

This month's minutes also include the minutes of a special work session that was held on the evening of October 24, 2023. The special meeting minutes appear at the end of the regular monthly minutes.

This report also includes a letter HOA President Jack Smith received from Mr. Justin Lewis, a lawyer representing the firm Ward and Smith, Attorneys at Law, Raleigh NC, P.A. concerning questions about NC State statute 47F

***NOTE* These minutes are posted, but not approved, by the Board of Directors. Approval will be voted on at the next regular board meeting. Until then they are to be considered pending.**

Three Colonies Homeowners Association Board of Directors Meeting

October 30, 2023

Board Members Present:

Jack Smith, Nancy Melton, Brian Gaskell (arrived late due to work commitment), Ruth Hair (left early due to illness), Richard Hup, Walt Mingle, Karen Stein and Izzy Van.

Treasurer: Mitzi Hennessy

Secretary: Pete Horne

Call to Order / Welcome:

Mr. Smith called the meeting to order at 6:30 PM and welcomed all community members to the meeting. Our board will strive to follow Roberts Rules of Order. Mr. Smith explained the process for community input at our meetings. (Fifteen minutes will be allowed at the beginning and ending of the meeting for community input - three minutes per resident.) To respect the time allotted for resident input, individual board members will not address concerns during the community input portion of the meeting; however, questions will be addressed during the board member update or following the meeting, whichever is most appropriate. The board hopes this process will allow for more communication between this board and residents.

Mr. Smith began by reading a statement regarding Statute 47F. (Statement will be included with these minutes). He shared that he has spoken to three attorneys and if accusations continue – regarding this board's disregard of adherence to this particular statute – Mr. Smith will meet with a recommended attorney in Raleigh. This board will follow all aspects of the statute that we are legally bound to follow.

Mr. Smith asked for all requests for information of any type to come through the board as a written request. The board will provide the requested information; however, we need to have a written copy of the request and response. Please do not address your requests for information to Ms. Hennessey.

Mr. Smith introduced resident Mr. Mike Surrett. Mr. Surrett has 40 years of forestry experience. He was asked to address the need for tree removal in the community. Mr. Surrett found an additional 18 trees, in addition to the trees Mr. Hup identified, as needing removal. Ms. Van stated she did not understand why the trees destroying the pavement, were not removed when the paving was done 5 years ago. A community member spoke up and asked how many were priority. Mr. Surrett believes approximately 12 trees need immediate removal although the additional identified trees need removal as well.

Mr. Smith thanked all who attended and helped with the success of the Fall Festival.

Mr. Smith thanked Ms. McCormic and Mr. Jackson for their hard work while members of this board.

Mr. Smith opened the floor to any community member(s) requesting to speak.

Community member shared the following concern(s):

All residents receive orientation materials when they move into our community, however, we are not enforcing the rules. This resident has neighbors living on her court that are parking on the street and a truck continues to park in the visitor spot near her home. All residents were aware of the need to register vehicles and receive replacement decals. We received emails and signs were posted. The residents not in compliance need to receive fines.

At the Town Hall meeting it was stated that 47F was 'dead' however, the statement tonight contradicts that statement.

Issues with trash in the corral need to be addressed. Additionally, she recently spoke to a person retrieving items from the corral. The person was not a resident, however, had a key to the corral.

Community member has issue with 'selective' enforcement of rules.

Someone continues to use the tennis court to practice baseball.

Please report on Colony I maintenance costs.

Concern that nothing is on the Special Projects list.

Resident stated this board has been fighting him for a year over 47F. He believes the community gets an opportunity to speak not matter what type of meeting the board is holding. He also believes the board does not get to spend over the budget allotments without community input. Doing so is violating property rights of residents.

Following the input from residents, Mr. Smith opened the business portion of the meeting.

Mr. Smith made a motion, seconded by Ms. Stein, to accept the resignations of Mr. Jackson and Ms. McCormic. The board members present approved unanimously. Mr. Smith shared that we have openings on the board for Maintenance and Pool. Please let Mr. Smith know if you are interested in serving on the board in either position.

Mr. Hup made a motion to approve the September minutes. Mr. Mingle seconded the motion and the board members present approved unanimously.

