

BOD Indian River Farms
HOA Meeting Minutes
July 10, 2017

The meeting was called to order at 6:41pm. Board members present, Erick Kearns, Tonya Anderson, Janet Wilms, Cindy Rauch and Matt Merciez. In addition to homeowner attendance at the UPA office, a conference phone line was opened to allow homeowners to participate in the meeting via teleconference.

May BOD Minutes were approved with a motion to dispense of the reading and approve as written by Erick, Tonya. Motion carried

Mark Young was introduced as the new UPA property manager for IRF. Mark reviewed UPA management report after motion by Erick/Matt. Motion carried

Motion to move home owner's forum to the next agenda item by Erick/Janet. Motion carried.
Homeowners forum opened at 6:48PM.

Given the number of homeowners in attendance, each homeowner was given 3 minutes to present their statements.

Homeowner expressed confusion about why the HOA is discussing BMP maintenance at this time? Per this Homeowners report, owners are stating they do not want anyone on their private property. There has been discussion in the neighborhood about fines, the HOA ability to fine, clarification of the term fine versus lien. Statements were made stating homeowners were "trained how to maintain banks so it wouldn't require additional landscaping costs." Board requested a copy of the training materials that were mentioned. BOD advised that the Declaration states management of BMP maintenance easement falls to the HOA responsibility and that a change to the Declaration could be executed by 2/3 vote of homeowners. The change would place legal responsibility to maintain BMP maintenance easement to the individual homeowners. Further discussion centered around the ARB amendment from 2006 was not recorded with the City. UPA advised ARB changes do not have to be recorded with the City. Rule changes are within the scope of the BOD per the Declaration.

Homeowner advised she took pictures of some of the other BMPs in other neighborhoods in Virginia Beach for comparison to our current BMP maintenance levels. She notes "they look exactly like ours."

Homeowner inquired why is BMP maintenance an issue now? Homeowner stated nothing has been done since the neighborhood was formed and don't understand why this is an issue now. BOD advised there were homeowner concerns raised early last summer related to water quality in the larger BMPs and algae overgrowth. There is continued algae overgrowth in the smaller BMP. The BOD advised the City was involved in erosion repairs to the storm water management drains in the common area last summer and fall. During that process they evaluated the storm water drains and pipes that lead into the BMPs. The City made reference to proper maintenance of the banks and sediment control in the BMPs. The BOD had since had the City and two private organizations as guest speakers at board meetings to address the maintenance issues, answer questions and provide guidance.

Homeowner stated he will not permit anyone to enter his property or cut his trees.

Homeowner raised concern related to the plot plan on file with the City regarding the 20 foot maintenance easement for access to the BMP that he states is assigned to the City, not to the HOA. BOD explained the plot maintenance easement and the legal opinions that have been obtained. The City is shifting attention to BMP maintenance across the area due to an increase in surveillance at the state level and increase in flooding and other drainage issues in the local area. The City has subcontracted annual BMP inspections. Our HOA BMPs were recently inspected by the City's contractor and violations were cited including erosion on the banks, poor maintenance practices, erosion due to tree falls, erosion due to homeowners channeling pool drains or other drainage pipes to the BMP banks, all leading to an increase in the breakdown of the structural integrity of the BMPs. BOD advised it can place the City report on the website. There is an open question with the City representatives around the dredging schedule for the BMPs and who will pay the cost of the dredging - the City or the HOA. The City has advised they will provide further guidance around the contractor's report but we do not have that guidance at the time of this meeting.

A Homeowner stated she called Inman & Strickler independently, unaware they had provided the legal opinion on BMP maintenance to the BOD. The homeowner proceeded to read information off the Inman & Strickler website related to the transfer of Title and transition of common area when a development is completed,

Homeowner asked why the current opinion on BMP maintenance responsibilities from Inman & Strickler has not been shared with the homeowners. BOD advised they are acting on advice from Mr. Inman directly to not share the opinion in open forum.

Homeowner provided a historical perspective on why BMPs are now an issue for discussion and action, why it is important to maintain the BMP banks and maintenance easements, she touched on wildlife including snakes, Nutria and otters, and destructive or invasive plants. She commented on the tree fall that left a large pocket of erosion from the root ball on the bank near the water surface and rip rap.

