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Board Certified Real Estate Attorney

June 21, 2017

***BY ELECTRONIC AND CERTIFIED  
US MAIL, RETURN RECEIPT REQUESTED TO:***

Bobbin Brook Homeowners Association, Inc.,  
c/o Board of Directors  
P. O. BOX 1713  
TALLAHASSEE, FL 32302

Re: Bobbin Brook Drainage Easement

Dear Board of Directors,

Please be advised this office represents the homeowners of 4005 Bobbin Brook Cir., Mr. Daniel Bean, and Ms. Vivien Szu-Tu (hereinafter "Homeowners"). This office has been retained to pursue to resolution the matter regarding BOBBIN BROOK HOMEOWNERS ASSOCIATION, INC.'s (hereinafter the "Association") violation of its governing documents in failing to enforce the maintenance of its drainage easements. As provided in the Association's Declaration, the Association has various drainage easements, all of which pursuant to Article V, "**shall** be maintained by the Association." The express language of the Declaration is clear that all drainage easements **shall** be (not optional) maintained by the Association. There was some confusion as to an Abandonment of Easement that was recorded on June 25, 2003, and whether that effectively abandoned some of the drainage easements and which ones. However, it has since been conclusively determined by multiple entities, including but not limited to the Association's own counsel, that this Abandonment of Easement was void and thus unenforceable. Therefore, all of the Association's easements remain and are required to be maintained by the Association.

Unfortunately, despite numerous warnings by not only the Homeowners, but also the engineering firms obtained by the Association, that various culverts and ditches affecting the drainage system have been compromised, the Association has "decided<sup>1</sup>" not to maintain the drainage system. Moreover, not only has the Association not maintained the drainage system, but

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<sup>1</sup> See attached email from the Board, "deciding" not to challenge the Abandonment of Easement, even though the Board does not have an option to challenge or not. The Abandonment is void, therefore all the easements exist, and all are to be enforced and maintained by the Association.

has also “decided” not to enforce the further requirements that “no structure, planting or other material which may interfere with the use and purpose of the easement shall be permitted to remain,” as provided in both sections 1 and 2 of Art. V of the Declaration. This is in clear violation of the Association’s Declaration, to which the Board of Directors has a fiduciary duty to enforce, not a choice to. Moreover, board members who continue to ignore their required fiduciary duties, ignore the advice of both legal and engineering counsel and ignore the required provisions of the Association’s own governing documents, especially after numerous warnings and notices, potentially open themselves up to individual liability.

Therefore, please take this letter as final notice of the Board’s failure to uphold its fiduciary duty in enforcing the Association’s governing documents, and demand for the Board to comply. Immediate maintenance, and unclogging of ditches and culverts is requested to be initiated within thirty (30) days of this letter. Should the Board continue to refuse and fail to enforce the governing documents of the Association, and breach their duties, the Homeowners will have no other option but to proceed accordingly, which could include instating an action to enforce the Association’s documents under Florida Statutes §720.305(1).

We acknowledge that the Board did take some action to “attempt” to resolve the flooding issue that has been occurring, noting that the Board has recognized that there is and has been a continuing issue with flooding since 2003, as seen in the attached meeting minutes from 2003. However, said recent attempts were faulty in that the engineers hired were instructed by the Board to not take into consideration all of the drainage easements and culverts, thus producing inaccurate reports, and the minimal requirement set forth in the engineering report (i.e. long term maintenance of each drainage needs to be taken into consideration) were not adhered to. As a result, and not surprisingly, the Board’s attempts have failed, as clearly established by the attached pictures of flooding.

Despite the previous Board’s clear initiative since 2004 to monitor all of the drainage culverts and maintain that all culverts and drains are free of debris to prevent the “recurring erosion and flooding problems” this Board has “decided” to ignore these maintenance duties. Having said that, the Homeowners foremost desire is to work with the Association, to resolve this. However, the Homeowners have been requesting the Board comply with the Association’s documents and enforce and maintain the drainage easements since July 2015, and yet the issues still remain. It is understood that one of the owners that is in clear violation of the Declaration as they have tampered with the drainage system has threatened the Association and that is why the Board has “decided” not to enforce the Declaration and clean the drainage at the expense of that violating owner. However, from the attached, it is clear that violating owner cannot claim reliance on any Abandonment of Easement, because the Abandonment was executed well after they became owners, and the owner was fully informed prior to acquisition about the drainage easement, the Association’s Declaration governing the drainage easements, and the Association’s enforcement of said easements. See attached letter dated December 10, 2002, from the Association to the owner. Additionally, attached please find the prior Board’s correspondence demonstrating the required maintenance to the drainage, its importance, and the significance of the drainage problems the



