

**Millbrook Addition Home Owners Association
Minutes of Regular Board Meeting
Conducted via teleconference, 27 October 2020**

1. The President, Katheryn Houston, called the meeting to order at 7:00 pm.

2. Attendees on the conference call were:

Katheryn Houston (President)
Duane Johnston (Vice President and Area 1 Representative)
Jerry Moore (Area 2 Representative)
Danny Barton (Area 3 Representative)
Don Meissner (Area 4 Representative)
Pat Monis (Area 5 Representative)
Charles Rhodes (Resident)
Linda Switzer (Resident)

2. Katheryn Houston asked Jerry Moore to lead the discussion reviewing a document submitted by Charles Rhodes. Jerry reiterated that Covenant & Restrictions (C&R) document is still in draft form and not ready for a vote, and that the document will need to first be reviewed by an attorney. Jerry highlighted these points that need further discussion:

- Assessment of penalties for non-compliance. We have certain guidelines but no way to enforce them.
- Much has changed over 45 years. New people coming to neighborhood not always aware they were part of an HOA that has covenants and restrictions.
- Comparison of current C&R document with the Lakewood community, a nearby development also with a canal system. (The document in review is based on the Lakewood C&R, incorporating items and language applying specifically to Millbrook.)
- Purpose of covenants and restrictions is defeated if there is no means to enforce them, via legal action or arbitrations.
- Current guidelines are very subjective. Part of this process is for C&R to be more specific, less ambiguous and less open to interpretation.

Jerry provided an example of ability to lease out property, and had found that several other communities have much more restrictive leasing guidelines. The original C&R was developed before there was an Airbnb and other companies that facilitate short and long-term leases of private properties to groups of people. In these cases, an absentee landlord can let the property rapidly decline. Jerry said he felt it was necessary to include an enforceable guideline regarding leasing.

HOA member Charles Rhodes commented that the Millbrook C&R does not apply to properties “across the street” except for Postbridge and Millbrook. Jerry agreed stating we are not a gated community, and comparably small to many surrounding communities. Jerry added we cannot create a document that applies perfectly to every property in the vicinity, but feels we should strive for a balance instead of not addressing this matter at all.

Regarding arbitration, Jerry said he has researched property code, finding that in court cases HOAs normally prevail because those are the rules, and arbitrary provisions were probably not necessary, but will likely end up in a final document.

Jerry summarized that our intent was to give our HOA some means to enforce those things that have been general knowledge, but what we really need are regulations to attach to it, to interpret those general concepts. As the neighborhood evolves, others will have definite guidance on what we want the neighborhood to be, and this should be the time we address this.

Jerry mentioned Interlochen neighborhood has similar provisions of our current guidelines, so the HOA can only plead with members to adhere to the guidance, but are unable to effectively enforce. Lakewood is almost an identical community. We used Lakewood document as a starting point to bring ours up to date. He added that the vast majority of Millbrook members voluntarily comply. Non-compliance is very isolated but does roll from one house to another as ownership changes. Jerry qualified his statements as being his personal observations, and not sourced from any formal study or survey.

3. Association Member Charles Rhodes had reviewed the draft document. To expedite his comments, he shared his markup version in a document to board members in advance of the meeting. His comments are summarized here:

- The proposed updates to the covenants should define that appeals for infractions go to the Board and not a third part; an arbitration approach where the Board is both the prosecution and the jury.
- Penalties may be a way of enforcing covenants, but are open to further legal action and associated expenses. Even after collecting a fine, the Board may still have to take the homeowner to court.
- What we as a Board today would consider an appropriate fine could be changed (“tripled”) by a different board in the future. Should it be decided to include fines for infractions, a clear schedule should be part of the document. Schedule should be reasonable and designed to protect future boards.

- The Board has the responsibility to take care of the lake/canal system. Most property appearance and behavioral issues can be enforced through city ordinances.
- An item that proposed a penalty for blocking a neighbor's view of the canal would require further definition. One does not have the right to control another person's view as long as they are complying with the covenants.

