



Community Newsletter

The Voice of Condominium, Civic, & Homeowner Associations of Pasco County

Volume 2 Issue 4

Council of Neighborhood Associations, Inc.

April 2004

CONA West

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ASK AN ATTORNEY!!

Robert Tankel, Attorney at Law
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Q. Our documents have not been enforced. I have heard that if the Board has not enforced them, we have lost the right to do so? What can we do?

A. The enforceability of covenants that have not been enforced is a fact intensive question. While no answer can cover all situations, the following needs to be addressed with your attorney.

First, if there are violations, are there people who are willing to step up to the plate and be witnesses if necessary? This is as much of a practical question as a legal question. If people complain about violations but are not willing to testify against their neighbor, the whole issue is moot. see ATTORNEY page 3

CONA Members Meeting

Wednesday, April 21,
9:30 a.m. at

New Port Richey City Hall.

Rosemary Lyons of
Pasco County Animal Control
will be our speaker this month

Do you have a problem with
wild or domestic animals?
Attend this meeting and hear
Rosemary's presentation and
maybe you will find a solution
to barking dogs, gifts on your lawn
and/or animals distributing your
garbage around your property.

▷ Agenda ◁

Pledge of Allegiance
Reading of Minutes
Treasurer's Report
Director Reports
Unfinished Business
New Business
Open Forum

CONA member meetings are
always on the third Wednesday
of the month. Don't forget to mark
your calendar. Your participation
and support is always appreciated
Bring a friend!

*Please share this Newsletter with
other residents. Thanks!*

ANIMAL ORDINANCES, in part, from
article by Cheryl Bentley, Suncoast News
There are three proposals that the county
commissioners are reviewing.

- One - defining exact measurements and conditions for suitable animal shelters.
- Two - authorizing judges to reduce the number of dogs or potbellied pigs if they are creating a nuisance.
- Third - would give the county additional authority to impound dogs and potbellied pigs in certain circumstances.

From the President

Recently, the Code Enforcement Department of Pasco County started a new program designed to eliminate Pasco County Code violations. A different development will be inspected with as many code enforcement officers as needed to complete the inspection. The amount of officers doing the inspection is determined by the total number of homes in the particular development in order to complete the check in one day.

The officers will check each home for violations and if no violation(s) is found a preprinted green tag will be assigned to that home expressing the county's appreciation for having pride in home ownership. A white tag, preprinted with a list of the most frequent violations, has one line marked "other," for noting a violation that may not be on the list. Next to each violation listed is a box for the officer to check if a violation is found. There is a notice at the bottom of the form informing the homeowner that the officer will be back in seven (7) days, and if the violation has not been corrected, a citation will be issued and a fine imposed.

The current plan is to do this in one development per month. Code enforcement officers will decide which area they will "blitz." Hopefully, after all violations are corrected, the guilty homeowners will see the difference in the appearance of their neighborhood and will have an incentive to keep it that way. If that does not work, maybe peer pressure will.

Joe Gross and his Code Enforcement staff are to be congratulated for this proactive stance. If you like what they are doing, why not call them at 847-8171, or better yet, call John Gallagher at 847-8115, and tell him.

Everyone likes a pat on the back! □

Board of Directors' Meeting of March 17, 2004.

Minutes of February 18, 2004 were read by secretary Weber, and approved as read...

Treasurer Smith reported Cona's bank balance was \$2,511.14 as of March 17, 2004. meeting.

Commissioner Peter Altman spoke on animal control, transportation, and the Concurrence Ordinance for U.S. 19.

Commissioner Altman fielded a variety of questions from the members in the audience. He also mentioned that Pasco County won an award for the best tasting water in the area.

The subject of over-pumping of water by Aloha Utilities was mentioned and Commissioner Altman said that he would look into the over-pumping complaint.

It was reported that the profits acquired at Chasco, by the Kiwanis, will be donated to the local community

Attorney Bob Tankel was in the audience and he also fielded questions from the members after Commissioner Altman left the chambers. Attorney Tankel expressed his concern on Ordinance HB1223 relating that it was anti-developer and anti-consumer. See "Ask an Attorney article" for further comments by Mr. Tankel.

The meeting adjourned at 11:10 a.m. It was a very interesting meeting covering many subjects. □

CONGRATULATIONS

A big welcome to recently elected presidents of their homeowner association. They are Christine DeMoncada of Beacon Square Civic Association, Marion Rettino of Ponderosa Park Civic Association, Fred Rydzik of Oak Ridge Homeowners Association has rejoined CONA, Jim Turtle was reelected to T.A.T. Civic Association, and Roberta Desantis of Bear Creek Beautification Association, a new Cona member. □

GOOD NEWS!