Association has. Additionally, this owner is in violation of the Reasonable Use Rule<sup>2</sup> adopted by the Florida Supreme Court, to which Homeowners have put this Board on Notice thereof, and request immediate enforcement.

The Association cannot just abandon its maintenance requirements or drainage easements, as to do so would at a minimum effect roadways, water flow, and other various consequences. Some consequences are dangerous road conditions, pot holes, sink holes, flooding and sewage problems, and even mosquito infestations and other health concerns, some of which the Association is already experiencing. All of these issues could expose the Association and its members to unnecessary liability should someone be harmed or someone's property be damaged as a result of the Association's failure to maintain said drainage and easements. Please take this a formal notice of said damages and the Board's fiduciary duty to enforce the Declaration and prevent any further damage from occurring.

Again, it is the Homeowners primary desire for the Association to comply with its governing documents and enforce and maintain the drainage system. The Homeowners are more than happy to assist the Association in achieving this goal and welcome the Board to contact this office to discuss further. However, as previously stated the Homeowners have been requesting said enforcement since July 2015, and yet the Association has continued and failed to take full action to remedy the situation. Therefore, the Homeowners will have no other option but to proceed accordingly should the Association continue to fail and refuse to enforce its Declaration within thirty (30) days of receipt of this letter.

Please govern yourself accordingly.

Sincerely,



Lindsay Demmery, Esq.

Cc: [vivien8888@yahoo.com](mailto:vivien8888@yahoo.com) and  
[daabean@yahoo.com](mailto:daabean@yahoo.com)

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<sup>2</sup> This Rule provides that a possessor of land is not unqualifiedly entitled to deal with surface waters as he pleases, nor is he permitted without restriction to increase or interfere with the natural flow of surface waters to the detriment of others. The blocking of the culvert to divert the natural flow of water away from the drainage easement due to one home-owner's self-interest that it would effect his pool and tennis court, at the detriment of his neighbors, and where the water has caused great damage and health concerns for the community at large clearly is a violation of this Rule.

*Bobbin Brook Homeowners Association*

December 10, 2002

Mr. Mitch Covington  
4027 Bobbin Brook Circle  
Tallahassee, FL 32312

Dear Mitch:

I'm sorry it has taken me over a week to respond, but the holiday has been a very busy time for us.

First of all, attached are copies of the correspondence I have from the general files in my possession. As I have told you before, I do not have any construction plans or any documents explicitly approving any construction on Phase II Lot 35. These are the only items in the file from the early construction period. After going through two full drawers of files, I could not find any comment as to the intention of previous Boards regarding the drainage easement on your property.

Second, the Board has never discussed in depth or taken a formal position on the abandonment of easement issue, therefore it could not "reverse" its position as you state in your recent letter. I'm not sure where Mr. Musgrove, the engineer for Dr. Balliro, got the idea that the Board intended to abandon and vacate the drainage easement bisecting your property. In Spring 2001, I was asked by Dr. Balliro to issue an abandonment of easement for his property. I told him it would have to go to the BBHOA full membership. I talked with a lawyer and he stated that in order to do anything like that, BBHOA would have to insure that such abandonment would not have an adverse effect now or in the long term. I mentioned this issue at March 2001 annual meeting. The minutes read as follows:

"Under New Business, Kathy Bye reported on one homeowner's request for an abandonment of drainage easement for a non-working drainage pipe that crossed under his backyard. This is being requested as a contingency on the sale of the house. It was proposed that before the Association could act, the owner should have an engineer certify to the Association that there is a working drainage easement that currently handles the flow of water. It was brought up that the entire Association membership will have to vote on this. Kathy Bye will contact a property lawyer to determine the best way to proceed."