Treasurer's Report

Ms. Hennessey provided the treasurers report. Mr. Hup made a motion to approve the treasurer's report. The motion was seconded by Ms. Melton and approved unanimously by the board members present.

Ms. Hennessey provided a line by line report of the 2024 budget. Ms. Melton made a motion to approve the 2024 budget. Mr. Gaskell seconded the motion and all board members present approved. (Copy of the budget will be included with these minutes)

Colony I:

Ms. Van has sent several letters of non-compliance and most residents have come into compliance. We appreciate those residents which respond positively. She spoke again to the resident with the pod on Fen Court. The resident should have the pod moved by November 1st. If not, Ms. Van will contact the resident's attorney to have the pod removed.

Ms. Van asked about the parking for Colony I residents. Only two spaces are assigned. Mr. Smith stated the board needs to discuss temporary and long-term parking for Colony I residents. The board will figure out how to appropriately address and parking needs.

Ms. Van researched ADA requirements for our community pool. Ms. Van reported that our private pool is not covered under ADA requirements.

Colony II & III:

Ms. Stein stated that street parking (as mentioned by resident) is against the rules. Ms. Stein is not walking at night to find violations occurring at night. Ms. Stein asked for specific concerns to be emailed to her, please. This board prefers to use fines judiciously when addressing violations and strives to fairly address resident complaints.

Ms. Stein would like to recognize a 'Yard of the Month' during the non-winter months and provide the recognized resident with a \$25.00 gift card to Lowes.

Grounds / Corral:

Winterizing of the grounds has begun.

Green Biz will begin landscaping the front entrance sign area the week On Nov. 6th.

Mr. Hup will contact the Hawks and Mr. Wynne about cleaning their area in the corral.

Maintenance:

Mr. Hup reported on the repairs needed in the clubhouse / pool bathrooms. The repairs need to happen very soon to avoid any frozen pipes when the temperature drops. The men's restroom is most critical but both bathrooms need to be addressed. His 3 estimates range from \$3,500.00 to \$4,500.00 for the men's bathroom. The best estimate was received from John Hyatt (\$3,500.00) the ladies' room will be an additional \$2,800.00. Mr. Hup made a motion to move forward with both restroom repairs with the cost not to exceed \$7,000.00. Ms. Melton seconded the motion and the board members present approved unanimously.

Mr. Hup stated he has completed 4 work orders.

Boots, roof vents and damaged shingles will need to be addressed on the townhome roofs.

Security:

Ms. Melton shared that she appreciates all of the residents that came to register their vehicles and receive replacement decals. She and Mr. Smith will continue to contact those residents that have not complied.

Clubhouse:

Ms. Hair had to leave early this evening because she was not feeling well. Bunco night is Nov 10th.

Pool:

Mr. Campbell is doing the winter pool maintenance.

Website:

Nothing new to report. All seems to be working well now.

Special Projects/Playgrounds/Tennis Courts:

Mr. Gaskell reported that new stop sign posts are being installed and will be painted.

Brian Gaskell made a motion to **adjourn at 8:25 pm**. Mr. Hup seconded the motion and the board members present approved unanimously.

At the conclusion of the meeting, homeowners in attendance were encouraged to share any additional concerns with the full board or individual board members.

Resident suggested numbering some parking spaces for vehicles with visitor passes

Resident asked about the February addendum. Also asked where fines are addressed.

(Board members encouraged resident to check the Rules and Regulations and / or bylaws.)

Additional comments were shared regarding 47F.

Minutes taken by Pete Horne

The board encourages all residents to review the rules and regulations.

Please contact the Architectural Committee before making any changes on the exterior of your home.

We hope all residents are following the Three Colonies Facebook page.

Three Colonies Homeowners Association Board of Directors Work Session

October 24, 2023

Board Members Present: Jack Smith, Nancy Melton, Brian Gaskell, Ruth Hair, Richard Hup, Walt Mingle, Karen Stein and Izzy Van.

Treasurer: Mitzi Hennessey

Secretary: Pete Horne

Finance Committee Resident Rep: Chet Oheme

Call to Order:

Mr. Smith called the work session to order at 6:30 PM. Mr. Smith opened the work session by sharing the goals of tonight's work session to be discussion of the new budget and cautious, thoughtful expenditure of funds.

Each area of responsibility was discussed.

