

Don't expect HOA to take care of every problem

Posted: Friday, Aug. 27, 2010

Q. My home sits next to a common area. According to the HOA covenants, it is the responsibility of the HOA to maintain the common areas. As it stands now I mow most of the common area beside my home (the HOA's landscaper only mows about 10 to 15 feet back from the road).

However, the common area behind my home, which consists of thick, heavy brush, is not maintained by anyone. Over the last few months the brush has grown rapidly and is now encroaching into my yard. I contacted the HOA, and they informed me that it is not in the budget for them to maintain this area, and that others within the community with common areas around their homes maintain those areas themselves. I find this in direct contradiction of what the covenants state. Am I correct in my interpretation and assumption that this is the HOA responsibility?

The two basic functions of most HOAs are to enforce the community's restrictive covenants and maintain the common areas.

The real question here is, what level of maintenance is the HOA obligated to provide? Some communities have exquisitely landscaped common areas. Others, such as those in more rural areas, have a lot of natural areas.

A natural area next to a home site may be valued by one homeowner and despised by another. The HOA's duty is to do what is in the best interest of all homeowners, balancing the owners' needs and desires for maintenance of common areas against the cost. However, neglected maintenance that hurts property values could create liability for the HOA.

One HOA that I represent recently had an owner who complained of mosquitoes in her yard, and she expected the HOA to undertake a regular (and very expensive) program of spraying the creek and wetland areas that runs along the back of several homes to eradicate the mosquitoes.

In my opinion, it is unrealistic for homeowners to expect the HOA to insulate them from the effects of every conceivable naturally occurring phenomenon.

If the HOA undertook regular maintenance of the common areas behind your home, they would have to offer the same service to all other similarly situated owners, and the result could very well be a significant increase in the amount of assessments levied against all homeowners.

COLUMNISTS »

[Michael Hunter](#)



Charlotte attorney Michael Hunter specializes in community and condominium association law for the firm of Horack Talley.

[E-mail questions](#)
[Website](#)



Michael S. Hunter

One solution in your case would be for the HOA to provide limited landscaping to simply trim back the encroaching growth during growing season. That would relieve you of the burden of purchasing heavy equipment and performing the labor yourself, while protecting your and others' yards from the encroaching growth for what would probably be a modest increase in assessments.

Charlotte attorney Michael Hunter specializes in community and condominium association law for the firm of Horack Talley. E-mail questions to home@charlotteobserver.com.