4. Jerry agreed we should not put anything in the document that overlaps city code. According to Texas HOA guidance, any fines need to be vetted with the Architectural Committee and they would determine and administer penalties, something that does not exist in our guidelines today. Homeowner should be notified of infraction and given time to remedy. If not remedied or arbitrated otherwise, the Board can file the case in court. Katheryn concurred that before a fine is imposed, the Board must provide notice and opportunity to correct an infraction.

Charles said it was possible to include a penalty schedule, with the consideration of how it could be applied in the future. Arbitration can be handled in a matter of weeks. Court trials can be years, and likely very expensive. He said the Board can implement a penalty schedule. "Let's just do it right."

Jerry again stated the document as it stands is very preliminary, and the Board intended on meeting with attorney. Charles advised to make sure language is included that might create built-in opportunities requiring attorney action.

Board Member Duane Johnston added there was a desire to be able to enforce the guidelines, and to make sure people know they are part of the HOA and these can be enforced.

Katheryn said she was proposing changes to Bylaws that Board Members have the responsibility to know the people in their district, and are able to collect proxy votes, etc. Katheryn already sends welcome letter to those moving in to the neighborhood. Attaching the C&R and Bylaws to the email would assist Board Members in making sure new neighbors had the info.

5. Jerry called attention to the point that covers an instance when a homeowner does something that violates the covenants and the HOA doesn't take action, it doesn't preclude the Board from coming back at a later time. Basically there is four-year statute of limitations for the Board to take action, so that probably needs to be refined.

6. Katheryn said the document being reviewed was in its second revision, and asked at what point should we seek membership input. Jerry said anyone is free to speak up or email him with additional input. Katheryn said that before we present this to an attorney, we want to make sure the documents are as close to final as possible.

Everyone in neighborhood has a chance to come forward and provide their input. But once we get final document we need to present it at annual meeting or some meeting where all can attend.

7. Duane said people moving here should know they are responsible for the care of the canal walls within their property. This is another reason planting trees within 10 feet of the wall is discouraged, as some root systems can damage walls. Katheryn will include this statement in future welcome letters.

8. Danny Barton said in his review of the documents, the points he was concerned about had been covered, and that it seemed like that what needed to be “grandfathered” was in there.

Jerry noted they were trying not to use the term (grandfathered) due to it being broadly translated. He said these items were usually handled by the Architectural Committee (ACC). He said it was necessary to go back and address situations and make sure any variance is filed with County Clerk, and make sure ACC responds with approvals in timely manner (within 30 days). This to protect HOA and homeowner so new home buyer is not suddenly forced to correct an issue. We need to also review what happens with variances when a home is sold. We need to find a way to record variances and include in the document so going forward we’ll have what is necessary.

9. Pat Monis asked about language regarding membership fees and due dates. Charles said it is covered according to “what the annual meeting sets,” so when dues are adjusted, we don’t have change the Bylaws. When you close on your house, you’re told what to pay. Jerry said this would be looked into further to confirm.

10. The Board agreed to meet on this again in a few weeks. Katheryn will send out a suggested time preferably well ahead of Thanksgiving and let residents know about the meeting for those who wish to attend.

General discussion:

Danny asked if there was further word on the trash track. Katheryn said she heard from the engineer who works with the city and received more specs, and submitted to see if this was a viable solution. Katheryn intends to file for a grant from city to help pay for this. The deadline is Nov. 4. Cardinal had submitted their recommendations and Katheryn was following up.

Danny said the silt had returned and was unable to get a boat in area in his district. Dredging method seemed ineffective since the area is rocky.

Katheryn said she hopes trash rack can help but it won’t be effective in controlling silt build up. It was agreed more should be done to correct the source of the issue.

Katheryn said she's consulting with Magnolia to address the watermeal and duckweed in the lake system. Magnolia plans to fine tune the formula so it lasts longer. She has also checked with Lakewood to see if the sonar application is effective. Consensus was it was worth treating. Timing of the application is important. Additional rain and colder temperatures will help.

The meeting adjourned at 8:57 p.m.

Respectfully submitted,

Don Meissner

District Four Representative, filling in for Board Secretary Don Gwynne