

I'On Assembly Board of Trustees Meeting

January 31, 2017

Members Present: Jody McAuley, Chad Besenfelder, Lori Bate, Tom O'Brien, Paul Gillis, Matt Walsh, Karen Dillard, Michael Purcell

Members Absent: N/A

SCS: Mike Parades, Lesley Ramey

Guests: Michelle Sinkler, 10 Saturday Rd.; Amy Mathisen, 146 N. Shelmore Blvd.; Antonia Fokas, 34 Fernandina St.; Diane Bennett, 14 Fernandina St.; John Culpepper, 73 Ponsbury Rd.; Steven Woodward, 62 Eastlake Rd.; Gayle Woodward, 62 Eastlake Rd.; Amy Sage, 63 Joggling St.

Homeowner Forum:

Steven Woodward, 62 Eastlake Rd, spoke against the Sports Court, listing out 3 points for the Board of Trustees. The first being that Residents near Eastlake Field had twice made a representation to the Board about their objections to the project. These residents felt the subcommittee did not adequately address those concerns. The second being a packet was hand delivered to the management office containing a petition. Approximately 190 households registered their objections through this petition. This represents almost 25% of the homes in I'On. Mr. Woodward asked the Board review the comments residents submitted and recognize the reasons for objection. Most of the homes in the immediately affected areas opposed the sports court. The third point is that seven of the families most impacted have sought legal counsel regarding the Board's duties and the Homeowners' options for objection.

Matt Walsh, Amenities Chair, informed the Homeowners present that there would not be a vote taken on the sports court tonight.

Call to Order: 6:16 pm by Jody McAuley.

Approval of Minutes:

*Motion to approve the December 8, 2016 I'On Assembly Meeting Minutes.
Motion Seconded. All in favor. Motion passed unanimously.*

Motion to approve the Draft January 11, 2017 I 'On Assembly Annual Meeting Minutes. Motion Seconded. All in favor. Motion passed unanimously.

Motion to approve the January 14,2017 Board Organizational Meeting Minutes. Motion Seconded. All in favor. Motion passed unanimously.

Presidents Report:

Jody McAuley announced he would submit a letter from legal counsel, Shawn Willis of Nelson Mullins, to the record. The letter addresses what the Board can and cannot do in terms of adding and improving amenities. Matt Walsh expanded on this stating the letter was commission after there were legal questions raised regarding the Board's ability to add new amenities. The Board believes they are empowered by the Governing Documents to continue moving forward with the new amenities, but will be soliciting community feedback before a vote is taken.

Jody McAuley reminded the Board about the contract in place with Communications Consulting Group. The Board has the right to reconsider that contract and terminate it should the Board desire.

Motion to terminate the contract with Communications Consulting Group. Motion Seconded. All in favor. Motion passed unanimously.

Tom O'Brien reminded the Board no money had been paid to the consultant and with the cancellation of the contract, no money would be paid. Jody McAuley elaborated that the cancellation did not mean the Board would neglect the broadband issue. Rather, the Board is stepping back and starting over.

The final piece of the President's Report is approving the Committee Members. A list was included in the Board's packet. Tom O'Brien raised the question of if the Dog Park Subcommittee was still active. Jody McAuley stated the Board could strike later if need be.

Motion to approve the 2017 Committee Members as listed on the document included in the Board Packet. Motion Seconded. All in favor. Motion passed unanimously.

Amenities Report

Matt Walsh reiterated there would be no votes taken regarding amenities tonight. Matt Walsh want to single out and thank Michelle Sinkler for her leadership on the Sports Court subcommittee.

The Waterfront Enhancement Subcommittee does not have an update yet. Matt Walsh will have one for the February meeting.

The Sports Court Subcommittee submitted a variety of documents for the Board Packet. Matt Walsh encouraged residents to read that information, especially with many misleading statements being made in the community. There were no Sports Court bids yet. Mike Parades is soliciting bids from 4 vendors. Hopefully, all bids would be in within 2 weeks and will be able to present those bids at the February meeting.

Amy Sage, 63 Jogging St., asked for Matt Walsh to clarify his statements regarding misleading statements.

Matt Walsh clarified his comments using the examples of a drawing used with the petition was not accurate per the schematics commissioned by the subcommittee. The budget also suggested of \$42,000 was inaccurate as there were no bids yet. The Nature Conservancy also issued an opinion that the trees were not a habitat.

Steve Woodward, 62 Eastlake Rd., stated the drawings were commissioned from the schematics presented at the last sports court subcommittee meeting. Mr. Woodward also noted there was a budget line item for the Sports Court for \$42,000.

