STRATEGY MEMORANDUM

Generated from Bach Atlas Memo Prep Package

To:	Board, Lake Parker Estates Property Owners Association
From:	Counsel
Re:	Pre-Filing Strategy Analysis Mandatory Injunction Action for Landscape Covenant Enforcement Against Two Non-Compliant Homeowners
Jurisdiction:	Polk County, Florida (Tenth Judicial Circuit; Florida Sixth District Court of Appeal)
Readiness:	Likely Ready to Draft. No legal research gaps identified after four-cluster iteration.
Date:	[Date]

I. Issue Presented and Memo Goal

Whether the Association can successfully obtain a mandatory injunction in Polk County Circuit Court compelling two homeowners to bring their lawns and landscaping into compliance with the recorded declaration of covenants, after three written violation notices over a six-month period have failed to produce compliance and the Board has authorized litigation.

This memorandum is a pre-filing strategy analysis. It evaluates the legal elements the Association must establish, the binding pre-suit procedural requirements under Chapter 720, the controlling Sixth DCA precedent on the threshold question of whether the injunction route is even available, the homeowner defenses to anticipate, the attorney's fee recovery posture, and the verification steps required before filing.

II. Matter Background and Key Facts

The Association has issued three written violation notices to two homeowners over six months for failure to maintain lawn and landscaping in good condition under the recorded declaration. The homeowners have not cured. The Board has authorized litigation. The declaration includes covenant restrictions on landscape maintenance and provides the Association with enforcement authority. The declaration also contains a provision allowing the Association to take corrective action on behalf of owners and assess costs. The Board has expressed a preference for the injunction route rather than the self-help corrective action route.

There is no prior litigation between the parties.

III. Governing Authority

Statutory framework.

The cause of action is grounded in Chapter 720, Florida Statutes. Section 720.305(1) authorizes "actions at law or in equity, or both" by the Association to redress noncompliance with the governing documents and provides that the prevailing party "is entitled" to recover reasonable

attorney's fees and costs. Section 720.311(2)(a) imposes a mandatory pre-suit mediation requirement for covenant-enforcement disputes. Section 720.305(2) governs the parallel fining track, which is independent of but related to any litigation strategy. Section 720.3075 restricts retroactive application of certain provisions and overlaps with the Florida-Friendly Landscaping statute discussed below.

Controlling appellate authority for Polk County.

Polk County sits within Florida's Sixth District Court of Appeal. The Sixth DCA's decision in *McConico v. Morgan's Mill Property Owners Ass'n*, 387 So. 3d 368 (Fla. 6th DCA 2023), is binding precedent for Polk County circuit courts. *McConico* holds that where the declaration provides the association an option of self-help (entering the lot, performing maintenance, assessing costs, and lien rights), the association has an adequate remedy at law and is not entitled to a mandatory injunction until the self-help remedy has been exhausted or shown to have been frustrated.

The Second DCA reached the same result on a materially identical fact pattern in *Mauriello v. Property Owners Ass'n of Lake Parker Estates, Inc.*, 337 So. 3d 484 (Fla. 2d DCA 2022), which involved a Polk County HOA. *Alorda v. Sutton Place Homeowners Ass'n, Inc.*, 82 So. 3d 1077 (Fla. 2d DCA 2012), is the foundational Second DCA precedent on which *Mauriello* relied.

The Mooney circuit split.

In August 2025, the Fourth DCA decided *Mooney v. Color Le Palais of Boynton Beach Homeowners Ass'n*, 4D2024-0967 (Fla. 4th DCA Aug. 27, 2025), which reached the opposite conclusion: an HOA may seek injunctive relief without first attempting self-help and without proving irreparable harm or inadequate remedy at law. The Fourth DCA certified express conflict with *Mauriello* and *McConico* to the Florida Supreme Court. **Mooney is persuasive only in Polk County and is not binding here.** Until the Florida Supreme Court resolves the conflict, the Association's strategy must be built around *McConico*.

Attorney's fee authority.

The Florida Supreme Court in *Moritz v. Hoyt Enterprises*, 604 So. 2d 807 (Fla. 1992), established the "significant issues" test for prevailing-party determination, refined and reaffirmed in *Trytek v. Gale Industries*, 3 So. 3d 1194 (Fla. 2009). Trial courts retain discretion under *Trytek*, including the discretion to find no prevailing party in mixed-result cases. *Coconut Key HOA v. Gonzalez*, 246 So. 3d 428 (Fla. 4th DCA 2018), establishes that a party who obtains injunctive relief is the prevailing party for fee purposes even without monetary damages. *Khodam v. Escondido HOA*, 87 So. 3d 65 (Fla. 4th DCA 2012), reinforces this rule. *Alhambra HOA v. Asad*, 943 So. 2d 316 (Fla. 4th DCA 2006), holds that mid-litigation compliance followed by association dismissal can confer prevailing-party status on the member. *Olson v. Pickett Downs Unit IV HOA*, 205 So. 3d 869 (Fla. 5th DCA 2016), requires allocation of fees between covered and non-covered claims in multi-count complaints. *Florida Patient's Compensation Fund v. Rowe* governs the lodestar reasonableness analysis.