Ms. Melton and Ms. Hennessey addressed each budget item by line. (Copy of the final budget will be attached to the Oct 30, 2023 HOA meeting minutes) Explanation of increases and decreases were shared. The information will also be shared with community members at the Oct 30, 2023 HOA meeting.

Ms. Hair:

Asked about the increase in landscape budget. Ms. Hennessey responded that increases in cost of straw, seed, plants and irrigation needs contributed to the increase in budget.

Ms. Hair asked about the playground equipment along Lox Drive. Mr. Hup is waiting for approval to replace. Although he continues to make repairs, the equipment is old and needs to be replaced.

Ms. Hair asked for additional \$250.00 for socials and \$400.00 for Clubhouse exterminating.

Ms. Van:

Ms. Van questioned the need for a TV in the clubhouse. Mr. Smith hopes we can have community events for ballgames, movies, etc. We expect Metronet to provide free internet to the clubhouse once they have services in our community.

At the request of Ms. Van, Ms. Hennessey explained the increase needed to provide a computer and printer for Ms. Hennessey as well as a monitor for Ms. Horne. She also explained the cost of professional fees and the insurance cost increase.

Ms. Van objects to the number of trees needing removal. She feels some are not needed. Mr. Hup explained why the trees need removing (disease, damage to paving and damage to fences and foundations.) Ms. Van does not object to removal of the trees that are damaged, diseased or leaning. Additionally, Ms. Van asked for the dead, diseased and leaning trees to be marked with a different color to indicate they need to be removed right away.

Ms. Hennessey added that large items (tree removal, new flooring, etc) will be paid using the 2023 reserve funds.

Ms. Van has researched ADA requirements and found that our private pool does not need to be ADA compliant.

Ms. Van suggested we should always use the standard of 'net 30 days to pay' and always use the Lox Drive (clubhouse) address for billing.

Ms. Melton:

Will continue to work with the security company for the new guard contract.

Ms. Hair and Ms. Melton would also like for us to keep a master list of repairs, installs and services. Mr. Smith will take care of this master list.

After lengthy discussion, all board members agreed to move forward with the budget presented.

ADDITIONAL BUSINESS:

Harvest Festival is October 28th and Bunco Night is November 10th.

At this time, we have approximately 30 residents that have not registered their vehicles. Ms. Melton and Mr. Smith will continue to reach out to these residents.

Ms. Van again spoke to the resident with the moving pod on Fen Ct. Ms. Van will contact the resident's attorney to have the pod removed if not removed by the homeowner no later than November 1, 2023.

Ms. Hair would like to have the clubhouse floor stripped and waxed and the clubhouse windows washed. The total cost will be \$1960.00.

Ms. Hair suggested purchasing a \$100.00 gift card for Mr. Steve Campbell in appreciation for the work he has put into the pool all summer. All agreed and appreciates his efforts to keep our pool in beautiful condition.

Mr. Hup has 3 estimates on the bathroom repair. The best bid was from John Hyatt at \$3,500.00. Walls need to be removed/replaced and shower removed to be used for storage. Mr. Hup will get an estimate to do both bathrooms as work is needed in both.

Mr. Mingle encouraged all to remember to check your emails.

Work session adjourned at 9:00 PM.

Minutes taken by Pete Horne

Letter from law firm

Letter from Justin Lewis, 2023 representing the firm Ward and Smith, Attorneys at Law, Raleigh NC, P.A.

In 1999, the North Carolina General Assembly enacted the North Carolina Planned Community Act ("Act") as Chapter 47F of the North Carolina General Statutes. The Act was intended to establish certain rights for property owners in planned communities, establish a framework of rules and regulations to govern planned communities, and grant owners' associations the powers necessary to manage them.

Prior to the Act, planned communities were governed solely by the declaration for the community, the articles of incorporation and bylaws of the owners' association, and possibly a set of rules and regulations (collectively, the "Governing Documents"). Some case law addressing interpretation and application of Governing Documents also existed, but it was limited. Many Governing Documents did not account for circumstances and events common to planned communities, and the purpose of the Act was to fill those gaps and to provide solutions to many of the problems created by ambiguous or missing provisions in poorly drafted Governing Documents.