Jody McAuley thanked Mr. Woodward for his comments and reiterated the Board's commitment to being open and transparent about the Sports Court.

Matt Walsh updated the Board on the Dock Expansion Subcommittee's efforts. OCRM has voiced approval for the project via a letter. The permitting process can begin in earnest now. However, this process will take six months or longer. Any work would not begin until late 2017/early 2018 at the earliest.

Paul Gillis reminded the Board these projects would be funded by the Capital Projects fund. That fund had approximately \$109,000 at the end of the 2016 fiscal year. The Capital Projects fund receives \$46,000 out of the Operating budget this year. Paul Gillis noted these projects are competing for that pool of money; they are not funded independently.

Michelle Sinkler, 10 Saturday Rd. and Chair of the Sports Court Subcommittee, asked the Board to revise the scope of the subcommittee if they are to continue on the Sports Court project with landscape design and bid evaluation. The scope of the subcommittee was originally just to develop a design that addressed concerns and solicit bids to present to the Board.

Matt Walsh stated he intended for the subcommittee to continue to be involved.

Karen Dillard expressed concern about Committee members sharing information from meetings without communicating that with the Board or Chair of their Committee. Jody McAuley stated leadership of the Committees outlined that was not appropriate. Mike Parades reminded the Board Committee Members serve the Board and are supposed to only disclose to the Board. Karen Dillard reiterated her concern about being transparent but wanted to ensure information going out was always accurate and true.

General Manager Report

Mike Parades informed the Board that there were competing bids to host the Firecracker 5k.

Motion to approve the I'On Club's bid to host the Firecracker 5k. Motion Seconded. All in favor. Motion passed unanimously.

Jody McAuley instructed Mike Parades to sign the paperwork on behalf of the I'On Assembly.

Mike Parades informed the Board that tree pruning would be delayed until the following Monday as the Landscape and Infrastructure Committee finalizes contracting with the tree service. There will daily emails about which streets pruning is occurring on.

Mike Parades informed the Board there would be a portion of Westlake path blocked off while roof repair was being done on a home.

A yard debris reminder was included in the General Manager Report. Mike Parades noted many homeowners have landscaping services that do not remove their clippings. This is a violation of the landscapers' licenses.

Mike Parades reminded the Board of the issues with finding an adequate meeting place when there are large crowds at Board meetings. Mike Parades

was commissioned to find alternative options from the 2nd level conference room and the Creek Club. The Meeting House has offered a deal to the Board to use their facility for \$350.00 for 3 hours if needed. An agreement will be draft for the Board's review.

On a final note, receivables are 4% lower than they were in 2016 at the same time. The management office will be contacting errant owners to collect the last bit of payments.

Landscape and Infrastructure Report

Michael Purcell noted there were plans to add a 10x10 storage area in the Scramble for the HOA. The IDC has approved the designs. Mike Parades is working to get bids for the project.

Michael Purcell informed the Board a new policy had been adopted by the Landscape and Infrastructure Committee:

“No fallen trees in any common wooded areas will be removed unless it is the opinion of the Committee that such tree is a danger to persons or property.

Jody McAuley asked for Michael Purcell to clarify where this policy came from. Michael Purcell stated there were some concerns from neighbors near common HOA areas that had inquired about removing downed trees.

Finance Report:

Paul Gillis stated the Operating ended up with a \$30,000, mostly due to some unexpected things like the \$15,000 payment from the I'On Club and the lower insurance premium than expected. There was roughly \$26,000 in tree damage from the hurricane. The Finance Committee plans to recommend the net income be used to replenish the Insurance Replacement Reserves that were used to fund the tree cleanup. This motion will be made in February when the work has been completed.

Paul Gillis informed the Board that the 2017 Reserve Study update draft was complete. There were promising indicators about potentially reducing the contribution to the Reserves in the 2018 Budget.

Paul Gillis commended Mike Parades on his collections activity. There was less than \$5,000 left to collect that was delinquent from last year, mostly from one property on a payment plan. Mike Parades noted receivables with homes that

haven't paid the 2017 Assessment was at \$88,884. Good collections policy seemed to be working well. Paul Gillis noted the Assembly works hard to work with all financial situations. Jody McAuley applauded these efforts.

IDC Liaison Report

Lori Bate stated she had only attended one meeting so far. All the projects at that meetings were either approved or approved with conditions, save one project that was denied. That project intends to file an appeal.