Other key authority.

White Egret Condominium, Inc. v. Franklin, 379 So. 2d 346 (Fla. 1979), governs the selective-enforcement defense. *Chattel Shipping & Investment, Inc. v. Brickell Place Condo. Ass'n*, 481 So. 2d 29 (Fla. 3d DCA 1985), provides the "line in the sand" cure. *Dwork v. Executive Estates of Boynton Beach HOA*, 219 So. 3d 858 (Fla. 4th DCA 2017), establishes strict (not substantial) compliance with the 14-day fining notice. *Park Crossing HOA v. Suarez*, 4D2024-3116 (Fla. 4th DCA 2025), addresses the FHA reasonable-accommodation overlay and confirms section 720.305(1) authorizes covenant-enforcement injunctions with prevailing-party fees.

IV. Key Strengths

The substantive covenant violation is well-documented.

Three written violation notices over six months establishes a clean enforcement record and supports the Association's good-faith effort to resolve before litigation. This documentation supports both the underlying breach claim and the response to any selective-enforcement attack, provided the Association can also show consistent treatment of comparable properties.

Board authorization is in place.

Litigation has been formally authorized by the Board, which addresses standing and board-action defenses that often arise in HOA enforcement matters.

Florida law treats restrictive covenants favorably on irreparable harm.

Under *Stephl v. Moore*, 114 So. 455 (Fla. 1927), violation of a restrictive covenant on real property has historically been treated as sufficient without an independent showing of irreparable injury. While the Sixth DCA in *McConico* has narrowed the practical availability of this principle through the adequate-remedy-at-law analysis, *Stephl* remains good law on the underlying covenant-as-property-right framing.

Section 720.305(1) provides a mandatory fee-shifting engine.

Section 720.305(1) uses mandatory "is entitled" language for prevailing-party fees, which is non-discretionary once prevailing-party status is established. This contrasts with the "as determined by the court" language in section 720.305(2). Bach Atlas confirmed that the statute supplies an independent statutory fee basis even where the declaration is silent or covers only some claims (*Holiday Isle Improvement Ass'n v. Destin Parcel 160*, 257 So. 3d 582 (Fla. 1st DCA 2018)). The Association can plead dual entitlement under both section 720.305(1) and the declaration's fee-shifting provision.

V. Key Risks and Gaps

The threshold McConico risk is outcome-determinative.

This is the dominant risk in this matter. The Board has expressed a preference for the injunction route over self-help, but the declaration contains a provision allowing the Association to take corrective action and assess costs. Under *McConico* and *Mauriello*, that provision is treated as an adequate remedy at law that bars a mandatory injunction unless self-help has been exhausted or

frustrated. **Filing for injunction now without first attempting self-help carries a substantial risk of dismissal and a prevailing-party fee award to the homeowners under section 720.305(1).** Counsel commentary referenced in the underlying research notes a *McConico*-line dispute that ran approximately ten years and generated fee exposure exceeding the cost of simply curing the violation.

The Sixth DCA in *McConico* indicated in dicta that if the homeowner physically prevents the Association from exercising self-help, the legal remedy may be deemed frustrated and an injunction may then be appropriate. To preserve the injunction option, the Association would need to attempt self-help and document any obstruction. The exact text of the declaration's self-help clause and its notice triggers must be verified before any filing decision is made.

Permissive versus mandatory self-help language has not been treated as a meaningful distinction.

Even though the Association's declaration permits but does not require self-help, the *McConico* and *Mauriello* courts have not treated the "may" versus "must" distinction as material. The existence of the option is enough to create the adequate-remedy-at-law bar.

Attorney's fees recovery posture and the asymmetric risk.

Section 720.305(1) cuts both directions. If the Association prevails on the covenant-enforcement claim, it recovers fees. If the Association loses, including on a *McConico*-based dismissal, the homeowners recover fees from the Association. The prevailing-party analysis runs through the *Moritz* "significant issues" test, which asks who achieved the principal benefit sought in the litigation. *Trytek* confirms trial-court discretion, including the discretion to find no prevailing party in mixed-result cases. A party that obtains injunctive relief generally prevails even without monetary damages (*Coconut Key*; *Khodam*).