We are happy to inform you that Charlie Rifkin, a CONA board member, is back home from a long stay in the hospital.



*It's Secretaries Day!
Wednesday, April 21
Take a secretary to lunch!*

March 22 West and East Cona Board Meeting.(not verbatim)

Copies of April 26 minutes of the West and East Cona meeting were presented to the board members. Pat Gorecki, West Cona, moved to accept the minutes as typed...motion seconded, all yeas...motion carried.

President of newly formed East Cona, Larry McLaughlin reported East Cona has about fifty (50) association and individual members from eighteen (18) or nineteen (19) communities. He indicated that East Cona is having trouble getting volunteers to be involved in their communities.

A letter was composed at the meeting to be sent to the Commissioners for the Commissioners CAC meeting the next morning at Dade City expressing Cona Board members disappointment that the DRC would be dissolved. Motion was made to approve the letter as written, seconded...all yeas...motion carried. Secretary of East Cona, Dave Domino, was asked to type the letter and see that it got to the Commissioners before the meeting so it would be entered into the record. President McLaughlin of East Cona moved to so order...all yeas...motion carried. It has since been reported that the Commissioners decided that the DRC would remain status quo.

Vice-President Pat Gorecki of West Cona suggested that the Cona board appeal to the commissioner to change their routine of present meeting dates and times, and return to once a week instead of the present routine of every other week □

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Anytime there are violations, the Board needs to make sure that the violation is either self-evident or that there are witnesses willing to testify, if necessary, as to the existence and duration of the violation. Keeping a log book of violations such as barking dogs, parking of improper vehicles and so forth along with dates and descriptions is invaluable.

Second, in order to be enforceable, the enforcement must be timely and uniform and not be selective. This means that if the Board knows of a violation (and there are many cases dealing with what "knowledge" is,) it has the obligation to address the violation in a timely fashion.



No covenant is unenforceable until a judge says it is !

If the Board does not enforce the covenants and other people see a violation and rely upon it in violating themselves, that will pose a problem for the Board in the future.

Additionally, formal legal action (not just complaint or threatening letters) needs to be taken in a timely fashion. The courts recently held that violation of a set of covenants invokes the Statute of Limitations for violations of a contract. In order to bring an action to enforce a breach of a contract, the statute of limitations is five years. That is an extremely long time, and there are equitable doctrines, such as laches, that might operate to effectively shorten the time period. There is no "magic number" where any lawyer can say with certainty that the ability to enforce the covenants either has or has not expired. Bottom line: act promptly.

Additionally, at least one Court of Appeals found that, where a condominium board of directors failed to enforce a restriction against balcony enclosures, it had the power to "draw a line" and grandfather in previously existing

violations while prohibiting future violations. Normally, this type of behavior would lead one to expect that the Board lacks such authority, but it was upheld. As a result, the Board may be able to take an inventory, grandfather in violations and move forward with strict enforcement. Obviously, this course of action depends on the willingness of people to testify and the willingness of the Board to actually carry out its intent by the resolution. If such a resolution is drawn up and is not enforced, it will probably weaken your position. *Take a complete video inventory of the community at least yearly, and keep it in a safe deposit box.*

Finally, it is important to remember that no covenant is unenforceable until a judge says it is. The fact of the matter is that almost everybody has a nephew or relative who is a lawyer these days, and threats of lawsuits are just that, threats. One should not simply conclude that something is unenforceable without at least testing it. While the test can cost a lot of money and take a lot of time, the only sure way to test enforceability is to bring an action, if required. Sometimes lawsuits are not decided by who is right, but who is more willing to see the lawsuit through. Given the superior resources of the Association and the possibility of personal liability for failure to enforce the covenants, the Board should seriously consider consulting with Counsel and bringing formal legal action against violators, when appropriate, to enforce deed restrictions. Otherwise, the failure to enforce will be a self fulfilling prophecy. □

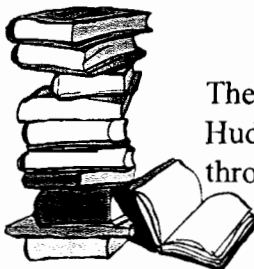
Bob Tankel is a long time member of CONA and occasionally appears at our meetings. You can obtain further information at www.condocollections.com/news.html for the latest information about community association law.