Communications Committee:

Karen Dillard stated there had not been a meeting yet, but the focus on the Committee this year would be on the website capabilities. Karen Dillard gave special recognition to Meegan Graham, editor of the Living In I'On newsletter, for her exceptional work.

There being no further business to come before the Board of Trustees, the meeting adjourned at 6:47 pm.

Respectfully submitted by _____

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
151 Meeting Street / Sixth Floor / Charleston, SC 29401-2239
Tel: 843.853.5200 Fax: 843.722.8700
www.nelsonmullins.com

Shawn R. Willis
Tel: 843.534.4230
shawn.willis@nelsonmullins.com

January 31, 2017

Via email to jmcauley@rwbaird.com

Mr. Jody McAuley
President of the Board of Trustees
I'On Assembly, Inc.

Re: I'On Assembly, Inc.
Construction of Improvement on Commons

Dear Jody:

You have asked me whether the I'On Assembly, Inc., a South Carolina nonprofit corporation (the "Assembly") generally has the power to construct new improvements on the common areas within the I'On neighborhood (the "Commons"), and if so, whether the Board of Trustees for the Assembly has the authority to approve such construction without a vote of approval by the membership. You have also asked me specifically whether the Assembly has the power to construct new improvements on the portion of the Commons located at the northeastern corner of Eastlake Road and Mathis Ferry Road designated as the "Amenity Area, 109,934 sq. ft." on that certain plat recorded in Plat Book EC at page 631 in the RMC Office for Charleston County (the "Amenity Area"). The answers are that the Assembly generally does have the power to construct improvements on the Commons, including the Amenity Area, with certain potential limitations, and the Board has the ability to authorize such construction without a vote by the membership for approval. The power, authority and the limitations will be discussed in this letter.¹

The power of the Assembly, and authority of the Board, with regard to construction of improvements on the Commons is expressly established by statute and the Assembly's governing documents, specifically through the South Carolina Nonprofit Corporations Act (the "Act"), the Articles of Incorporation for the Assembly filed in the Office of the South Carolina Secretary of State on June 4, 1998 (the "Articles"), the Declaration of Covenants, Conditions and Restrictions for I'On recorded in Book C-297 at page 282 in the RMC Office for Charleston County (the "Covenants"), and the Bylaws of I'On Assembly, as last amended by that Third Amendment dated March 24, 2016 (the "Bylaws").² The Articles, Covenants and Bylaws are referred to collectively herein as the "Governing Documents".

1. Power and Authority

¹ This letter does not discuss reconstruction of existing improvements. However, reconstruction of existing improvements is specifically addressed in the Covenants.

² The original Bylaws of the Assembly are recorded in the RMC Office in Book 0559 at page 644, the First Amendment to the Bylaws are recorded in Book 0402 at page 291, the Second Amendment to the Bylaws are recorded in Book 0402 at page 292, and the Third Amendment to the Bylaws are recorded in Book 0559 at page 647.

Mr. Jody McAuley
President of the Board of Trustees
I'On Assembly, Inc.
January 31, 2017
Page 2

a. SC Nonprofit Act

S.C. Code Section 33-31-302 of the Act provides that "[u]nless its articles of incorporation provide otherwise, every corporation...has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including, without limitation, power: ...(4) to purchase...and own, hold, *improve*, use, and otherwise deal with, real or personal property...." (emphasis added). Accordingly, the Assembly, as a South Carolina nonprofit corporation, has the statutory power to construct improvements on real property.

b. Articles of Incorporation

Section 8(D) of the Articles provides as follows:

"Powers. In furtherance of its purposes, the corporation shall have the following powers, *which, unless indicated otherwise* by the Declaration [Covenants] or Bylaws, *may be exercised by its board of trustees*: (1) all of the powers conferred upon nonprofit corporations by common law and the statutes of the State of South Carolina in effect from time to time; (2) all of the powers ... including, without limitation, the following:... (B) to manage, control, operate, maintain, repair, and *improve* property subjected to the Declaration [Covenants]...." (emphasis added).