While the Act, **as a whole, applies to planned communities created after January 1, 1999**, some, but not all, of the provisions may also apply to planned communities created prior to January 1, 1999. While this partial application occasionally provides some guidance to pre-1999 communities, it can also cause confusion for them because the answers to other important questions can only be found in the community's Governing Documents, and such answers are often hard to find or, even worse, not addressed at all.

Some of the most common problems that arise in pre-1999 planned communities that are not governed by the Act or addressed by the Governing Documents are:

- Transfer of common elements;
- Grant of easements over common elements;
- **Member approval of the owners' association's annual budget; and,**
- **Amendment of the declaration.**

Transfer/Mortgage of Common Elements

Granting Easements Over Common Elements

Approval of an Association's Budget

One of the duties of an association's board of directors is to establish an annual budget for the association which will be funded, primarily, if not exclusively, by dues or assessments against owners. Some, but not all, pre-1999 planned community Governing Documents include provisions requiring some level of owner approval to increase annual assessments in excess of a certain amount; for example: in excess of 5% over the prior year's budget.

Owners in the pre-1999 communities whose Governing Documents are silent have no control over the budget other than to vote off (or in some cases, to remove) the board directors who have adopted an unpopular budget.

The Act gives owners in post-1999 planned communities the power to reject the board of directors' budget. N.C. Gen. Stat. § 47F-3-103(c) provides that the owners in a post-1999 planned community must be given an opportunity to ratify the community's budget. After preparing the budget, the board of directors must provide a summary of it to all owners and hold a meeting to consider the budget. It is not necessary that a quorum of owners be present at the meeting. If the owners of at least a majority of all the lots in the planned community reject the budget, it will not be ratified and the budget for the previous year will continue in effect until the budget is ratified.

N.C. Gen. Stat. § 47F-3-103(c) does not apply to pre-1999 planned communities. If the Governing Documents of a pre-1999 planned community do not give owners the right to approve or reject the budget prepared by the board, the owners have no control over their association's budget other than to vote against the re-election of the board or vote for the removal of the offending directors. The owners will not find approval authority in the Act or any other statute. Owners in pre-1999 planned communities who want to have at least some level of budget control should consider amending their Governing Documents--which raises the next issue.

Amendment of the Most Important Governing Document – The Declaration

One of the most common, and certainly most important, actions taken by an association is the amendment of its Governing Documents, specifically the declaration. Until legislation enacted by the General Assembly in 2013, pre-1999 planned communities could only amend their declaration if, and upon the terms, provided for in the community's declaration and other Governing Documents. In 2013, the Act was amended to make N.C. Gen. Stat. § 47F-2-217, the declaration amendment section of the Act, applicable to pre-1999 planned communities except as provided below.

N.C. Gen. Stat. § 47F-2-217(a), which, with the exception addressed below, is now applicable to all planned communities, provides that "the declaration may be amended only by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration specifies." The association's declaration may require a higher level of member approval, but the **minimum level** of member approval in a residential community is 67%.

There is a catch. While N.C. Gen. Stat. § 47F-2-217 now applies to pre-1999 communities, it does not if "the articles of incorporation or the declaration expressly provides to the contrary." Unfortunately, the meaning of this phrase has created potential problems for pre-1999 communities. For example, if a pre-1999 community's declaration contains a clear and unambiguous provision providing that a mere majority of all members can amend the declaration, the provision in the declaration should control over N.C. Gen. Stat. § 47F-2-217(a). If, however, the declaration contains ambiguous language regarding amendments, such as "all actions taken by Members shall be by majority vote," it is unclear whether this is a sufficiently "express provision" to override the 67% approval floor set out in N.C. Gen. Stat. § 47F-2-217(a).

The amendment applying N.C. Gen. Stat. § 47F-2-217 to pre-1999 communities is new and has not yet been interpreted by a North Carolina appellate court. Until that time, planned communities without clear amendment provisions in their declarations should consider taking the conservative approach and complying with the Act.

Conclusion

There are several other provisions of the Act that do not apply retroactively to pre-1999 planned communities, but the provisions discussed above seem to create the most problems. Directors and members of a pre-1999 planned community who desire to convey title to or grant an easement over common elements, grant members some level of budgetary approval, or amend the community's declaration based on the current provisions of its Governing Documents will need to carefully interpret their community's Governing Documents to decide how to proceed.