Three specific fee-recovery risks require attention. First, a party that "fails or refuses to participate in the entire mediation process" under section 720.311 forfeits the right to recover attorney's fees in subsequent litigation, even if it ultimately prevails. This is a hard statutory bar that requires rigorous documentation of participation. Second, under *Alhambra HOA v. Asad*, mid-litigation compliance by a homeowner followed by association dismissal can confer prevailing-party status on the homeowner. Third, under *Mauriello*, if either homeowner sells the property mid-litigation and the new owner cures the violation, the original homeowner may be deemed the prevailing party on the original claim. The first risk counsels rigorous participation documentation. The second and third counsel against premature dismissal and in favor of moving expeditiously once filed.

If the complaint includes multiple counts, *Olson* requires allocation of fees between covered and non-covered claims, with section 57.105(7) reciprocity potentially applicable. The injunction count should be framed as the litigation's center of gravity to support a favorable significant-issues analysis under *Moritz* and *Trytek*.

Selective enforcement is the most common merits defense in landscape cases.

White Egret makes selective enforcement a viable defense where the Association has tolerated similar conditions on other parcels. The Association should inventory comparable conditions community-wide before filing. If past inconsistency exists, the *Chattel Shipping* "line in the sand" approach (prospective uniform enforcement reset) should be considered before filing rather than after.

Florida-Friendly Landscaping statute creates a potential statutory override.

Section 373.185(3)(b), reinforced by section 720.3075(4)(a), prohibits enforcement of covenants that would prohibit Florida-friendly landscaping. The statute is described in the underlying research as "the single most powerful landscape-specific defense" available in Florida. The case law on the statute is described as "relatively undeveloped," but the statutory text is strong. The Association needs to determine whether the homeowners' landscape condition might qualify as Florida-friendly (drought-tolerant groundcover, native species, reduced turf, mulched areas).

Fair Housing Act reasonable-accommodation risk.

If either homeowner has a disability or if the landscape condition serves a medical or accessibility purpose, 42 U.S.C. section 3604(f) and the interactive-process duty come into play. *Park Crossing v. Suarez*, 4D2024-3116 (Fla. 4th DCA 2025), illustrates the resulting fee-shifting complexity. The Eleventh Circuit confirmed in *Watts v. Joggers Run Property Owners Ass'n*, 133 F.4th 1032 (11th Cir. 2025), that the FHA reaches HOA conduct directed at homeowners. This risk should be screened pre-filing.

Mandatory injunctions are disfavored and must be narrowly drawn.

Under *Mayor's Jewelers, Inc. v. State of Cal. Pub. Emps.' Ret. Sys.*, 685 So. 2d 904 (Fla. 4th DCA 1996), and *Abbey Park HOA v. Bowen*, 508 So. 2d 554 (Fla. 4th DCA 1987), mandatory injunctions requiring ongoing supervision or perpetual compliance are unenforceable. Fla. R. Civ. P. 1.610(c) requires that any injunction "describe in reasonable detail the act or acts restrained." Vague injunctions risk reversal under Rule 1.610(c) as reiterated in *Park Crossing*. Counsel should plead time-limited, specifically-described relief rather than perpetual supervisory orders.

Mootness through sale of the property.

Mauriello contains a separate warning: if either homeowner sells mid-litigation and the new owner cures, the original homeowner may be deemed the prevailing party as to the original claim and entitled to fees. This counsels in favor of moving expeditiously once filed and amending pleadings promptly if a sale occurs.

VI. Procedural Path

Step one: Self-help attempt or documented obstruction.

Before serving the section 720.311 mediation demand, the Association should either (a) exercise the self-help provision in the declaration to cure the violation and assess the costs against the homeowners, or (b) attempt self-help and document any obstruction or refusal of entry by the homeowners. This step preserves the injunction option under the *McConico* dicta exception and

dramatically reduces the threshold risk of dismissal. If self-help proves effective, the Association's enforcement objective is achieved without litigation and the recovery proceeds through assessment and, if necessary, lien foreclosure rather than injunction.

Step two: Section 720.311 pre-suit mediation demand.

If self-help is attempted and frustrated, or if the Board determines self-help is inadequate for documented reasons, the Association must serve a statutory pre-suit mediation demand before filing. The mechanics are strict and unforgiving.