After this meeting Dr. Balliro would start and stop the urgency of this request. When some members of the Board met with you, Dr. Balliro and Mr. Musgrove, no commitment was made, nor could we have made one at that time. The "Abandonment of Easement" form was not drafted by the Board--it was sent to me by the closing attorneys for Dr. Balliro and I told them that I could not complete this form without the approval of the membership and that this could take considerable time.

## *Bobbin Brook Homeowners Association*

Dr. Balliro called me on several occasions to say that the drainage recommendations from Mr. Musgrove would be sent to me. They never arrived until after the closing. Just prior to this Dr. Balliro told me that you were going ahead with the closing. I asked him if I should just wait until the new owners contacted me, and he said yes.

At one point, I asked the Corradino Group to look at the sight when they were working on other drainage issues, but we never asked for any formal opinion.

Finally, when the membership asked for a Stormwater Drainage committee to be set up (with Marshall Criser as chair), I brought your issue to that group. During subsequent meetings of that group, several people voiced concerns. These were not Board members. The Board has not taken any stand on the issue of an abandonment of easement.

I've asked Jim Eaton to get a legal opinion as to how the Association should address this issue. I will let you know as soon as I have something from him.

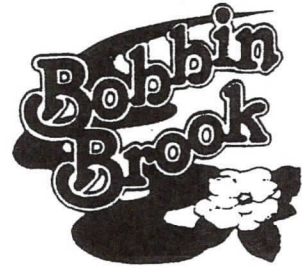
Sincerely,

Katherine J. Bye

### Attachments

cc: Dale Lauer  
Jim Eaton  
Tom Herndon  
Ida Thompson  
Hal Johnson  
Charlie Stratton





July 27, 1989

Dr. James Balliro  
4027 Bobbin Brook Circle  
Tallahassee, FL 32312

Dear Dr. Balliro:

I am writing this letter by certified mail because our Association Architectural Chairperson, Dr. Rackley, has been unable to contact you nor have you returned his inquiries. As you know, your recent clearing of your lot has caused a great deal of consternation among our residents, not the least your four neighbors on each side. Further, at the time your contractor, Gene Wilcox submitted on your behalf, your proposed blueprint, the then Architectural Committee approved two variances on the condition that existing foliage be left in place. To the point, we agreed to let construction proceed with the tennis court and an otherwise unacceptable facing of the garage. Mr. Wilcox has since informed us that such conditions were relayed to your attention.

It is very dismaying to several residents that such verbal covenants were not honored.

As a consequence, we are requesting that you submit to Dr. Rackley, within one week of receipt of this letter your intentions and the time frame to restore/reestablish sufficient cover both in height and depth to your grounds so that the two variances will be cosmetically blocked from Bobbin Brook Circle.

