking is desired. Or the board may decide to remove excess parking if the membership prefers additional greenbelts.

And the board may reasonably regulate parking. Guest parking may have time limits. Spaces might be restricted for "overflow" parking of owner vehicles. Obviously, if one car parks in a spot, a neighbor cannot simultaneously exercise their "non-exclusive easement rights" to park in the same location. The board cannot, however, "sell" or "permanently assign" a portion of the common elements to a single unit (or anyone else) without getting 80% membership approval as required by Article VI.

This issue has come up before when an owner asks to "fence in a portion of the common elements." The board lacks authority to give any owner exclusive common area rights. Fencing it in would be about the strongest visible action of "commandeering common area." Parking on common area is a bit less permanent, and we have not explored the limits between "allowing you to park there until further notice," compared to "granting a lifetime exclusive easement." A long term commitment certainly violates the declaration if viewed as a "transfer" of ownership rights lacking the 80% approval requirement.

We have previously researched many cases involving deck encroachments into common areas (a common problem). Generally, courts hold that associations cannot "consent" to allow some owner to take over common area with a new deck. When a deck inadvertently encroaches into common areas, however, courts have also refused to tear off an expensive deck to solve a trifling encroachment. Often, the court will award "nominal damages" and require the encroaching deck owner to pay some paltry sum as "annual rent" of the common space with agreement to rebuild in a non-encroaching manner once the useful life of the deck is over. (This situation is much different, however, if an owner intentionally encroaches or constructs improvements requiring association approval without following the correct process—we have successfully gone to court in order to force an owner to cut back an oversize deck that violated covenants).

In the case of Lake Side Terrace, we understand this issue has commonly arisen in two situations—when an owner asks to fence "their" back yard or when an owner asks to "expand" the width of an end unit driveway onto adjacent common areas. Neither request is proper.

Fences may be approved within the designated "Lot" boundaries shown on the plat. We are not sure how the "building footprints" line up with "Lot" boundaries, although Mr. Pinard emailed his as-built which showed approximately 6' of "yard" extending beyond his back deck before reaching the "Lot" property line. This yard is part of his "Lot" and the association could approve a fence in this location. If the fence extended further or enclosed a corner "behind the garage," however, that would be an improper taking of common area.

We have not explored the limits of whether an association might grant a "temporary" right to fence a portion of common area (similar to allowing "guest parking" for limited

durations). We are aware of one court case (from another state, not necessarily binding in Alaska), however, which ruled against an association that allowed all owners to section off "their" portion of a shared back yard with individual fences. The objecting owner argued (successfully) that his non-exclusive easement rights were violated, even though all owners were treated equally. The right to play with three other owners in a shared back yard is not the same as the right to fence in "my quarter section" of that yard while being excluded from the other three sections. At least in the one case, the court required an association to remove the dividing fences so the aggrieved owner could jointly use the entire yard (along with his fenceless neighbors who now hated him).

The short answer here is that common areas are to be shared among all the membership. There are no "limited" common areas assigned solely to a particular unit or particular building.

We hope the above explanation addresses all the questions presented to us. If the board requires any further clarification, please advise.

Sincerely,

OSOWSKI LAW OFFICES, LLC

Shane J. Osowski

enclosure (maintenance chart)

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