

August 31, 2021

Board of Directors
River Watch Homeowners' Association of Hillsborough, Inc.
c/o McNeil Management Services
1463 Oakfield Drive, Suite 142
Brandon, FL 33511

Re: Speed humps

Dear Board:

It was requested that your governing documents be reviewed, and information be provided regarding the installation of speed humps in the subdivision. At a recent meeting, a member was of the opinion that speed humps are considered capital improvements and that capital improvements must be approved by the membership.

First, are the speed humps going to be permanent additions to Common Area. The streets of the Association are Common Areas that are owned by the Association. It is one thing to resurface a street. Resurfacing would be considered a maintenance item, however, to add speed humps would be an improvement or addition to the Common Area. As a result, this addition or improvement is considered a capital improvement.

If the speed humps are going to be temporary installations that will be removed after traffic has calmed, this could well be seen as acquisition of personal property and not necessarily a capital improvement. The River Watch Declaration, Article II, Section 3, places Common Area maintenance responsibility upon the Association. The Association is supposed to be responsible for the operation, management, care, restoration, insurance, renovation, alteration, reconstruction, repair, maintenance, rebuilding, replacement, improvement, taxes and utilities. Also, private streets and streetlights, as well as other improvements that have been constructed installed, or created by the Developer are supposed to be maintained by the Association in the same condition and appearance as originally constructed. The Association is supposed to be responsible for maintaining the traffic in the subdivision. Please see Article III Section 8 of the Declaration which indicates that the Association may adopt rules for the speed limits and traffic regulation on roadways in the Common Area, and rules for usage of the recreational facilities in the Common Area. This section gives the Association the right to hire Hillsborough County Sheriffs to enforce traffic regulations on the Common Area roads. The Association also has the right to enforce traffic regulations, and the regulations shall be enforced in the same manner as other rules and regulations of the Association, which is by fine and lien pursuant to Chapter 617, Fla. Stat.

There does not appear to be any prohibition to the Association acquiring personal property. The acquisition of personal property will not be considered a capital improvement. If the Association decides to purchase speed humps, that would be installed on a temporary basis only, to help control

traffic, this would appear to be permitted. Of course, the speed humps will need to be removable and clearly temporary in nature.

The Association needs to decide if the speed humps are intended to be permanent in nature. If they are going to be permanent in nature, it would appear that the speed humps would be considered a capital improvement and would be in permanent attachment to the subdivision streets. If the speed humps are permanent capital improvements, it appears that membership approval will be needed because the permanent speed humps will be considered a capital speed humps.

Article III Section 6 of the River Watch Declaration of Covenants clearly states that, "The Association may not expend funds for capital improvements to the Common Area without the prior approval of at least two-thirds (2/3) of those members authorized to vote thereon."

Article III Section 6 is broad language and appears to require two-thirds (2/3) approval of the entire membership before a capital improvement can be accomplished by the Association.

While Article III Section 8 gives the Association the right to include speed limits, rules and regulations for traffic control, as well as traffic regulation on the roadways and Common Areas of the Association, this section does not contemplate the installation of speed humps or speed bumps. A review of the Declaration does not reveal that adding speed humps or speed bumps is an improvement that can be approved by the Board without membership approval.

The amount that is going to be expended appears to be relatively low, approximately \$1,000.00. If a special assessment needs to be approved by the membership in order to finance the installation of speed humps, a special assessment must be approved by two-thirds (2/3) of those members authorized to vote, as defined in the Declaration, who are voting in person or by proxy at a meeting duly called for this purpose. As a result, it is easier to pass a special assessment. Only two-thirds (2/3) of those members who are present at the meeting, in person or by proxy, need to approve of a special assessment. Once a quorum is established, two-thirds (2/3) of the quorum need to approve of the special assessment.

The language in Article III Section 6 is much stricter than the language contained in Article IV Section 5 regarding special assessments for capital improvements. Article III Section 6 quoted above, appears to require two-thirds (2/3) of the entire membership to approve of the capital improvement.

If you have any questions, after review, please let me know.

Very truly yours,

FRISCIA & ROSS, P.A.

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