

Beachwalk HOA Board Meeting Minutes – March 2014

A regular meeting of the Beachwalk Homeowners Association (“HOA”) Board of Governors was called to order at 4:00 pm, March 12, 2014, by HOA President Pat Brennan. Board members Dave Duffrin and Tom Moffitt also were present. In attendance were members of the Stormwater Committee (Joe Truelove, Mike Gentile, Ted Gragg and Jim Craig), Chairman of the Rewrite Committee (Gary Stickley), HOA Board attorneys (Adam Beaudoin and Justin Lewis), the HOA's professional engineer (Larry Sneed, P.E.) and the Beachwalk's property manager (Cindy Snead). Also in attendance were 24 homeowners (see attached attendance list). With the quorum present, the Board proceeded to conduct its business.

Approval of the January 2014 Minutes.

Pat Brennan made a motion to approve minutes of the January 2014 meeting prepared by HOA Secretary Tom Moffitt. The motion was adopted unanimously. Pat explained that the Board did not have a meeting in February because Tom was out of the State during the month of February.

Financial Report. The Board received the financial reports made by property manager Cindy Snead and Treasurer Joe Truelove. The Board members had no questions concerning the matters stated in the reports and accepted them without discussion.

Solar Panel Guidelines. The solar panel guidelines were distributed to the homeowners for review and comment following the January Board meeting. Cindy reported that only two comments had been received – one for and one against adoption. Neither comment requested consideration of substantive changes to the guidelines. Tom moved that the guidelines be adopted. The motion was seconded. Dave requested Adam's oral legal opinion concerning Beachwalk's authority to regulate where solar panels can be placed on a property owner's house. Adam stated that under North Carolina law, Beachwalk cannot prohibit installation of solar panels but does have the authority to adopt reasonable guidelines concerning the location and manner of placement of solar panels on houses. The guidelines were adopted unanimously. A copy of the adopted guidelines is attached.

Response from Beachwalk's Attorneys to Board's Request for Legal Opinions.

Tom introduced Beachwalk's attorneys, Adam Beaudoin and Justin Lewis of the firm of Ward & Smith, to the homeowners and summarized the reasons

the Board requested the legal opinions. Tom said that there was split of opinion on the Board that needed resolution for the Board to proceed with consideration of steps that would need to be taken to bring the stormwater management system (wet detention ponds, canals and ditches) into compliance with Beachwalk's stormwater management system permit. He said that the need to act had been accelerated because the Department of Environment and Natural Resources ("DENR") had inspected our stormwater system and found it not to be in compliance with our State permit. Beachwalk was given a deadline by which it must submit a plan to remedy the deficiencies or face possible enforcement action, including monetary civil penalties.

On January 22, 2014, the Board requested opinions on three issues. The first issue was whether owners whose lots do not adjoin the north and south ponds may be assessed to pay for maintenance and repairs to those wet detention ponds. The second issue was whether lot owners on whose lots there are recorded drainage easements are solely obligated to pay for maintenance and repairs of those canals and ditches, or whether ordinary repair and maintenance of those canals and ditches is a collective responsibility so that the stormwater management system is maintained and repaired as one unified system funded collectively as a common expense by all property owners. The third issue was whether the Board must get homeowners' approval before making repairs to the system costing more than \$5,000.00 and homeowners' prior approval for any special assessments to defray the cost.

The Board attorneys responded in writing on February 28, 2014. As to the first issue, the attorneys concluded that the wet detention ponds are common areas which are collectively owned by the homeowners and all homeowners should be assessed equally for the cost to maintain the ponds.

As to the second issue, there was a split in views on the Board, with Dave taking the view that maintenance and repairs to stormwater system components (i.e., drainage easements) being the sole responsibility of the lot owner. Pat and Tom believe that such maintenance and repairs are a collective responsibility of all homeowners. The attorneys responded by saying that lot owners bear the responsibility for repair and maintenance of the drainage easements on their property. This opinion was based on the language in the Declaration, which by state law prevails over provisions in the plat maps and Bylaws that seemed to suggest that such maintenance and repairs are a collective responsibility. The attorneys stated in their response that although it may make sense for this to be a collective

responsibility, Beachwalk's Declaration needs to be amended to grant clear authority for that. Adam stated at the meeting that in virtually all planned communities the responsibility to maintain and repair all components of a stormwater management system in a planned community, like Beachwalk, is a community responsibility carried out by homeowners associations and funded by common assessments paid by all homeowners. In this respect Beachwalk is unusual. The attorneys also noted that our governing documents are not well drafted and that Beachwalk should consider amending them to clear up this and other issues.