Homeowner requested an update on the status of the Neighborhood Watch. The watch coordinator was not present at the meeting so an update will be provided from the coordinator at the next meeting.

Homeowner asked if UPA was taking a stand not to release the attorney's opinion. Mark responded that UPA takes direction from the BOD and UPA does not have a copy of the attorney's opinion.

Homeowner asked if the BOD position is to not release the attorney's statement. Response was the BOD is following advice of the attorney and is not releasing the statement at this time. For clarification, BOD has a copy of the attorney's opinion. UPA does not have a copy of the attorney's opinion at this time.

Homeowner stated he reviewed the city ordinance cited to support the ability of the City to levy a fine against the HOA for failure to maintain the BMP. Homeowner states the ordinance refers to sewage and not to his trees. Requested that the homeowner review all the definitions within the ordinance that pertain to waste.

Homeowner mentioned the water quality report cited turbidity as an issue with the BMP. Homeowner stated the water quality report found no other issues. BOD proposed posting the water quality report from 2016 to the association website.

Homeowner again stated the 20ft maintenance easement is for the City, for maintenance of the waterway. He stated this is defined on the plot map which includes an area to allow for sediment removed during dredging to dry prior to haul away. He reiterates his opinion the easement is for water management, not for bank management.

Homeowner who defines himself as a longstanding owner in the community commented that he has always maintained his bank for the duration of time he has lived in IRF. He stated the small BMP off Kentucky Derby Dr has serious issues including uncontrolled algae growth. He feels the relevant question is 'how do we want to maintain the banks?' Some homes, mostly renters, do not manage the bank well. He feels the HOA should cite the homeowner in violation of ARB guidelines. He stated homeowners should be able to maintain the bank however they want "as long as it doesn't impact the water." He feels there are other things that can be done to clear up the water other than managing the bank.

Homeowner asked if everyone understands why there is concern about the woody growth on the BMP maintenance easement. The association as a whole needs functioning BMPs. Everyone who lives in IRF belongs to the HOA. All of our storm water drains into the BMP whether you live on the BMP or not. The state and City have turned their attention to BMP maintenance and inspections in light of recent flooding and storm water management challenges. The best management practices have evolved over time and now consider excessive woody growth a detriment to the integrity of the banks as well as causing increased deposition of sediment into the BMPs and blockage or deterioration of intake and outlet pipes. This all accelerates the need to dredge which is costly.

A homeowner feels that homeowners who don't live on the BMP should not have to pay dues to clean up the BMP maintenance easement.

Homeowner asked BOD to clarify the process to change the Declaration to assign responsibility for the maintenance easement and BMPs to the homeowners who live on the BMP. Advised a change in the Declaration requires 2/3 homeowners approval by vote. The change in the Declaration should be drafted in such a manner as to define the maintenance requirement clearly, legally, and in an enforceable manner. Advised the BOD has consulted 2 attorneys and 2 commercial companies and the City to obtain guidance on the appropriate management of growth in the maintenance easement and the impact that growth has on water quality. Homeowner then asked if the BOD could draft a change to the Declaration. Bod advised any homeowner can draft a change to the Declaration and present it for voting. A different homeowner then stated he feels this does not require a change to the Declaration because the Declaration states the association has to manage the water and not the maintenance easement. Further discussion around any change to the Declaration that assigned ownership and maintenance of the easement to the homeowner would also need to include clear and enforceable maintenance parameters, including addressing the issue of woody overgrowth, and instructions for the homeowner to be followed.

A homeowner brought up the topic of special assessments and the consequences for a homeowner that doesn't follow the maintenance instructions and guidance, should the change in the Declaration pass vote. Will the change in the Declaration include the ability to fine or place a lien on the homeowner? UPA advised of the current violation process which includes written notification of the violation and a due process hearing. This can result in a memorandum of lien if needed. A homeowner pointed out this process still requires attorney fees and costs associated with the memorandum of lien. It was

recommended that we add fines to the change in the Declaration if that will be pursued. If the Declaration contains explicit language for fines against homeowner for violations of Rules and Regulations, Bylaws or Declaration, then that could be levied as a consequence for violation of ARB guidelines as part of due process.

