

Meeting Summary
Bentley Woods Board of Director's Meeting
October 11, 2018

Location: Seminole County Public Library, East Branch

Board Members in Attendance: Philip Bass, Harold Buhl, Paul Knight, Autumn Garrick, Elisabeth Essary, Valerie Marchetti, Pat Panagiotou

Towers Staff in Attendance: Raymond Shrum, LCAM

Quorum of the Board was verified. Meeting was properly noticed; signs were posted Sunday night.

Nine members of the Homeowners Association were in attendance, therefore, the threshold for voting interest was not met.

MINUTES

1. Call to Order- approximately 6:35 pm (following ACC meeting)

2. Approval of Previous Meeting Minutes

July minutes were not approved, Autumn Huff Garick requested the addition of a letter read by Linda Trocine at the meeting. The text of the letter to July minutes as soon as it is received.

Philip Bass made the motion to approve August and September minutes, which was seconded by Paul Knight. August and September meeting minutes are approved.

3. Manager's Report and Financial Report

Raymond Shrum reported that coordination with Solitude for a walk through and receiving bids on tree removal were ongoing. Board members requested that this process be expedited, as they felt the process should not take this long.

Philip Bass requested that Raymond Shrum contact the appropriate entity (either Duke or the city) in regards to neighborhood streetlights that are obscured by trees. Additionally a street light between Rochester & Manchester appears to need repair. Raymond Shrum to follow up. Regarding the inoperable streetlight on Artesia St, Duke has been called and repair requested.

There is a damaged gutter/curb at the end of Manchester at Artesia on the pond side. Raymond Shrum was asked to contact the city and request repair. During discussion, HOA members stated that it has been damaged since 2012 and many requests have been made to the city for repair in the past, with no results.

The fountain in the pond off Yorkshire is in need of repair. Raymond Shrum stated that he has called Lake Doctors and will continue to follow up.

The board has numerous questions & concerns regarding the Bentley Woods Balance Sheet and Financial Report. For example, explanation of the provided "Year to Date" amount requested since it appears incorrect. Itemization of checks requested, both those received and disbursed. There is also a question regarding a line of the September balance sheet ("Cash-Previous Mgmt Union Bank") that did not appear on the October balance sheet. Additionally, the board would like to know why the Income/Expense statement states that \$229 was spent on "collections" despite no entity has been retained to enforce collections to the knowledge of the BOD.

Raymond Shrum stated that he is unable to address these are questions and that he would have to ask the Towers Management accountant. The board requested that Raymond Shrum arrange a meeting between the board and this accountant. He stated that he would ask if the accountant was available to attend the next meeting. The board requested that a meeting be arranged, even if it needs to happen during business hours and not all members can attend.

Raymond Shrum shared a (tentative) proposed budget for fiscal year 2019. Several issues were pointed out that needed adjustment. However, further discussion of the budget was tabled until the next meeting, as time was running short. It was established that the fiscal year runs from July to June and the final version of the budget needs to be completed in time to distribute to homeowners 30 days prior to the annual meeting.

Upon reviewing outstanding violations, Philip Bass requested that "action reports" need to be received from the Towers Property Management lawyer anytime he takes legal action on our behalf. Raymond Shrum was asked to obtain and share action reports with the board as soon as possible.

4. Report of Officers

No additional issues reported by the Treasurer or Vice President.

The secretary, Elisabeth Essary, confirmed that all directors of the board have submitted "Post-Election/Appointment Certification" form to Raymond Shrum.

Discussion established that Raymond Shrum will post the initial draft of meeting minutes onto the website bearing the "DRAFT" designation on the link and pages of the minutes prior to formal approval. It is the desire of the BOD to provide a record of the meetings to homeowners as soon as possible. Elisabeth Essary stated she would email the minutes to Raymond Shrum as soon as they were completed.

The board would like to create a master file of all “official documents” as outlined by FS 720 to be kept on hand separate from the documents on file with the management company. Elisabeth Essary will contact Raymond Shrum to schedule a meeting at his office to review documents. She will then make a binder containing these official documents to be brought to HOA meetings as needed and for reference in future discussions.

