

## Wisteria Park – Adjacent Areas Report

### Introduction

Article 7.02 of our Declaration introduces the idea of “Adjacent Areas” with the following text. *“Each Owner shall be responsible for the maintenance, repair and replacement of his Lot and all improvements thereto. In addition, commencing upon the date each Owner is issued the Certificate of Occupancy for his completed residence on his Lot, each Owner shall routinely maintain any sodded or landscaped areas adjacent to his Lot from the platted Lot lines up to the curb(s) or edge(s) of right of way pavement and /or exterior Subdivision boundaries (the “Adjacent Areas” ), excluding fences, walls, signs, or other structures common to the Subdivision installed by the Declarant or the Association, which shall be the responsibility of the Association to maintain.”*

Starting with Neal Communities and their Association Boards, and continuing with following Boards, Adjacent Areas were understood to apply to a narrow strip of land lying between Owners’ rear Lot lines and the exterior fences and walls of Wisteria Park. This interpretation also applied to areas adjacent to the side lot lines of Lots 1 and 70 close to the 17<sup>th</sup> and 21<sup>st</sup> Avenue entrances, respectively. The provision allows an Association to access the fence / wall structures in order to complete repairs and is a frequent part of Home Owner Association Declarations.

Karl Hamlin recently queried the specific language used in Wisteria Park’s Declaration. After much rereading by ourselves and our lawyers, we have found our text could be construed to include all the land, for example lying between an Owner’s rear Lot line and 17<sup>th</sup> or 21<sup>st</sup> Avenue. This was clearly not the intention, since such an interpretation would require these Owners to maintain extensive landscaping which was installed for the benefit of all residents of Wisteria Park.

Shortly after Mr. Hamlin’s inquiry it also came to the Board’s attention that the Association was maintaining (trimming, weeding, fertilizing) hedges on Adjacent Areas at the rear, and inside the fence portions, of West Side Lots bordering 17<sup>th</sup> and 21<sup>st</sup> Avenues. This practice was started by Neal as a way of preserving the exterior appearance of the subdivision as perimeter Lots were sold and occupied by Owners. Although not provided for in the WP Declaration this practice has been in place so long that it could be thought of as established. As a final point of inconsistency, trimming for these hedges was funded through the Common Property budget (everyone pays), while the identical work for the hedges on the East Side was funded by the East Side Supplementary budget (only East Side residents pay).

Finally, the last sentence of 7.02 allows the Association to “take over” maintenance responsibilities in selected Adjacent Areas at any time. *“The maintenance of such Adjacent Areas by each Owner shall at all times be subject to the rights and duties of the Declarant and the Association to regulate, manage, modify, improve and control said Adjacent Areas as set forth in this Declaration, including the right to take over the foregoing maintenance responsibilities and discontinue Owner maintenance at any time.”*

In sum we have found a sloppy and technical glitch in 7.02 that ought to be corrected to forestall problems in the future, and a long established landscaping practice in some Lots on the West Side which is not provided for in our Declaration.

The issue now is what to do.

## **Alternatives**

### Amend the Declaration

This would have to be accomplished through a Members' meeting and would require affirmative votes from two thirds of the Membership. Amendment would provide the flexibility to structure the change in different ways; e.g.

1. Maintain the existing situation for both East Side and West side Owners by continuing to provide routine services (trimming, weeding and fertilization).
2. Maintain existing services for East Side Owners, but discontinuing this practice on the West Side.

It should be noted that these amendments would be complex to draft and to explain to the Membership. Specific provisions would have to be made for the Common Property abutting Lots 1 and 70 in order to allow the Association to continue full responsibility for maintaining these areas. The amendments may also have to involve Article 13.01, which provides for maintenance services on the East Side

### Use the 7.02 "Take Over" Provision

The last sentence of 7.02 allows the Association to assume responsibility for maintenance of Adjacent Areas and to discontinue Owner maintenance at any time. This could be accomplished with the Board adopting a policy stating that, going forward, the Board will take over maintenance of Adjacent Areas which lie on Common Property and maintain the landscaping consistent with the standards applicable to other Common Property within Wisteria Park. This would leave owners responsible only for their Adjacent Areas next to the interior streets.

This approach would not be able to provide for the nuances of Alternatives 1 and 2 above but is simple to implement and explain. The policy maintains the status quo and overcomes a poorly drafted Article 7.02. However, in addition to routine landscape services this policy would also commit the Association to rectifying problems such as White Fly infestations of Ficus hedges on the affected Adjacent Areas. This exposure would have to be limited through the use of preventative chemical treatments, if appropriate and rigorous monitoring.

For reasons of simplicity using the Take Over provision is recommended. If it is decided to use this approach, Board approval of this report and Policy would be sufficient.

## **Cost Allocation**

To restore consistency in payment for perimeter hedge maintenance and recognizing that all of these hedges lie on Common Property, the East Side maintenance costs will need to be moved to the Common Property budget

- The cost of trimming hedges on the West Side is reported to be \$2,100 per year. This cost will continue as part of the Common Property landscape budget.
- The cost of maintaining hedges on the East Side is estimated at \$4,200. (The cost is higher because there are more linear feet involved on the East Side). Currently this cost is part of the Supplementary Landscape budget and will be moved to the Common Property budget
- The 2016 Budget will need to reflect this change

## **Communication to Members**

Finally this alteration in policy will be of interest to our Members. It is suggested that the new policy and the reasons for it be outlined in the Association newsletter, perhaps making use of some of the information in this report.

Respectfully submitted

Bob Harcourt

Proposed policy follows on page 4

## **Policy – Landscape Maintenance on Adjacent Areas**

Article 7.02 outlines homeowner responsibility for the maintenance of landscaping on their properties and on so called Adjacent Areas found next to their Lot lines. The text of this Article has caused confusion and is poorly drafted with respect to Adjacent Areas at the rear of Lots on the perimeter of Wisteria Park, consisting of a 2 to 3 ft wide strip of land between the rear Lot lines and the adjacent fence or wall, and at the side of Lots 1 and 70, on 88<sup>th</sup> Ct. NW and 87<sup>th</sup> St. NW, respectively. These Adjacent Areas also happen to lie on Common Property.

To overcome this problem, and as permitted by Article 7.02 of the Declaration, effective November 1, 2015 the Association will take over responsibility for landscape maintenance for Adjacent Areas which lie on Common Property, at standards consistent with its maintenance of other Common Property in Wisteria Park.

This change in landscape responsibilities will entail a change in cost allocation between the Common Budget for all of Wisteria Park and the Supplemental Landscape budget for the Maintenance free (East Side) portion of Wisteria Park.

- The cost of trimming hedges on the West Side is already a part of the Common Property landscape budget.
- The cost of maintaining hedges on the East Side is currently a part of the Supplementary Landscape budget.
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To achieve consistency in cost allocation, and recognizing that these hedges lie on Common Property, this cost will be moved from the Supplementary budget to the Common budget. The 2016 Budgets will be adjusted to reflect this change.