As to the third issue, the attorneys responded that under our current governing documents homeowners' prior approval would be necessary if the cost of maintenance or repair of common elements (such as the stormwater wet detention ponds) exceeds \$5,000. Prior homeowner approval also would be necessary if a special assessment would be required to pay for such maintenance or repairs.

The attorneys then responded to clarifying questions posed by individual Board members and lot owners. In response to Pat's question, the attorneys stated that there is no legal prohibition against spending HOA funds on private property if the governing documents authorized it. There also was a general discussion concerning potential Board and homeowner liability if the homeowners did not approve repairs required by DENR for Beachwalk to bring our stormwater management system into compliance. As long as the Board acts prudently and uses its best business judgment when recommending the expenditure, Board members will not be personally liable if the homeowners refuse to fund the repairs. However, DENR has sufficient statutory tools to move against individual homeowners who refuse to make necessary changes mandated by law.

Rewrite Committee Report. Gary Stickley, Chairman of the Rewrite Committee, made a report to the Board about the status of the Committee's work. He reported that the rewrite process is nearly complete. His Committee has made extensive efforts to solicit and to consider comments and suggestions regarding the provisions of the second proposed Declaration and Bylaws. He said that he believed that the proposed governing documents are vastly better than the ones Beachwalk presently is operating under. He concluded by saying that his Committee will work with Cindy to have the proposed documents ready for a vote of the homeowners within the next few months.

Stormwater Management System. Tom, as the Board liaison for the Stormwater Committee, reported on developments relating to the stormwater management system. He reported that DENR inspected our stormwater system on February 14, 2014, and found it not to be in compliance with our State permit. By letter, dated February 18, 2014, DENR notified us of the deficiencies and gave us a deadline to respond with a plan to remedy the deficiencies.

Tom reported that the Board and Stormwater Committee met with DENR employees just before the Board meeting today to discuss what DENR wanted us to do to remedy the deficiencies. He reported that the meeting had gone very well. The DENR representatives told us that they did not find the deficiencies to be major and that their primary concern related to erosion in three areas: (1) the entrance channel to the north pond (between lots 78 and 79), (2) the channel between lots 74 and 75, and (3) the channel between the two ponds (between lots 66A and 65B, and between lots 62A and 61B). DENR asked for a plan of action to be prepared to repair and stabilize the erosion in those areas. After the repairs, DENR employees said they would reinspect the areas and accept the repairs if they are deemed adequate.

Larry Sneed, P.E., also provided information about repairs that would need to be made in the future concerning pond depth and bank slopes. The Board and Stormwater Committee will follow up to assure that DENR's requests are satisfied.

Proposed Duffrin Plan. Dave outlined an approach to repairing and maintaining drainage easements that was similar to that used in 1999 when shingles were blown off many homes in Beachwalk. In 1999, the Board coordinated a program with the homeowners to arrange for a contractor to repair all the shingle issues for a flat rate of \$200 per homeowner, which the homeowner, not the HOA, paid. The same process could be applied to repair of drainage easements. If repairs are required on a homeowner's lot, and the homeowner refused to have the repair made, then the Board would arrange for the repair to be made and charge the homeowner for the expenses incurred. This plan leaves the decision to the homeowner but the homeowner is responsible for payment of the costs of repair made on his or her property.

New Business. There was no new business discussed.

Adjournment and Scheduling of Next Meeting. Having concluded its business, the meeting was adjourned at 6:04 pm. The next Board meeting is scheduled for 4:00 pm on April 9, 2014.


 Thomas Moffitt, Secretary

Approved: _____

Attendee List

1, 2. Kathryn and Fred Pirnia	14. Kate Gentile
3, 4. Christine and George Maine	15. Patsy Ennis
5. Elaine Porter	16. John Kelly
6, 7. Mary Jo and Dennis Wrynn	17. Ron LaCourse
8. Janet Salvi	18, 19. Jackie and Herb Weibe
9. Bill Guyton	20. Don Morrow
10. Walt Jankowski	21. Dan Church
11. Donna Moffitt	22. Larry Meachum
12. Todd Vought	23. Patricia Bollander
13. Lee Brennan	24. Margaret Duffrin

ADDENDUM

After the Board meeting, subsequent developments occurred that the Board discussed in an executive session on March 18, 2014. Pat Brennan, Tom Moffitt and Dave Duffrin attended. The Board reviewed the draft minutes of the March Board meeting, along with this addendum, to be tentatively approved so that homeowners could be kept abreast of significant developments before the minutes could be formally approved at the next Board meeting in April.