President, Philip Bass, reported that his priority is filing to preserve the covenants and amending the Declaration of Covenants. His recommendation is that we file to preserve and submit any amendment(s) to the Covenants simultaneously. He feels that the first amendment should be to change the voting majority from 3/4 of homeowners to a 2/3 majority vote. This would be the difference of 164 homeowners to 144 homeowners required to approve amendments.

Discussion established that the neighborhood’s “Root of Title” date is June 14, 1989. Therefore, according to FS 712, our Declaration of Covenants will formally expire on June 14, 2019 unless preserved. Discussion continued that the request to preserve the Covenants should be submitted no later than the annual meeting in January, regardless of whether amendments have been approved for simultaneous submission.

5. Old Business

Immediately prior to the BOD meeting the ACC heard an appeal for the “Little Lending Library” located at 330 Bentley St. The Garicks made the following points to the ACC committee:

- The “Library” builds community and state that when neighbors were polled, greater than 90% of them were in support of keeping the “Library”.
- They pointed out that several other HOA controlled neighborhoods within Oviedo have registered “Little Free Libraries”.
- The “Library” has been in place for a year without negatively impacting property values.
- There are many other non-conforming structures in other yards that either received ACC approval or deemed to not require it.
- There was no proper ACC committee meeting/minutes when the application was first submitted in Dec 2017, it should have been approved by default, as per ACC guidelines in the DOC.

Following a vote (2-1), the formal recommendation of the ACC was to deny approval of this structure. The specific concerns named at the ACC meeting (added here for the record) included the following:

- There was concern that approval of the “Library” would set a precedent that would allow violations of articles V and IX in the Declaration of Covenants. Concern was that an acceptance of this appeal would under law require blanket approval of (1) other front yard structures, (2) physical business transactions at homes on residential streets, and (3) activities that would increase foot traffic and therefore create a nuisance.

- Additionally, the ACC did not want the precedent set in which a homeowner/ resident could disregard ACC requirements and decisions without consequence.
- Harold Buhl expressed concern that the “library” should be legally considered a business based on the definition listed in NAICS (North American Industry Classification System) Code 519120 (“Libraries and Archives”) and/or NAICS code 813219 (“Other Grantmaking & Giving Services”). The DOC clearly forbids businesses within the neighborhood. He was also concerned about governance regarding business transactions subject to contract law. However, this claim was refuted on the basis that not all elements of contract law were present; the homeowner stated that there was no requirement for patrons to return materials. The Garicks also shared that their “Library” was registered with the not-for-profit “Little Free Library” organization in November 2017.

At this time, the Garicks added that the city of Oviedo considers their “Library” an accessory, similar to a bird house or bird feeder. Therefore, it does not require a business permit or license.

Of note, during the ACC meeting, Harold Buhl attempted to resolve the issue with compromise. The offer to move the “Library” to the common area was reiterated. He also suggested the “Library” be considered a seasonal yard item which would be displayed in the front yard only on agreed upon dates/seasons. The homeowners declined these offers.

Also pertinent to the matter, please note the following excerpt from the approved BOD meeting on October 11, 2018:

“ACC application procedure moving forward was clarified. Once an ACC application has been received, it will go to the ACC committee for consideration and vote. During the ACC meeting the homeowner/applicant will have the option of addressing the committee. The committee will vote whether the recommendation to the BOD will be to approve or decline the request. If the ACC application is denied, the homeowner will have the option of appealing this decision to the BOD at the following meeting. HOA members will also have the option of addressing the BOD re: the ACC application from the floor.”

Following the procedure as outlined in the September minutes, the Garicks appealed to the BOD to reject the ACC recommendation and allow the “Library” to stay.

A motion was made by Paul Knight to allow the Garick’s “Library” to stay in its current location, on the condition that both parties agree not to pursue legal fees and/or monetary claims against the other. It was clarified that, to date, the HOA has spent approximately \$1500 on legal action against the “Library”. Discussion established that significantly more money would need to be spent on the matter for legal action against the Garicks to proceed. The Garicks agreed to dismiss collection of a \$4000 fine they maintain is due them for failure to provide requested HOA records per FS 720.303, contingent upon approval for the “Little Lending Library” to remain in their yard.