A homeowner read parts of section 4.1 from the Declaration regarding the association responsibility for management of retention ponds. The City can fine the association if our lack of maintenance or lack of correct maintenance interferes with the function of the BMP. If the intention is to move forward with a change in the Declaration, it should be clear on who has responsibility for the maintenance easement and who has responsibility for the water quality, the maintenance requirements for the easement and the associated fines that could be levied for failure to comply with the maintenance requirements.

Homeowner mentioned she had spoken directly with Anita Hagar, President of UPA. The homeowner reports Anita advised that UPA cannot release the attorney opinion statement because the BOD discussed the opinion in Executive Session. The homeowner does not feel that the attorney opinion should have been discussed in Executive Session but should have been discussed in open session. BOD responded that the attorney opinion was never read or discussed in Executive Session or in open forum due to direction from the attorney. A separate homeowner expressed concern that the BOD was not maintaining confidentiality and asked each board member if they discussed confidential matters with their spouse.

Homeowner asked if the hedges that run behind the fence along the front of the property were part of the landscaping management contract. She expressed concern they were looking overgrown. Advised they are part of the landscaping management contract and they are scheduled for trimming in the fall.

Homeowner asked if the BOD would be making decision regarding management of the BMP maintenance easement tonight or wait until after Community Day in September to see if a change to the Declaration is passed by the homeowners. BOD advised that the current Declaration and Rules and Regulations assign responsibility to the association, and give guidance for the maintenance requirements. The BOD would work on parallel paths to support the Declaration and rules and regulations as they are currently worded, as well as support an effort to draft a change to the Declaration, per homeowner request, to change the ownership of the maintenance of the easement to the homeowners with express requirements for maintenance and potential fines for non-compliance.

Homeowner who also is an ARB member raised concerns about the process for ARB application review. Homeowner asked Mark Young to explain his understanding of the current process for ARB review. Mark advised it was somewhat loose understanding because he has just taken over management of this property. Basically an application for exterior alteration is received by UPA from the homeowner, it is shared with the ARB, a decision is made and the decision is shared with the homeowner. In Mark's experience, it is expedient to use email for review and discussion of the applications in order to render a timely decision. Mark stated again he is not an expert on the current HOA documents because he is the new manager for the property. Normally he would expect to communicate and receive decisions from one key contact on the ARB such as the Chairman. The homeowner then responded that the ARB needs to have meetings, which have not been happening for quite some time. He stated the ARB has 30 days to review an application so they don't need to be expedient. He stated he personally does not want to receive documents via email. He wants hardcopies of the applications hand delivered to his door. He wants to go back to hard copy hand delivery of completed packages. The BOD advised nothing in our

Declaration or in UPA contract states the ARB applications have to be hand delivered, or that the applications have to be submitted in color or with color photographs. Most applications are received via fax which is black and white. The ARB should be acting in the best interest of the homeowners to allow them to move forward with exterior alterations that are in compliance with ARB rules and regulations. UPA advised VPOA allows for email transactions and email approval by a majority vote of the ARB. There are 3 voting members of the ARB so 2/3 required for approval.

Homeowner asked when the UPA contract terms and if the BOD is looking for RFPs from other property managers. The contract with UPA expires 11/31/2017 but has an auto-renewal clause unless written action is taken. The BOD is not investigating other property management agencies at this time.

A homeowner urged the BOD to move forward with the water quality management contracts that have been under review and were discussed at last board meeting.

There was further discussion around the timing of review of ARB applications. The application states it should be submitted by the 20th of the month to be reviewed at the next scheduled meeting of the ARB, which is held the first Tuesday of each month. The applications are deemed approved if no action taken on the application after 30 days of receipt. The ARB has sole discretion to waive any of the specified documentation elements. The Chairperson should be the one directing communication to UPA regarding applications. Only one ARB member was present to review the application in question on July 4, so there was no quorum established for the ARB meeting. Regarding the application in question, 2/3 ARB members approved the application as it was submitted and the application approval was returned to UPA on July 5.