- The demand must be in substantially the form prescribed in section 720.311(2)(a).
- The demand must identify the specific disputes and the authority supporting each alleged violation.
- The demand must list five Florida Supreme Court certified circuit court civil mediators with current hourly rates.
- Service must be by certified mail return receipt requested, with a parallel copy by regular first-class mail, to the address shown in the Association's records under section 720.303.
- The responding party has 20 days to respond.
- Mediation must be held within 90 days unless extended by mutual written agreement.
- Failure to respond, agree on a mediator, pay fees, or appear constitutes impasse, authorizing filing in court.
- A party who fails or refuses to participate in the entire mediation process forfeits the right to recover attorney's fees in subsequent litigation, even if that party prevails. **Document participation rigorously to preserve the fee-recovery posture.**

Step three: Filing in the Tenth Judicial Circuit, Polk County (Bartow).

On impasse, the Association may file the mandatory injunction action in the Tenth Judicial Circuit, Polk County. The complaint should plead:

- **Count I: Mandatory injunction.** Allege the recorded covenant, the violation, attempted self-help under *McConico* and any frustration or inadequacy, exhaustion of pre-suit mediation under section 720.311 as a condition precedent, and request specific time-limited injunctive relief specifying exactly what each homeowner must do. Frame this count as the litigation's center of gravity to support a favorable significant-issues analysis under *Moritz* and *Trytek*.
- **Count II (optional): Breach of declaration and damages.** Preserves limitations posture and supports an additional fee-shifting basis. Note *Olson* allocation risk if non-covered claims are added.
- **Count III (optional): Foreclosure of any properly perfected fine-based lien**, only if aggregate fines exceed $1,000 and section 720.305(2) procedures have been strictly followed.
- **Fee allegations.** Plead section 720.305(1) explicitly as the mandatory statutory basis. Plead the declaration's fee-shifting clause as a parallel contractual basis. This dual pleading preserves entitlement under both grounds.

Parallel track: Section 720.305(2) fining process.

If the Association is also imposing fines, the fining track runs independently of the litigation track and must be strictly followed. Fines are capped at $100 per day per violation, $1,000 aggregate for a continuing single violation unless the declaration permits higher. At least 14 days' written notice of the right to a hearing must be served. The hearing must occur within 90 days before a committee of at least three members who are not officers, directors, employees, or specified family members. Written findings are due within 7 days. Payment date must be at least 30 days out. Under *Dwork* and *Pecchia v. Wayside Estates HOA* (Fla. 5th DCA 2024), the 14-day notice is treated as a strict condition precedent; substantial compliance is not sufficient. Fines under $1,000 cannot become a lien. A defective fining process can give the homeowners a counterclaim or affirmative defense and can undermine prevailing-party status on connected counts.

VII. Recommended Strategy

The Board's stated preference for the injunction route over self-help is understandable but, in the Sixth DCA, structurally risky under *McConico*. The recommended strategy is to pursue the enforcement objective through a sequenced approach that preserves the injunction option while substantially de-risking the action and protecting the fee-recovery posture.

Recommended sequence:

- 1. **Audit the declaration's self-help clause carefully.** Identify the precise notice triggers, cure timelines, and procedural requirements before any action is taken. Many declarations require multiple notices and an opportunity to cure before self-help may be invoked.
- 2. **Conduct a community-wide enforcement audit.** Inventory comparable landscape conditions on other parcels and document the Association's enforcement history. If past inconsistency exists, consider issuing a "line in the sand" notice under *Chattel Shipping* to reset enforcement prospectively before any litigation.
- 3. **Screen for Florida-Friendly Landscaping and FHA accommodation issues.** Before any further enforcement action, determine whether either homeowner's landscape condition might qualify for the section 373.185 / section 720.3075(4)(a) statutory override or whether any disability-related accommodation is implicated.
- 4. **Attempt self-help under the declaration.** Issue the notice required by the declaration, attempt entry to perform the maintenance, and document the result. If self-help succeeds, the enforcement objective is achieved and the Association recovers costs through assessment. If the homeowners obstruct, document the obstruction in writing with photographs and contemporaneous notes.
- 5. **If self-help is frustrated, serve the section 720.311 statutory mediation demand.** Comply strictly with form, service, and timing. Document participation rigorously to preserve fee-recovery posture under *Moritz* and avoid the section 720.311 fee-forfeiture bar.
- 6. **On impasse, file the mandatory injunction action in Polk County Circuit Court.** Plead self-help attempt and frustration as a key factual element supporting the injunction claim under the *McConico* dicta exception. Plead section 720.305(1) and the declaration's fee-shifting

clause as dual fee bases.

• 7. **Run the section 720.305(2) fining track in parallel** if the Board chooses to pursue fines, with strict compliance with the 14-day notice and committee hearing requirements.