Philip Bass stated that since all board members were present for the ACC presentation and subsequent discussion, the BOD would proceed directly to a vote. Harry Buhl asked again if there was any compromise which could be reached. Philip Bass replied after a short pause for input from the floor in the negative.

The BOD voted upon this motion, with the vote being 5-1 (plus 1 recusal) in favor. (Autumn Huff Garick recused herself from all discussion and voting re: the "Library". The motion carried and the "Little Lending Library" was granted permission to remain in the front yard of 330 Bentley St.

Adjournment

A motion to adjourn the meeting was made by Paul Knight and seconded by Elisabeth Essary. The meeting was adjourned at 7:50 pm.

Attachment

Please see subsequent pages for a letter from Pepler, P.A. The Garicks have requested that this letter be added for the record.

PEPPLER LAW, PA

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May 9, 2018

VIA U.S. FIRST CLASS MAIL and
EMAIL: ryan@dhnattorneys.com

Ryan Fong, Esq.
3203 Lawton Road, Ste. 125
Orlando, FL 32803

Re: Garick v. Bentley Woods Community Association, Inc.

Dear Mr. Fong:

On April 30, 2018 my clients received your letter of April 23, 2018, written of behalf of the Bentley Woods Community Association, Inc. (the HOA). They asked me to respond. They do not believe that a small "lending library" structure in their front yard violates any enforceable restriction upon the use of their property. They reject each of the demands in your letter.

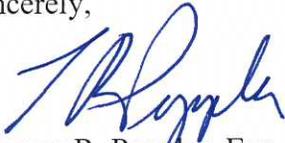
It is true that the governing covenants and restrictions give the architectural board broad discretion. But, under Florida law, that discretion is subordinate to the rule that restrictive covenants are strictly construed against those who assert the power to limit an owner's free use of his land. The HOA's rejection of my clients' small "lending library" structure is not based on any part of the recorded covenants and restrictions because there are no standards listed in the restrictive covenants. The HOA's denial was only justified based upon an oblique reference to "the aesthetic appearance of the Community". And this appears to be contradicted by a previous statement by the board that the same type of structure could be installed on part of the development's common area.

Where an agency or board is given sole discretion to approve or disapprove building plans, Florida courts have consistently taken the position that such approval cannot be exercised arbitrarily or unreasonably. There is no written standard governing the types or size of structures allowed. There is no pattern or scheme of architecture which would have placed my clients on notice that a small structure such as their "lending library" would not be allowed. The structure is not substantially different in size or looks from the types of structures currently existing in the subdivision. Accordingly, the HOA clearly does not have the power or discretion to deny this use based purely on "aesthetic concepts." See, Young v. Tortoise Island Homeowner's Association, Inc., 511 So2d 381 (Fla. 5th DCA 1987); Lathan v. Hanover Woods Homeowners' Association, Inc. (Fla. 5th DCA 1989); Robertson v. Countryside PUD Residential Homeowners, 751 So2d 674 (Fla. 5th DCA 2000); and Silver Woods Community Association, Inc., 159 So3d 2015 (Fla 5th DCA 2015).

The “lending library” structure has no adverse impact upon the other homes in the subdivision. My clients have polled the owners in Bentley Woods and over half have agreed that they like and approve of the “lending library”. Accordingly, the HOA cannot validly claim that they were acting to “protect” the interests of the members.

My client thought that the placing of the small “lending library” was an act of a good citizen and was their contribution to the community. As pointed out above, most of the other members of the community agree. Now my clients feel strongly that their right to free use of their private property is being abused and ignored. If the HOA takes any further adverse action against my clients, to include any kind of lien resulting from your letter, they will seek relief in the circuit court. When they prevail, the HOA will be liable for my clients’ attorney fees and court costs. I am sure that the other members of the HOA will not appreciate the special assessment that would result. Please advise your client to govern themselves accordingly.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Peppler', written in a cursive style.

Thomas R. Peppler, Esq.

cc: Mr. and Mrs. Garick