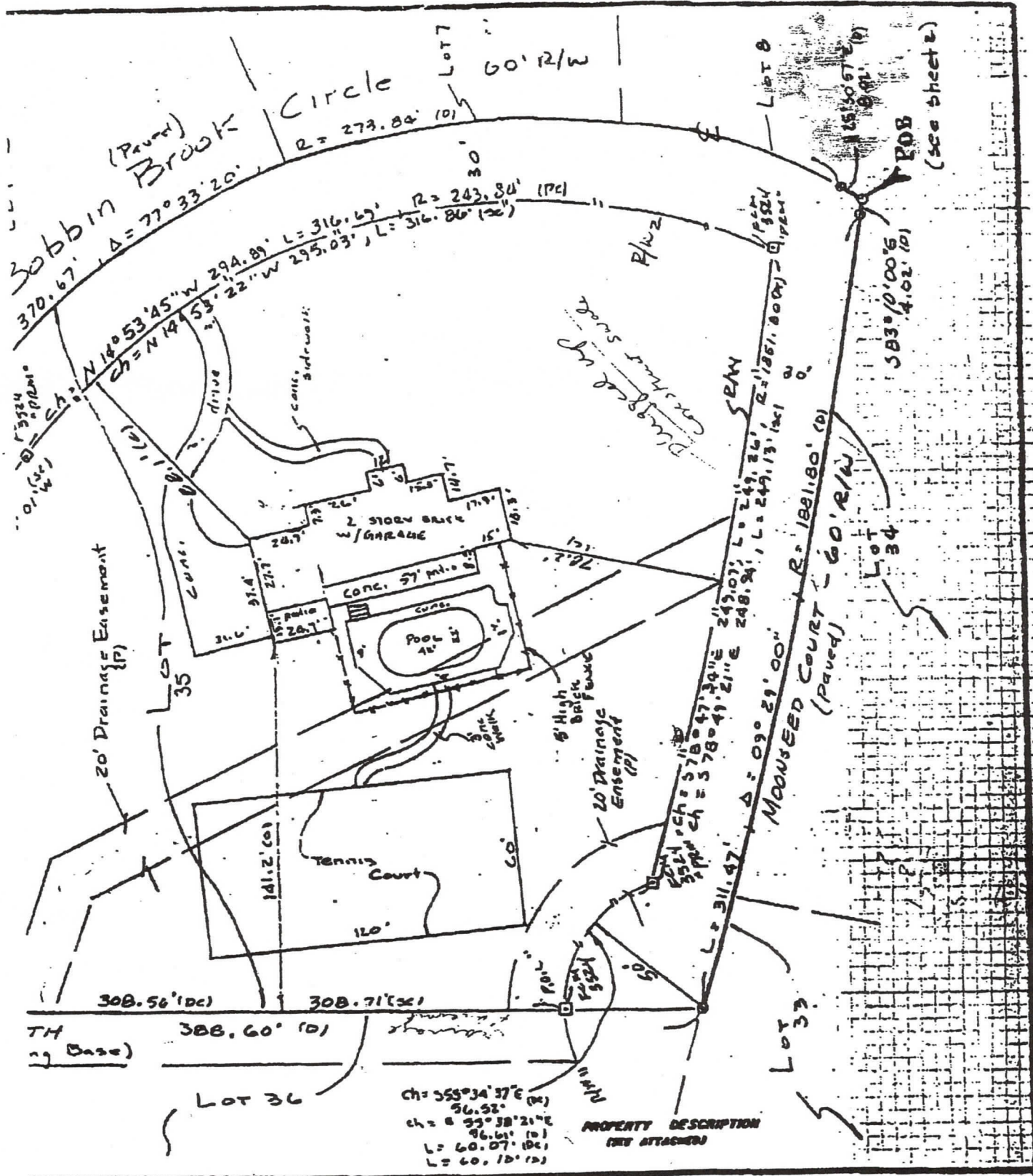
On another matter, we have also noted that during our recent heavy rains, the drain pipe under your driveway was insufficient to handle the runoff. As a consequence, runover and undermining of the driveway has occurred. Mr. Wilcox, at the time of installation was informed that the diameter of the pipe was substantially less than the 20" diameter used for this type installation. Please submit to Dr. Rackley your plans and time frame for correction. Dr. Rackley can be reached at 893-9428. Should you have questions of a legal nature please feel free to call the Association attorney, Russell Gautier, Esq. at 222-5510.

Sincerely,

R. J. Lindquist, President  
Bobbin Brook Homeowners' Association

CC: Dr. O. D. Rackley, Architecture Chairperson ✓

Russell Gautier, Esq.  
3375-F Capital Circle, N.E. Tallahassee, FL 32308 (904)385-6114 or 893-4051



PROPERTY DESCRIPTION  
(SEE ATTACHED)

$ch = 555.34.37^{\circ}E$  (P)  
 $56.52'$   
 $ch = 578.47.34^{\circ}E$   
 $96.61'$  (P)  
 $L = 60.07'$  (P)  
 $L = 60.10'$  (P)

I AND ACCURATE REPRESENTATION OF THE ABOVE  
 DEED BY SURVEYORS AND COMPLETION WITH CHAPTER  
 1247.  
**R. S. Matthews**  
 R. S. MATTHEWS, L.S.  
 FLORIDA CERTIFICATE NO. 2081  
 DATE: September 1, 1988  
 Revised March 3, 1989

**MATTHEWS, SHOAF & ASSOCIATES**  
 Lead Surveyors  
 Civil Engineers  
 640 VICTORY DRIVE  
 TALLAHASSEE, FL. 32306  
 (904) 882-8007

JOB NO. BS079 SHEET NO. 1053 DRAWING NO. 35 P. 64



To: Bobbin Brook Homeowners

From: Bobbin Brook Board of Directors

Subject: Transmittal of Minutes for 2003 Annual Meeting and Guidance on Storm Water Drainage Improvements

Date: July 24, 2003

Attached are the minutes for the Bobbin Brook Homeowners' Association Annual Meeting held on June 24, 2003. Per the direction of the members that were present, information on animal control procedures for the county are also enclosed. A number of homeowners have complained about aggressive dogs and unleashed, wandering dogs and cats. We ask that everyone make an effort to keep dogs and cats contained.

