



**MATURE OAK
TREES PUSHING
UP SIDEWALKS**

The Resident Controlled CDD Board is probably now working one of the toughest problems it has had since we came on the Board in November 2008. The problem is what to do about the oak trees between the sidewalks and the streets that are now starting to push up the sidewalks. The Board will not only have to decide what we are going to do about the approximately 2,000 trees, but how we are going to pay for this problem to be fixed.

Background

Each month, I attend the Pasco Alliance of Community Associations (PACA) meeting that consists of board members from other CDDs and HOAs in Pasco County. At the August 2009 PACA meeting, the Chairman of The Groves CDD mentioned to me that his organization had worked with Pasco County to get the oak trees removed between the sidewalks and streets because the tree roots were pushing up the sidewalks. At our CDD Planning Workshop on September 16, 2009, I briefed the CDD Board on the problem our oaks trees could cause. During the workshop, the Board voted on which long term improvements the Board should work. The issue of oak trees between the sidewalks and streets was included as one of these improvements.

At the Board's request, Mark Straley, our attorney, prepared a memorandum dated December 9, 2009 on who should maintain the sidewalks, trees, and landscaping located in the District's road right-of-way area between the streets and sidewalks. It explained that the answer is complicated due to this area being the District's road right-of-way; the Seven Oaks Declaration of Covenants, Conditions and Restrictions requiring the homeowner to maintain it; and SOPOA designated to enforce the Declaration. In the memorandum, our attorney stated that the CDD, the property owner, and SOPOA may all have liability in the event of a personal injury claim.

He also stated that the property owners of the adjacent residential lots have a contractual duty to maintain the sidewalks. His decision was based on the following statement in Article XI, Section 1 on page 34 of the Seven Oaks Declaration of Covenants, Conditions and Restrictions, "Each Residential Unit Owner's responsibility for maintaining the landscaping on the Residential Unit shall include maintaining street trees, sidewalks and any landscaped area within a right-of way which is adjacent to and

continuous with the owner's Residential Unit." Our attorney recommended in the memorandum that the CDD notify SOPOA that they should take the appropriate enforcement action to require the homeowners to maintain the sidewalk adjacent to their property.

The Board debated if the term "maintaining" in the Declaration included making repairs such as trees pushing up the sidewalks. Since Crown developed the Declaration, I asked Craig Weber, Crown's General Manager for Seven Oaks, what was meant by putting "maintaining" in the Declaration. Craig Weber, replied in writing on January 27, 2010 that "It means everything including repairing cracks, replacement, repairing trip hazards, removing algae, etc." Based on this information, the Board directed Rizzetta, our district manager, to send a letter to SOPOA stating that the homeowner is responsible for maintaining the sidewalk adjacent to their property to eliminate all possible liability issues. Rizzetta sent the letter on February 18, 2010.

Other Communities

At the February 10, 2009 CDD meeting, Ken Roth, our landscaper, mentioned that most of the trees at Seven Oaks between the sidewalks and streets would cause problems with the sidewalks. On February 24, I called Ken for more information. On March 2, Ken sent Rizzetta an email stating that "most of the street trees (oaks - between sidewalks and gutter) will lift the sidewalks as the trees mature." To see the problem with sidewalks that the oak trees can cause, he recommended that the CDD Board visited Windsor Park in Lutz.

He added that it is a 20-year-old neighborhood that when it was built had oak trees planted between the sidewalks and streets that were the same size as the oak trees planted at Seven Oaks between the sidewalks and streets. I visited Windsor Park and found that every sidewalk where there was an oak tree had to be replaced. I called Hillsborough County who was responsible for the community since they did not have a CDD or HOA. They said they had spent \$5,000,000 to repair the sidewalks in this community but did not have the funding to do it again if the trees caused problems with the sidewalks.

In 2010, Oakstead CDD, a member of PACA, started having problems with the roots of the oak trees pushing up their sidewalks and causing problems with the utilities planted in

this area. In addition to working with Pasco County to remove the trees, they brought the problem to PACA. It was discovered that six other PACA members, to include Meadow Pointe near us, were having the same issue. The Government Affairs Committee of PACA began to work with Commissioner Mulieri to adopt a new ordinance that will make it easier and less expensive for communities to solve the issue with trees causing a problem or with trees that will cause a problem. Because of PACA's actions, the County Commissioners recently approved a "new trees" ordinance in section 802 of Chapter 800 of the Pasco County Land Development Code. Based on this change, the CDD decided to gather information to consider changes to the oak trees between the sidewalks and streets at Seven Oaks.

The Solution

To help us come up with the best way of dealing with the problem, we invited Commissioner Mulieri to our January 11, 2012 CDD meeting. Commissioner Mulieri brought several of the Pasco County Staff to include Debra Zampetti (Zoning/Code Compliance Administrator), Doreen Lang (Code Enforcement), Pam Shaw (Plans Review), Elizabeth Blair (Staff Attorney), Jim Widman (Director of Engineering Services), and Chris Dewey (Pasco County Extension Office).

They explained that the county's new ordinance was designed to help communities such as Seven Oaks solve this issue. They recommended we do the following: First, work with Chris Dewey to determine the appropriate action for each tree. These would include pruning the roots, channeling the roots, or reinforcing the sidewalk to try to save the tree. Next, we need to hire a licensed arborist to prepare a plan that will be submitted to the county. The county will allow us to submit all the changes we would like for one \$300 application fee. This is a huge savings over the \$30 per tree application cost. Another change the county has made is if we do decide to take out a large tree such as an 8" tree we only have to replace it somewhere in Seven Oaks with a 2" tree.

The Board is aware that many residents, including myself, love the oak trees. We will continue to gather information and to do the best job we can to make a decision that will be in the best interest of Seven Oaks. ❖