

# KENSINGTON PARK MASTER ASSOCIATION INC.



From: Kensington Master Association Board of Directors

February 4, 2015

Dear Members,

We have scheduled another community meeting to provide more information on the Lake Bank time line and to answer any other questions you may have about the project including financing options. This meeting will be held at the Club House on Friday, February 13, 2015 at 10:00 AM.

To repeat (and correct) what we had in the last e-mail blast on January 29<sup>th</sup>, the Supplemental Assessment amount will be on the order of ~~\$5,980.00~~ \$5,890 per household and will be payable Wednesday, April 1, 2015 in total or 50% (\$2,945) and 50% (\$2,945) on Thursday, October, 1, 2015.

Several residents at the meeting on January 16<sup>th</sup> and in e-mails since have raised questions about the "fairness" of charging everyone in the community the same amount for the Lake Bank Stabilization Supplemental Assessment regardless of where they live, be it a condominium unit, a carriage home or a home in the Gardens. Unfortunately, this is not something the Board has any latitude in determining as it is clearly spelled out in our documents. Specifically, here are the sections and the language that speaks to utilizing a Supplemental Assessment to pay for this work and for charging everyone in the community an equal amount for the assessment.

First, there is no question the cost of the work is a common expense. Section 1.18 of the AMENDED AND RESTATED MASTER DECLARATION AND GENERAL PROTECTIVE COVENANTS, FOR KENSINGTON PARK defines "Common Expenses" as the actual and estimated cost of the following:

- a. **The cost for maintaining**, managing, operating, repairing and replacing Common Property and personal property owned by the Master Association, including the cost for utilities, trash disposal, street cleaning, insurance and taxes.
- b. Expenses for administration and management of the Master Association.
- c. **Reasonable reserves as deemed appropriate by the Board**.
- d. Unpaid Regular, Supplementary, Special, Improvement and Service Assessments.
- e. **Any other cost designated herein as a Common Expense**, or reasonably or necessarily incurred by the Master Association in connection with the owning, operating, **maintaining**, managing or improving the Common Property or for the discharge of any obligation expressly or implied or imposed on the Master Association by this Declaration, the Articles, By-Laws or Rules and Regulations.

We first considered which type of assessment was appropriate and our conclusion is that the work falls under Supplemental Assessment definition. We used the definition of each assessment as defined by our governing documents as our guide.

This is not a special assessment as defined by our Declaration. Section 1.4(c) of the Declaration provides that a 'special assessment' is "a charge against a particular Owner and his Plot necessary to reimburse the Master Association for costs in bringing the Owner or his Plot into compliance with the provisions of [the governing documents], or amounts advanced by the Master Association in accordance with this Declaration on behalf of an Owner . . ." The Master Association, not the Owner, is responsible for the lakes and therefore a special assessment

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may not be levied to bring an Owner into compliance where the Owner is not responsible.

Section 1.4(b) of the Declaration provides that a 'supplementary assessment' is an assessment necessary to pay common expenses, including, without limitations, amounts to cover non-recurring items of Common Expenses . . . "

As described above, the proposed work is a Common Expense of a non-recurring nature.

Our documents further define "maintenance" in section 1.19 as acts "to keep Common Property . . . in a condition comparable to their original conditions, normal wear and tear excepted. This includes, but is not limited to, . . . lakes, landscaping, water management systems and drainage facilities and designed Conservation Lands." The essential nature of the work being done as part of the Lake Bank Stabilization project is to bring the lakes back to their original conditions which is why Collier County issued Kensington a "maintenance" permit for the work we are pursuing.

Finally, Section 7.9 of the Declaration then provides that all Regular Members are equally responsible for Regular, Supplementary and Improvement assessments. It is also unlawful to assess based on square footage or property value or any other valuation mechanism when our Declaration expressly requires equal liability.

On another subject, don't forget we have one vacancy currently on the KPMA Board with another position opening up at as of the annual meeting with Jim Field having fulfilled his total allowable time on the board of 2 terms for a total of 4 years. We have two residents that have expressed interest in the two openings but if you are interested in being considered as candidates to join the Board please fill out the information that will be in your information mailing you will be receiving this week.

Best Regards,

KPMA Board of Directors