Drainage issues took up much of the meeting. The Drainage Committee submitted its plans to date for some work to be done where there is road erosion. Additional concerns still remain to be addressed and will be addressed in the months to come. Attached is a memo outlining drainage findings of the Storm Water Drainage Committee. If the drainage easement on your property is blocked under your driveway, it is your responsibility to insure that the pipe is open and clear of debris. We ask that individual homeowners address these problems as soon as possible. Written notices will go out in the near future to specific homeowners where a problem has been noted. Once driveway pipes are clear, the Association will clear the pipes under the roadways.

The Board will contact homeowners who are currently undergoing or planning new development to make sure they address potential drainage problems.

Another concern expressed was the clipping of trees and shrubs near the roadway. Each homeowner has the responsibility to keep the roadway clear of hanging branches and road signs clear of scrubs. The Association's landscape service is responsible for common areas. Please check all sides of your property to make sure there are no overhanging branches and all road signs are visible.

Finally, it is again time to update the directory. Attached is a form for each homeowner to complete, giving up to date information for the directory. We are also asking that you include an email address so that the Association can better communicate with everyone on neighborhood issues. If you do not have an email address you will receive notices by postal mail.

The Board and Drainage Committee have put considerable effort in implementing improvements in the neighborhood. We are always looking for volunteers to help out. It was suggested that we establish a beautification committee that would look after the neighborhood and suggest areas of improvement for individual homeowners or the Association. Please contact a Board member if you are interested in helping with this committee.



**BOBBIN BROOK HOMEOWNERS ASSOCIATION**  
**ANNUAL MEETING MINUTES**  
**May 23, 2004**

The meeting was called to order at 5:10 p.m. by Kathy Bye, president of the Bobbin Brook Homeowners Association (BBHOA). The Board members present were Dan Thompson and Skeets Lawson. The meeting was held at Forestmeadows Park.

Kathy reported that the brickwork on the islands had been completed and that the bridge lights were ready to be turned on once billing accounts could be worked out with the City. Skeets Lawson reported that the entrance lights had been repaired.

**Drainage Issues**

Kathy reported that the Board was preparing a letter to go to all home/property owners that would identify the responsibilities of owners for maintaining the stormwater drainage easements located on individual properties. These easements allow water to be carried in the roadways and alongside the roadways in swales and ditches. The Stormwater Management Site Plan (1984) will be included that identifies easements in the development. The Board is asking all homeowners to survey their property to determine if their easement areas are obstructed in any way and correct any problems. The Board and drainage committee members will work with homeowners to help them understand what needs to be done. In areas where water runs from one property to another, the Board will help mediate an acceptable solution for alleviating the problem.

The major areas of concern identified during the meeting were: drainage ditches on the west side of Bobbin Brook Circle, the intersection of Bobbin Brook East and Bobbin Brook Circle, drainage easements along Bobbin Brook Lane, and drainage easements on the east side of Bobbin Brook Circle. Kathy reported that a question had come up earlier to ask lot owners where there is no house built to clear their properties of overhanging trees and any other roadway obstructions.

**Bobbin Brook Beautification**

The Oranges brought up the possibility of having a property manager oversee the maintenance and landscaping activities. They suggested that the Board look for a homeowner who has the time and is willing to take this on and suggested that Mike Duke be considered for this responsibility. Mike said that he and his wife, Janice, would be willing to do this and would like to talk further with the Board. A motion was made and passed to authorize the Board to prepare a statement of responsibilities and contract with someone to perform these duties. Items of responsibility included negotiating a new contract for landscape services, replacement of signage, erosion repair, etc.