This sequenced approach reduces the *McConico* threshold risk substantially, preserves all enforcement options, protects fee-recovery posture under *Moritz* and the section 720.311 participation requirement, and creates a defensible record that supports both the substantive claim and the prevailing-party fee analysis if litigation is ultimately required.

VIII. Verification Checklist Before Use

This memorandum is built from Bach Atlas research and is intended as a drafting aid for attorney review. Before any filing or formal communication with the homeowners, counsel should verify the following.

Verified by Bach Atlas research and reflected in this memorandum:

• Polk County is in the Tenth Judicial Circuit and the Sixth District Court of Appeal.

• *McConico v. Morgan's Mill Property Owners Ass'n*, 387 So. 3d 368 (Fla. 6th DCA 2023), is binding precedent for Polk County circuit courts.

• *Mauriello v. Property Owners Ass'n of Lake Parker Estates, Inc.*, 337 So. 3d 484 (Fla. 2d DCA 2022), reached the same result on a Polk County HOA fact pattern.

• *Mooney v. Color Le Palais of Boynton Beach HOA*, 4D2024-0967 (Fla. 4th DCA Aug. 27, 2025), is in conflict with *McConico* and *Mauriello* and is on certified conflict review before the Florida Supreme Court. *Mooney* is persuasive only in Polk County.

• Section 720.311(2)(a) requires pre-suit mediation for covenant enforcement disputes, with the form, timing, and service requirements stated above.

• Section 720.305(1) authorizes both legal and equitable relief and provides prevailing-party fees on a mandatory "is entitled" basis.

• The *Moritz*/*Trytek* "significant issues" test governs prevailing-party determination. A party that obtains injunctive relief generally prevails even without monetary damages (*Coconut Key*; *Khodam*).

• Mid-litigation compliance can shift prevailing-party status to the homeowner (*Alhambra*). Multi-count complaints require fee allocation (*Olson*). Lodestar reasonableness applies under *Rowe*.

• Section 720.305(2) governs fines and committee hearings, with strict-compliance treatment of the 14-day notice per *Dwork* and *Pecchia*.

• Sections 373.185(3)(b) and 720.3075(4)(a) provide the Florida-Friendly Landscaping statutory override.

• 42 U.S.C. section 3604(f) and the Eleventh Circuit's decision in *Watts v. Joggers Run Property Owners Ass'n*, 133 F.4th 1032 (11th Cir. 2025), establish the FHA framework for HOA conduct.

Attorney must verify (factual and matter-specific items Bach Atlas could not confirm):

- **The exact text of the declaration's self-help provision, including notice triggers and cure timelines. This is the dominant verification item given the McConico risk.**
- Whether the declaration contains an anti-waiver clause and a non-discretionary-enforcement clause.
- Whether the declaration contains a fee-shifting clause and how it interacts with section 720.305(1) prevailing-party recovery (dual-pleading basis).
- Whether the declaration's specific landscape-maintenance covenants are sufficiently definite to support a mandatory injunction (vague "neat appearance" language is more vulnerable to attack than specific standards).
- The Association's documented enforcement history against the same landscape covenant on other parcels within the past three to five years.
- Whether the recorded declaration of the subject community was properly preserved under Chapter 712 (Marketable Record Title Act).
- Whether either homeowner has a disability or has requested any FHA accommodation.
- Whether either homeowner's landscape condition might qualify as Florida-friendly landscaping under section 373.185.
- The Association's current section 720.303 records and the homeowners' addresses of record.
- Board minutes confirming litigation authorization.
- Whether any fine has been imposed, and if so, whether the section 720.305(2) procedures were strictly followed.

Not addressed in available research (gaps Bach Atlas explicitly flagged):

- No directly on-point Sixth DCA decision addressing the precise overlay of repeated landscape violations, fining, and injunction in a single action.
- No Polk County trial court or appellate opinion squarely deciding a landscape covenant enforcement against a Florida-Friendly Landscaping defense.
- No published Sixth DCA decision squarely addressing section 720.305(1) fees in a covenant-injunction action (the Sixth DCA applies section 720.305(1) consistently with the other districts).
- The current status of any Florida Supreme Court resolution of the *Mooney* conflict.
- The text of any Polk County or municipal landscape ordinance that might run in parallel to private covenant enforcement.

This package is a memo-prep aid for attorney review. It is not legal advice, not a final filing, and not a substitute for professional judgment. Counsel should verify all authorities, confirm procedural posture, and apply professional judgment to the specific circumstances of this matter before any filing or formal action.