BOOKLETS FOR HOMEOWNER ASSOCIATION RESIDENTS

The 2004 Community Association Institute catalog has just been printed. Copies will be available at the April 21 CONA meeting. The booklets are available from CAI (for a small price.) A sample of the booklets are "So Now You're on the Board"; "The Role of the Assoc. President", "Secretary", and "Treasurer"; "Drafting Association Rules"; "Selecting the Landscape Maintenance Contractor"; "Assessment Collection": "Legal Remedies"; "Be Reasonable", and many more books to help you run a successful association. The catalog is for members only. See secretary after the meeting for your copy. □

LIBRARY NEWS RELEASE

"Temporary Closing"



The Hudson Regional Library, 8012 Library Road, Hudson, will be closed from Monday, May 3, 2004, through Saturday, May 15, 2004, for interior refurbishment, to include refinishing of its hardwood floors, and other maintenance. The library will reopen, barring any unforeseen circumstances, on Monday, May 17, 2004.

Hours of operation for the Regency Park Library, 9701 Little Road, New Port Richey, will be extended to 9:00 A.M. to 9:00 P.M. Mondays through Thursdays during the above closing period to provide additional public service to patrons. □

E-VELOPMENT

The Future is here !!

Homeowner Association online voting has arrived

Several Internet companies cater specifically to the election needs of associations making online voting relatively simple, secure, and affordable, and can even save you money by reducing printing and mailing; You don't even have to have your own website to do it.

Most states don't expressly prohibit electronic voting, but many states recognize voting by written ballot or written proxy. The question for you to ask your attorney is whether you can expand the definition of "written" or "proxy" to include electronic ballots, said Karyn Kennedy, Esq of Kennedy Law Firm in Sea Girt, New Jersey.

You can, with your attorney's guidance, amend your governing documents to remove any reference to in-person voting in all your documents. Your documents no doubt don't allow electronic voting, but they probably don't forbid it either. A good start would be to survey your residents on the subject. Florida has a new law allowing electronic transmission for board of directors to notify members of meetings and other information. There are specific rules in the law on electronic transmission.

There will always be someone who doesn't want to vote online. It's important to pursue online voting as another option rather than a replacement vehicle. Outsource is the new buzz word these days, so why not consider turning electronic voting over

continued

to a well-qualified independent third party? The association could do it themselves, but you must be very careful to have explicit guidelines. There are some associations that have been very successful in electronic voting. It would be prudent to have your attorney guide you in this project.

There should be a password for each member who wishes to vote. There would be instructions, voter eligibility check, candidate biographies, possibly photos of candidates; other issues, if any, to vote on beside voting for board members. A voter ID would be necessary to keep votes confidential. If you're struggling with poor voter turnout, this method brings the voters into the process and voters would be more inclined to vote. Wouldn't that be worth it? It might even bring more people to run for the board and get involved in their community. □

Cona at Work for you

President Mel Phillips

Last year the school enrollment increased by approximately 2,500 students. *Was this an unusual year?* Not really. In the last four years the enrollment in our county schools has increased over 2,000 students per year. It does not take a brain surgeon to realize that the recently passed additional 1% sales tax will not generate enough to build enough schools to accommodate this growth. *What is the cause of this growth?* At the present time, there is over 130,000 homes platted and approved, of which about half have been built and every month more and more are platted and approved by the county.

According to the plan to spend the school boards part of the sales tax funds over the next eleven years is to build eleven elementary schools which will accommodate with an average design capacity per school of 724 students equals a total of 7,964 students, five middle schools with a capacity of 1,181 students will accommodate 5,905 students

and four high schools with a capacity of 1,784 each will accommodate 7,138 students, for a grand totaled 21,005 students.

According to the school board's figures, these twenty schools will cost \$449 million to construct and equip. Do the math -- if no increase per year is experienced, we can expect an additional 27,500 students, and we are building for 21,005 we are short on space.

At present, each new single family home pays a school impact fee of \$1,694.00, for a new mobile home \$1,187.00, and for each multi-family unit, \$722.00. These impact fees do not even start to pay the impact cost each new home, mobile home, or multifamily unit costs.

The boards of both West and East CONA organizations have been meeting on a monthly basis to discuss what CONA can do to improve the quality of life in our county. It is the opinion of these two boards that "Impact Fees" need to be looked at by the Board of County Commissioners and we think that school "Impact Fees" should be first on the list.

What are your thoughts? □