**Budget Consideration**

The budget was discussed. The members present asked that the Fund Balances section be revised to reflect the set aside of restricted funds for road paving. This will give homeowners a

better idea of monies available for other projects. Thus far, \$50,000 has been set aside for this repaving. Kathy will work with Jim Eaton to revise the statement.

Dues were discussed at length and the consensus was that homeowners preferred to pay more in yearly dues in order to have more money set aside for future repaving. A motion was made and passed to raise the dues approximately 5% (the maximum allowable without a majority of homeowners present) to \$475.

The budget was discussed further and appeared to be in line with priorities. A motion was made and the 2004-2005 Budget was approved.

#### **Other Business**

Jim Eaton will be contacting road contractors to get estimates on repaving and repairing roadbeds in Phase I.

Several homeowners present asked that a call go out for greater participation on the Architectural Control Committee. It was suggested that a list of all committees and current members be distributed and volunteers be encouraged to sign up for a committee.

A request was made to research guidelines for the use of private property for limited commercial purposes. The greatest concerns were traffic, parking, and liability.

A homeowner raised the question of large recreational vehicles located on property and asked whether there was anything in the Covenants and Restrictions that addressed this issue. The Board will have to look into this further.

A homeowner asked if anything could be done to improve the quality of the pond. It was made clear that the pond is part of the surrounding properties and is not owned by the Association. It was stated that the improvement of the overall look of the pond would enhance Bobbin Brook as a whole. Charles Rockwood will look into possible pond improvement initiatives and said that homeowners could contact him (894-4850) regarding pond maintenance.

The meeting was adjourned at 6:40.



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TO: Bobbin Brook Homeowners  
FROM: Bobbin Brook Homeowners Association Board of Directors  
SUBJECT: Report of the Annual Meeting 2004  
DATE: July 9, 2004

Attached are the minutes for the Annual Meeting held May 23, 2004. Homeowner's at the meeting voted to increase the yearly association dues from \$400 to \$475. The treasurer will mail out invoices soon.

Homeowners also voted to have the Board work with Mike and Janice Duke to provide property manager-type services. Initially, they will work with Dale Lauer and the Grounds Committee on improving the landscape services that are now provided. Mike and Janice will also take care of the "punch list" of improvements that have been presented over the years, including road signs, light and sprinkler system oversight, trimming around roadways, and fill dirt for the bridge. If you have any suggestions for improvements in the common areas or see something that should be fixed please contact Mike or Janice at 893-2286. They will also make recommendations to the Board for any major improvements.

Attached is a diagram of the Bobbin Brook Subdivision Plan as submitted in 1984. The highlighted areas are the drainage easements. These easements allow water to be carried in the roadways and alongside the roadways in swales or ditches. As homes were built, driveways were built across the drainage easements and pipes were placed underneath to ensure the flow of water in the easement. Over the past 20 years, some of these roadside easements have been filled in with sod and plantings and some driveway pipes have been clogged with debris, thereby disrupting the flow of water and causing stormwater drainage problems.

The Board feels that if these problem areas can be identified and corrected as best possible, many of the recurring erosion and flooding problems could be resolved. Many homeowners have already made corrections and improvements. The Board is willing to work with individual homeowners on any plans they have to ensure that water is being correctly conveyed in the easements and that all underground pipes are cleared. If you have any questions regarding drainage issues, please contact Marshall Criser at 668-6885.

We are also looking for volunteers for the following committees:

Architectural Control  
Grounds Committee  
Stormwater Drainage Committee  
Directory/Newsletter

Please contact a Board member if you are interested in working on one of these committees. The Board members are:

Kathy Bye  
Dale Lauer  
Jim Eaton  
Marshall Criser  
Tom Herndon  
Dan Thompson  
Skeets Lawson

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Finally, a few cleanup tips:

1. If you put out yard waste and Waste Management has not picked it up in 2 weeks, please call them to arrange for a pickup. Hazardous waste materials must be taken to the landfill on Apalachee Parkway.
2. Make sure that trees on your property are properly clipped and do not hang over the road to the point that branches hit passing cars. Beginning in September we will ask the landscape service to clip low-lying branches and plants that obstruct roadway signs.
3. Lot owners that have not built homes must keep their lots trimmed along the roadway. Dead trees should be removed or moved so that if they fall they will not hit the roadway.



