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June 15, 2026

Via email - srose@lauderdalewest.org

Stephen Rose, President
Lauderdale West Community Association No. 1, Inc.
1141 NW 85 Avenue
Plantation, FL 33322-4624

RE: Lauderdale West Community Association No. 1, Inc. (the "Association")
Our File No. 12933.000

Dear Steve:

You have requested our opinion regarding whether the Association may remove overgrown trees, shrubs, hedges, plantings, and other landscaping installed or maintained by homeowners on Association property, where the Association may have previously tolerated or tacitly approved those plantings.

Subject to the assumptions and qualifications below, it is our opinion that the Association has the right to remove, prune, cut back, replace, or otherwise maintain overgrown plantings located on Association property. Prior inaction or tolerance, standing alone, does not convey property rights to an owner, create a permanent exclusive-use right, amend the Declaration, or prevent the Association from exercising its maintenance and architectural-control authority in a reasonable and uniform manner.

The Declaration supports this conclusion. It requires Board approval for trees, shrubbery, and other landscaping, regulates both installation and maintenance, and gives the Association broad authority to maintain lawns and related areas in a uniform, orderly condition. The Association also has responsibility for facilities intended for the joint use and enjoyment of its members. Accordingly, landscaping that interferes with access, visibility, drainage, irrigation, utilities, maintenance operations, common aesthetics, or the use and enjoyment of Association property may be removed or modified.

The principal concern is prior acquiescence. A homeowner may argue waiver, estoppel, or selective enforcement based on the Association's past tolerance. Those defenses are fact-specific, but mere inaction generally should not create a permanent right to use Association property for private landscaping. At most, the prior tolerance should be treated as a revocable license or accommodation. It did not convey title, create an easement, grant an exclusive-use right, or convert Association property into an owner-maintained landscape area.

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The same general analysis applies even if certain plantings were originally approved or tolerated. Landscaping changes over time. A planting that was acceptable when small may later become overgrown, obstruct access or sightlines, affect irrigation or utilities, damage pavement or drainage, interfere with maintenance, or become inconsistent with community standards. Because the Declaration regulates landscaping that is both "installed or maintained," the Board may require pruning, reduction, relocation, replacement, or removal when circumstances warrant.

An owner also may attempt to characterize the plantings as xeriscaping or Florida-friendly landscaping. That argument should not prevent the Association from acting where the plantings are on Association property. Florida law protects an owner's ability to implement Florida-friendly landscaping on the owner's own land; it does not authorize an owner to appropriate Association property, common areas, rights-of-way, drainage areas, utility areas, or Association-maintained areas for private landscaping.

To reduce avoidable disputes, we recommend that the Association proceed through a uniform, documented process:

1. Identify the affected areas, photograph the plantings, and document why pruning or removal is recommended.
2. Have the Board approve a uniform program or schedule for pruning or removal, using objective criteria and applying the program consistently throughout the community.
3. Provide affected owners reasonable written notice, preferably 14 to 30 days unless an urgent safety, access, drainage, utility, or maintenance issue requires faster action. The notice should state that any prior tolerance is revoked and allow the owner to submit any written approval, recorded easement, survey, permit, or other document claimed to authorize the planting.
4. Confirm whether any municipal, county, environmental, utility, or tree-removal approval is required, and have the work performed by the Association's landscape contractor rather than volunteers or individual Board members.

With respect to the ability for the Association to charge the unit owner the costs of removal by assessment, such a position is very aggressive. Although there is no direct authority in the governing documents, statutes or case law for this particular type of assessment, likewise there is nothing prohibiting it either.

Sincerely,

FRANK WEINBERG & BLACK, PL

A handwritten signature in black ink, appearing to read "Joel Mctague", written in a cursive, flowing style.

JOEL MARTIN MCTAGUE, B.C.S.

Board Certified in Condominium and Planned Development Law
For the Firm