

LAUREN'S BAY

Background. The Lauren's Bay Pond Improvement Project was prompted by events that occurred after J.D. Pritchard's entity (Lauren's Bay Lake LLC), owner of the pond and dam, failed to comply with a mandatory dam breach plan it submitted on August 18, 2009, to the Kansas Department of Agriculture Division of Water Resources (DWR); in addition to other requirements imposed at that time by the DWR. In essence, Pritchard's entity breached the dam improperly; which resulted in a danger to downstream properties in the event of a significant rain event and caused aesthetic issues for the neighborhood – the large pond had essentially turned into a swamp.

On December 11, 2010, property owners in the Laurens Bay neighborhood petitioned the City to establish an improvement district pursuant to state law whereby the City would secure title to the pond property (through purchase or eminent domain) and repair the breached dam. The improvement requested was:

To repair existing pond at Lots 6 & 8, Block A, Lauren's Bay Villas Subdivision, and Lot 9, Block F, Lauren's Bay Estates, including completed Division of Water Resources breaching, dredging silt deposits, repairing or replacing existing dam, permitting with Division of Water Resources and United States Corps of Engineers, landscaping, perimeter sidewalk, parking facilities, engineering and all other contingencies required for a complete project.

Repair/Special Assessments. On March 15, 2011, the governing body held a public hearing to consider comments regarding whether the City should undertake the improvement project and assess the costs against the property owners. [The minutes reflect that the initial improvement project was brought about by the dam being breached – resulting in the pond being turned into a “swamp” and “eyesore” – and that the associated repairs would benefit the City by generating a higher tax base and stabilizing property values.] Upon conclusion of the public hearing the governing body determined that the improvement was appropriate and, in the fall of 2011, subsequently authorized the initiation of eminent domain to acquire title to the pond and pedestrian easements so that the City could repair the dam and create a public recreational area.

The governing body approved a corresponding Repair and Maintenance Agreement (Contract No. 41094) (“Maintenance Agreement”) at the same time it approved the improvement project. The Maintenance Agreement provided:

- That an Improvement District be formed and that the owners of the real property located within said Improvement District be charged with the responsibility of paying all costs associated with the above-referenced public improvement project through special assessments – the City had (and has) no obligation to pay for any such costs.
- That specific repairs for which the City was responsible would include: (1) repair the pond and dam; and (2) construct a sidewalk for recreational use around the perimeter of the pond.
- That the Home Owners' Associations (“HOAs”) are jointly and severally responsible for performing most of the maintenance needed at Lauren's Bay. Translated: If one of the HOAs becomes defunct, the other HOA is still legally obligated to perform all of the responsibilities set forth in the Maintenance Agreement.

Maintenance Agreement between City and two HOAs. As stated above, the governing body determined that the initial improvement project was appropriate and ordered the improvements to be made. This was done, in large part, due to assurances made by two “HOAs” – both indicated that its members would be responsible for the maintenance and repair costs to the dam, the recreational sidewalks, landscaping and the parking lot. The Maintenance Agreement referenced above clearly set out in **Section 6.1** what the responsibilities of the two HOAs and the City would be going forward:

Subsection (b) -- *the two HOAs* are responsible for:

- the Dam (except mowing, for which the City is responsible)*
- Recreational Sidewalks (including adjacent vegetation)
- Landscaping
- the Parking Lot (including snow and ice removal)
- Mowing (between the resident’s property and the pond)
- any Irrigation System (including the cost of water)
- any Electrical Facilities or Service (including lighting)
- the Pond (including adjacent vegetation)
- Bank Stabilization
- Tree Trimming (including woody vegetation)
- Litter Control (including placement and emptying of trash cans)

Subsection (c) -- *the City* is responsible for:

- Mowing the Dam Area; and
- Maintaining the Spillway Outfall Area and structures therein; and
- Contracting for periodic inspections and inundation studies or updates (without bearing any responsibility for the cost of such inspections or studies).

The history behind this initial improvement project is extremely important because it clearly demonstrates the reasons why the governing body even entertained the idea of an improvement project at Lauren’s Bay; let alone approving it. Because assurances were made to the governing body by the two HOAs, (which includes the property owners who made up their membership), that the City would not be responsible for ongoing maintenance at Lauren’s Bay....otherwise, the governing body would likely not have approved the initial improvement project.

Expense Allocation Agreement between two HOAs. The two HOA’s, the Lauren’s Bay Estates HOA (Estates HOA) and the Lauren’s Bay HOA (LBHOA), entered into an Expense Allocation Agreement on January 31, 2011. This particular Agreement addressed the maintenance and repair costs by establishing a methodology requiring the Estates HOA to pay 63.12% and the LBHOA to pay 36.88%. *The City is not a party to the Expense Allocation Agreement.* The Estates HOA is no longer a viable business entity (it has been listed as “inactive” on the Secretary of State’s website since July 2011, for failing to file its annual report); prompting the LBHOA, which still *is* a viable entity, to express its intent to cease maintenance at Lauren’s Bay.

At a meeting held late last year (2015), at which representatives of the Estates HOA, the LBHOA and City staff were present, the LBHOA expressed dismay over performing maintenance with little assistance from the Estates HOA and asked the City to intervene. City staff reminded those present that the City's maintenance responsibilities were minimal and that the two HOAs should work together to resolve the ongoing maintenance issues covered under the Expense Allocation Agreement. It was argued that because the City did not deed the public recreational area at Lauren's Bay over to Shawnee County at the time it deeded all of its other park property, it is now a "City park" that the City is legally obligated to maintain. The history clearly establishes, however, that the City did not set out to create a park. The City took on the repair of the dam and the pond only because: (1) the property owners with Lauren's Bay requested the City's help; (2) said property owners agreed to pay the project costs through special assessments; and (3) the two HOAs agreed to maintain the pond. The City's ownership of the property does not absolve the HOAs of their legal duty to comply with the January 21, 2011 Repair and Maintenance Agreement; nor does it impose a duty to maintain the pond that is different from the City's responsibility to its other properties.