1. Proposed DENR Agreement – Long and Short Term

Larry Sneed reported that he had made substantial progress with DENR concerning plans to remedy the deficiencies of our stormwater management system. First, DENR is extending the deadline for a plan of action until March 31, 2014. Second, DENR is willing to agree to a phased repair with a short-term immediate repair to be followed by a long-term repair plan along the following lines. The short-term repair involves placing wattles (sand tubes) at the base of the slope at the scarp to reduce erosion on both sides of the inlet channel from 5th Street into the large north pond (Lots 78 and 79), the channel from between Shell and Surf Drives (200 feet) (Lots 66A, 65B, 61B and 62A) and the pond frontage on Lots 74 and 75 (350 feet). DENR would then give Beachwalk until June 1, 2014, to prepare a long-term plan to be implemented over a two year period. The wattles will last 6-12 months, and no heavy equipment or disturbance of the banks would be involved. The short-term project is estimated to cost less than \$5,000.

The Board members disagreed on how to proceed. Tom and Pat believed that it would be in Beachwalk's best interest to accept DENR's proposal and pay for the short-term project with money already in the pond reserve funds. The eight lot owners affected (Nolan, Metz, Parker, Hudson, Pagley, Stickley, Truelove and Brookshire) should not be asked to pay for this out of their personal funds because the benefit of the agreement inures to the entire Beachwalk community, not just to the eight homeowners. Pat and Tom did not believe it would be prudent to be rushed into making a long-term plan by March 31, 2014, under the circumstances that exist today. First, we wanted more time to evaluate our options. Second, whether the repair and maintenance of the stormwater system is to be treated as a collective responsibility to repair one unified system funded as a common expense by all property owners equally will be determined by a vote of the homeowners to be held before June 1, 2014. The outcome of that vote matters as to how we implement any plan acceptable to the homeowners. If the rewritten Declaration passes, the responsibility clearly and unambiguously will be on all homeowners equally. Asking eight individual homeowners to personally bear the cost of the short-term project before we know the outcome of the vote on the rewritten Declaration is unfair and unjust. Pat and Tom made a pragmatic business judgment that Beachwalk should accept DENR's proposal to give Beachwalk homeowners the time and space to vote on the rewrites and make long-range plans after the outcome of the votes on the rewrites is determined, rather than rejecting the proposal and risk further problems with DENR if DENR's proposal is rejected.

Dave disagreed. He does not want any HOA money spent on private property. Although he may not oppose the short-term project, he wanted the eight affected lot owners to bear the full cost of installing the sand tubes on their lots. He also wanted the affected property owners notified about the short-term project and why the Board wanted to do it – which Pat and Tom agreed that the Board should be done.

On a two (Pat, Tom) to one (Dave) vote, the Board voted to instruct Larry to accept the DENR proposal on Beachwalk's behalf.

2. Stormwater Committee Changes. Mike Gentile has withdrawn from the Stormwater Committee, and Pat has appointed Jim Craig to replace Mike as chairman of the committee. Mike has spent many hours working on the stormwater problems faced by Beachwalk. The Board appreciates the work he did and what he has accomplished and commends him for his good service.

3. Rewrite Committee. The Board has asked the Rewrite Committee to expedite the process of voting on the proposed rewritten Declaration and Bylaws. The Board anticipates scheduling a homeowners meeting in April or early May devoted to the Committee explaining the rewritten proposed Declaration and Bylaws and answering any questions homeowners have about the proposed documents. Before such a meeting, the proposed documents will be posted or distributed to homeowners so they will have ample time to review the documents before the question-and-answer meeting. Voting will be by written ballot.


Thomas Moffitt, Secretary

Approved: 

November 2013

Guidelines for Solar Panel Installation within Beachwalk

1. The Architectural Control Committee (ARC) and the Beachwalk Home Owners Association will not be held responsible for any non-compliance with any government or government agency ordinance, regulation or law regarding the installation and/or use of solar panels.
2. An application to install solar panels on a lot, dwelling or structure within Beachwalk must be submitted to and approved by the ARC before any work is started. The removal of trees must be included in the application and separately approved.
3. Applications shall include details of the proposed unit(s) and installation location(s). The qualifications and experience of the company installing the solar panel system must be included.
4. The lot owner is responsible for complying with all ordinances, regulations and laws regarding the installation and use of solar panels.
5. All solar panels must have anti-reflective coating.
6. Only ground or roof mounted systems shall be installed.
7. Ground mounted solar panels must be screened from the view from streets and adjoining lots. Placement of above ground panels shall be located on the lot between the lot rear boundary and the dwelling.
8. Roof mounted solar panels shall be placed on the roof facing away from and not visible from the street.
9. Roof mounted solar panels must be installed with the panels parallel to the roof structure and not more than eight (8) inches above the roof surface. No panel shall extend above the roof ridge line.
10. Inoperative solar panel systems must be removed within ninety (90) days from the day it was determined to be inoperative. The roof sites must be returned to the original condition and ground sites must be landscaped after the inoperative solar panel system has been removed. Roofing material must match the existing roofing material.