Accordingly, the Articles specifically grant the Assembly the power to construct improvements on property that is subject to the Covenants, including the Commons. Further, the Articles grant the Board of Trustees the power to authorize any such construction on behalf of the Assembly, unless such authority is otherwise limited by the Covenants or the Bylaws.

c. Bylaws

Section 3-104(b)(iii) of the Bylaws provides as follows: "Duties. Duties of the Board of Trustees shall include, without limitation: ...(iii) providing for the operation, care, upkeep, and maintenance of the Commons[.]" Further, Section 3-104(B)(viii) specifically authorizes improvements to the Commons by providing that additional duties of the Board include "making or contracting for the making of repairs, additions, and improvements to or alterations of the Commons in accordance with the Declaration [Covenants] and these Bylaws." Accordingly, the Bylaws grant the Assembly the power to construct improvements on the Commons, and grant the Board the authority to authorize any such construction on behalf of the Assembly.

d. Covenants

Section 1-101 of the Covenants provides that certain terms are defined on Exhibit A to the Covenants, and the term "Commons" is defined on such Exhibit A as "Real Property and interests therein which the Assembly owns or otherwise holds possessory or use rights in for the common use and enjoyment of Titleholders." Section 2-101 of the Covenants provides that one of the primary purposes of the Assembly is to "...own, operate, manage, maintain and control certain properties for the benefit of Titleholders." Section 6-101 of the Covenants provides that "[t]he Assembly shall assume full

Mr. Jody McAuley
President of the Board of Trustees
I'On Assembly, Inc.
January 31, 2017
Page 3

responsibility for the control and maintenance of the Commons as conveyed to the Assembly by the Founder unless contrary provisions are made through contract or in the instrument of conveyance." Section 6-102 of the Covenants provides that "[t]he Assembly shall be exclusively responsible for the control and management of the Commons...." The Articles grant the Assembly the power to construct improvements on the Commons, and the Covenants do not contradict the Articles in that regard. Rather, the provisions of the Covenants support the provisions of the Articles. Accordingly, the Covenants grant the Assembly the power to construct improvements on the Commons,

Further, Section 2-102(b) of the Covenants provides that "[e]xcept to the extent that the Governing Documents or Applicable Law specifically provide for a vote of the membership...for certain actions...all of the rights and powers of the Assembly shall be vested in a Board of Trustees....and may be exercised without a vote of the membership." Neither the Act, nor any of the other Governing Documents contain any provisions that require a vote by the membership to authorize the construction of improvements by the Assembly on the Commons. Accordingly, the Covenants grant the Board the authority to authorize any such construction on behalf of the Assembly.

2. Limitations

There are two limitations on the Assembly's power to construct, and the Board's ability to authorize, new improvements on the Commons.

a. Budget Approval Limitation

Section 2-104(b)(1) of the Covenants provides as follows:

"Any budget or revision adopted by the Board of Trustees shall automatically take effect 30 days after the date of its adoption by the Board of Trustees unless disapproved at a meeting of the Assembly by Titleholders entitled to cast at least 75% of the total eligible votes of Titleholders and by the Founder, if the Founder Membership exists. The Board of Trustees shall not be obligated to call a meeting of the Assembly to consider any budget except upon a petition of the members pursuant to the Bylaws presented within 10 days after the date of the assessment notice."

Accordingly, the Board has the authority to approve budgets for the Assembly that contain funds to be used for construction of improvements on the Commons without approval of the membership, subject however to the right of the membership to disapprove the budget through a membership vote requested by the membership through petition.

b. Express Restriction Limitation

As stated above, Section 6-101 of the Covenants provides that "[t]he Assembly shall assume full responsibility for the control and maintenance of the Commons as conveyed to the Assembly by the Founder unless contrary provisions are made through contract or in the instrument of conveyance." Accordingly, the Assembly's power to construct improvements on the Commons could be limited if either an existing contract or the instruments of conveyance of the Commons to the Assembly contain an enforceable restriction establishing such limitation. I am unaware of any existing contracts that contain

Mr. Jody McAuley
President of the Board of Trustees
l'On Assembly, Inc.
January 31, 2017
Page 4

any such restriction. Instruments of conveyance may exist that contain such restrictions. However, I have not examined all of the instruments of conveyance for the Commons to determine if any such restrictions exist. As stated in my conclusion below, I have examined the deed conveying the Amenity Area to the Assembly.

3. Conclusion

The South Carolina Nonprofit Act and the Assembly's Governing Documents expressly allow the Assembly to construct improvements on the Commons, subject to the two limitations discussed above.

Specifically with respect to the Amenity Area, assuming no restrictive contract exists, the only limitation that could be applicable to the Amenity Area would be the budget approval limitation, due to the fact that the recorded deed conveying the Amenity Area to the Assembly, which is recorded in Book C-476 at page 764 and which references the plat recorded in Plat Book EC at page 631, does not contain any restriction on the Assembly's power to construct improvements on the Amenity Area.

Very truly yours,

Shawn R. Willis