

Lely Resort Master Property Owners Association, Inc.

Minutes

The meeting was held on November 15, 2023, at 1:00 PM at the Ole Theater on Celeste Drive in Naples, FL 34113 and via Zoom.

1. Call to Order:

The meeting was called to order at 1:00pm by President Susan Vicedomini
A quorum of directors was confirmed, and posting of the meeting was verified.

2. Attendance - Directors Present:

Susan Vicedomini
Kenneth Haar
Gabe Choquette
Paul Snyder
Robert Priestley
Jan Face Glassman

Others Present: Stewart Carter, CAM, CMCA, AMS, Senior Vice President, Cardinal Management Group

3. Minutes of the October 23rd meeting were approved (Motion: Priestley, Second: Snyder)

4. Report of officers:

a. President – Urns on Grand Lely and Rattlesnake that we are repairing were hit by a car. We are looking for the responsible party.

Owner encroachment on preserve areas were surveyed. Six owners in Majors and the CDD identified. President of Majors HOA and Kevin Carter at the CDD contacted.

Paradise Lighting has installed holiday lighting on the palm trees at the entrances to Lely. Timers to be reset.

Preserve land at Rattlesnake and Grand Lely in final stages of turnover to county. Ole will be approached to accept two slivers of land LMPOA owns in the middle of the round-a-bout in front of Ole center on Celeste drive. Meeting to be set up between County, CDD, Players' Club and LMPOA to discuss turnover of land and road leading to the CDD and county buildings off Wildflower.

On a motion by Priestley with a second by Snyder the board voted unanimously to approve the contract for drainage projects in the amount of \$119K.

b. Vice President – No Report (See turnover committee)

c. Treasurer – October financials were reported and for both the month and year to date, revenue continues to exceed expenses. The favorable variance to budget on a year to date basis is primarily in Preserve Maintenance and Storm Drain System remediation as certain projects have not yet been accomplished. Our Deferred Capital Contributions continued to grow with an additional \$17K for September and October, based on 34 Lely purchases. We have generated over \$12K in interest income year to date on our invested capital. As of October 31, there was \$63K in delinquent accounts but as of the meeting, the balance had dropped to \$20K and collections are now running more smoothly.

5. Committee reports:

a. Documentation – we discussed latest draft of ARC documentation. Gabe Choquette read into the record the attached document in regards to his concerns about the draft. We will vote at our December meeting on a final version of the language changes to our declaration to be submitted to the owners for a vote at the annual meeting.

b. Turnover – Stock Development has responded to our 558 filing, not to us but to the CDD. We await our own response from stock.

6. Old Business:

a. Jan Glassman spoke of meetings with county officials concerning getting sections of Grand Lely Drive near Rattlesnake repaved.

b. Gabe Choquette asked for board clarification on the replacement of signpost project he is working on..

7. New Business

a. Next Meeting will be December 18th at 1:30PM (note time change) in Ole Theater and via Zoom.

8. Adjournment: at 2:50pm

An analogy of federal/state legislative processes is being used to articulate my position on the modification of the Lely Resort Master Property Owners Association's Declaration and the promulgation of the MARC Guidelines. If you are familiar with the legislative processes, please bear with me. I would like everyone to be on the same page.

The legislature (here, the Lely Resort membership) promulgates rules, regulations, and restrictions via Bills (the Declaration); an appropriate executive agency (the Lely Resort Master Association) develops policies and procedures (the MARC Guidelines) to implement and administer the legislation; any disagreement on how the legislation is being administered, is delt

with through the judicial system (a Fining Committee, arbitration, or court system).

Also relative to regulations is a term called “Order of Powers.” Order of Powers is a concept utilized in dealing with the hierarchy of regulations - in summary “When there are conflicts in documents, statutes, or policies/rules; the highest order prevails.” It starts with the Constitution of the United States, federal laws and statutes, state constitution, state laws and statutes, and association documents. Pertaining to Lely Resort the order is: Master Association Articles of Incorporation, Master Declaration, Master By-Laws, Master Policy & Procedures, Master Rules, Neighborhood Associations Articles of Incorporation,

Neighborhood Declaration, Neighborhood By-Laws, Neighborhood Policy & Procedures, Neighborhood Rules.

It is the owners that establish the RESTRICTIONS in Lely Resort via a Membership vote altering the Master Declaration and when purchasing a home, the owner agrees to abide by the Declaration. In the current Master Declaration of General Covenants, Conditions, and Restrictions for Lely Resort, Article III labeled “Use Restrictions;” Sections 3.04 through 3.20 explicitly specifies the restrictions in Lely Resort which provides for the ambiance of Lely Resort. Stock Development was the initial membership which created the current General Covenants, Conditions, and Restrictions and the quality of life we all enjoy now.

From the perspective of the Order of Powers, removal of Sections 3.04 through 3.20 from ARTICLE III of the Master Declaration will remove the authority of the master association to enforce those RESTRICTIONS. Once the RESTRICTIONS are removed it is almost impossible to reinstate them due to the requirement of a Membership vote.

The promulgation of MARC Guidelines should be a By-Law document which can be created and modified by the Master Association Board. The MARC Guidelines will document how the Board will administer its responsibilities to implement the requirements of Article III of the Master Declaration as it relates to the neighborhood associations.

In summary, removing restrictions in the Master Declaration will eliminate the Master Association's authority to enforce restriction violations – there will be no restrictions.

Approving the proposed MARC Guidelines via a Membership **vote** will not incorporate them into the Master Declaration. Therefore, where would the MARC Guidelines be in the Order of Powers? The Documents are Articles of Incorporation, Declaration, By-Laws, Policy and Procedures and Rules. Although approved by the Membership an argument can be made that the MARC Guidelines are just guidelines and not restrictions.

Approving the MARC Guidelines by the Membership creates another issue. Each time a minor change is needed in the

guidelines, a Membership vote would be required. It will be more efficient if the MARC Guidelines were By-laws which can be modified by Board.

The MARC Guidelines are also missing penalties for each guideline violation. Adding penalties to each guideline violation would provide guidance to a Fining Committee when established.

Recommendations: Modify the Master Declaration to remove developer language; update the Master Declaration to incorporate the latest 720 and 718 Statutes; do not and I repeat do not remove the restrictions in the Master Declaration; incorporate the MARC Guidelines as a By-Law document; add penalties to the MARC Guidelines for violations; and create a Fining Committee.

Establishing MARC Guidelines as a By-Law document will allow the Master Association to delegate its administrative authority to the Neighborhood Association while maintaining its authority to enforce restriction violations.

All the documents would then be in the hierarchy of regulations. The Master Declaration will document Lely Resort's restrictions and support the MARC Guidelines; the MARC Guidelines will document the Master Association's policies and procedures in administering the restrictions and support a Fining Committee.