A homeowner asked specifically what will the BOD provide to all homeowners prior to Community Day to explain what will be voted on regarding the change in the Declaration. She requested the proposed change be sent out to all homeowners ahead of the Community Day event, after it has been reviewed by the attorney. She requested the BOD pick a date to have the change in the Declaration drafted, share with homeowners and provide a window for homeowner feedback, with a defined date the window for comments closes. BOD asked for volunteers to work on drafting a change to the Declaration, including all the required elements of the change in ownership of the maintenance responsibility for the BMP maintenance easement, specific guidance on the type of management required by each homeowner, and draft of the consequences (fines, lien or other measure) for lack of compliance with the maintenance requirements. The draft would have to be reviewed legally to make sure it is in compliance with VPOA, city ordinance and is legally enforceable and filed appropriately if passed by 2/3 vote of homeowners. Joe Modica and Tina Sudduth volunteered to work on the initial draft language.

The BOD strongly encourages all homeowners to actively participate in the development of the draft change to the Declaration, to assist with developing criteria for management of the growth on the banks in the maintenance easement which includes specifically addressing the woody overgrowth issue, to define any associated fines or penalties pursuant to VPOA. It will take everyone's active participation to get quorum at Community Day to vote on a change to the Declaration and to ensure each homeowner has a thorough understanding of the implications of a Yes vote on the change and a No vote on the change.

The BOD issued a thank you to the homeowners that participated in the Yard of the Month review and congratulated Mr. and Mrs. Chris Stevens on winning the inaugural Yard of the Month award.

Motion to close Homeowners forum by Janet/Matt at 8:35pm. Motion carried

Moved to Unfinished Business at 8:35pm by motion from Erick/Tonya. Motion carried

At May board meeting Michaela indicated there was a problem with the previous quote submitted from Playground Specialists for installation of rubber mulch into the old sandbox area of the playground and top off the rest of the playground to the required 6 inch depth. The quote received was for wood mulch, not the terracotta rubber mulch that is currently in place. The revised quote from Playground Specialists was considerably more expensive. Michaela secured a quote from Mid-Eastern Construction, Inc for 16 cu/yds of Terracotta Red Rubber crumb, to include delivery and installation to restore low areas to compliance and replace damaged filter fabric, for the total amount of \$7,958. One additional quote is still pending from Site Concepts but they have verbally indicated the cost will be approximately \$6500. It was noted that bulk rubber mulch can be purchased from home improvement stores in the area for an approximate cost of \$600 per cu/yds but homeowners would then need to be engaged for the installation. That cost equates to a little more than the currently received quote from Mid-Eastern Construction, Inc. Motion to table review of contract to install additional terracotta rubber mulch to bring playground up to required depth until all written quotes are available for review by the BOD, by Tonya/Cindy. Motion carried.

BMP water management contracts remain tabled until BMP maintenance completed.

New Business opened at 8:40pm by motion from Erick/Tonya. Motion carried

Two proposals for power washing of the white vinyl fence at the front of the neighborhood were received by UPA and provided in the board packets. McKown proposal is for \$899 and he would use the HOA water source, and B&B proposal for \$850 and they use their own water tank. Motion to accept B&B proposal for power washing white vinyl fence for total cost \$850 by Erick/Cindy. Motion Carried. UPA will contact B&B with signed agreement and request date of service and will provide that information back to the BOD.

Community Day planning is beginning for September 16 Community Day. Ms. Najwa Wynn volunteered to help with planning as did Diana Merciez. Budget was briefly discussed and Motion to set all inclusive budget for Community Day event at a limit not to exceed \$3200 by Erick/Matt. Motion carried

Motion to hear committee reports by Matt/Erick at 8:44PM. Motion carried

ARB committee: Next Quarterly walk through inspection of common areas will be conducted by members of the ARB: Tina Sudduth and Javier Medina, and BOD member Tonya Anderson on July 30, 2017 at 5:30PM. Homeowners are welcome to participate. ARB was asked to send email to Steve Bernhart to notify him of the date and time.

Newsletter: Report provided by Diana Merciez. Diana made a general call for articles and topics of interest to the community for the next newsletter. She requested submission of articles by July 17.

Social committee: no report provided

The open session of the meeting was concluded with a reminder the next BOD meeting is scheduled for August 8, 2017, and the conference phone line was closed.

Motion by Matt/Erick to move to executive session at 8:52pm. Motion carried.

Motion by Cindy/Matt to close Executive session at 9:02pm. Motion carried.

Motion to adjourn meeting at 9:02pm by Erick/Matt. Motion carried.