

MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS
OF THE FOREST OAKS OWNERS ASSOCIATION, INC.
ON DECEMBER 13, 2011 at 7:00 P.M.
AT THE FOREST OAKS COMMUNITY CENTER
105 N. LYNNWOOD TRAIL, CEDAR PARK, TEXAS 78613

Item 1- Call to Order/ Establish a Quorum

The meeting was called to order at approximately 7:00 p.m. Board Members Ed Strout, David Karabinas, Don Garritano, and Joe Capesius were in attendance. Board Member Christi Cheng was absent. Community Association Manager Keri Scott was present.

Item 2 – Executive Session

The Board adjourned to executive session at 7:01 p.m.

Item 3 – Return from Executive Session

The Board returned from executive session at 7:35 p.m.

Item 4 – Oral Summary of Actions taken in Executive Session

Keri informed the homeowners that the Associations attorney received a letter from a homeowner's attorney with the intent to file a lawsuit relating to the fining policy. The Board would like Bill Flickinger to respond in writing with his legal recommendation in writing on how the Board should proceed. The Board also approved Bill Flickinger to respond to the homeowner's attorney's letter and provide a list of mediators for non-binding mediation as specified by Section 12.12 in the deed restrictions.

Keri reviewed the collection accounts with the Board.

Keri informed the homeowners that the Board approved to waive \$100 for overnight street parking fines from a homeowners account.

Keri informed the homeowners that the Board approved to suspend fining for lawn maintenance until February 1, 2012 for a homeowner that just had surgery and cannot mow the grass as much as needed.

Keri informed the homeowners that the Board approved to waive \$100 for overnight street parking fines from a homeowners account.

Item 5 – Approval of Minutes

The Board of Directors reviewed the minutes from the November 8, 2011 meeting. Director Strout made a motion to approve the minutes as written. Director Capesius seconded the motion and it was unanimously approved.

Keri reviewed the completed action items from the November 8, 2011 meeting with the Board.

Item 6 – Ratify and Reaffirm Board actions considered since last meeting

The following motions were handled by e-mail as documented:

- **Item 1 – Irrigation Controller**
Keri e-mailed the Board a bid from Native Land Designs to replace the missing irrigation controller at Brushy Creek and S. Lynnwood Trail in the amount of \$363.86. Director Garritano motioned to approve the bid. Director Capesius seconded the motion and it was unanimously approved.
- **Item 2 – Fountain Float**
Keri e-mailed the Board a bid from Aquatic Features to replace the fountain float in the fountain at Mandarin Flyway and Brushy Creek Road in the amount of \$930.95. Director Karabinas motioned to approve the bid. Director Strout seconded the motion. Director Strout, Cheng, Karabinas, and Garritano voted to approve the bid. Motion passed.

Director Karabinas motioned to approve the e-mail motions as documented. Director Capesius seconded the motion and it was unanimously approved.

Item 7 – RealManage Issues

Keri reviewed the November financials with the Board.

Keri reviewed the bid to install wildflowers at 105 N. Lynnwood Trail. Director Stout motioned to approve the bid to install wildflowers. Director Karabinas seconded the motion. Director Karabinas motioned to amend the motion that the date of implementation needs to be advised by the landscape company. Director Garritano seconded the amendment and it was unanimously approved. The motion as amended was unanimously approved.

Keri reviewed the bid to replace the rain sensor at 105 N. Lynnwood Trail. Director Garritano motioned to approve the rain sensor with the stipulation that it is relocated to a safer area. Director Karabinas seconded the motion and it was unanimously approved.

Item 8 - Board Issues

Director Strout discussed posting the meeting minutes on the website. Director Strout motioned to approve posting all open Board meeting minutes on the Community website beginning with the October 2011 meeting minutes. Director Karabinas seconded the motion and it was unanimously approved.

Director Garritano discussed the lawsuit expenses and presented copies for homeowners who attended the meeting. The detailed expense summaries are those expenses incurred only by the Association. Director Garritano motioned to include the lawsuit expenses spreadsheet as part of the December 2011 meeting minutes. Director Karabinas seconded the motion and it was unanimously approved.

Director Garritano discussed the DCCR conflicting sections. Keri informed the Board that this has been sent to Blake Magee to determine the intent of certain deed restrictions. Director Garritano motioned to include the DCCR conflicting sections as part of the December 2011 meeting minutes. Director Karabinas seconded the motion and it was unanimously approved.

Director Strout informed the homeowners that they will rewrite the records request and production policy and that the current policy will remain in effect until the new policy is filed and recorded with the County Clerks office. The Board will have the policy drafted up and review for approval at the January 2012 Board meeting. The Board will also post the draft policy on the Forest Oaks website to get homeowner feedback.

The revised ACC guidelines were reviewed by the Association' attorney and have been sent to the ACC committee for approval. The Board would like the ACC guidelines posted on the Forest Oaks website once they are approved.

Director Capesius discussed starting an Ad-Hoc Committee for Capital Expenditures and asked for volunteers.

Director Karabinas discussed the yard of the month and the next yard will be awarded in January 2012.

Director Karabinas discussed the possibility of installing pet stations. Keri informed the Board the stations are around \$360 plus installation and the upkeep of the stations. Director Strout will e-mail the City to request they add the stations along E. Park Street.

Item 9 – Homeowner sign-in speakers

Robert Medure requested the Board approve RealManage to send him August 2011 and September 2011 Board meeting minutes. Director Karabinas motioned to approve RealManage to send the August 2011 and September 2011 Board meeting minutes to Robert Medure. Director Capesius seconded the motion. Director Karabinas motioned to amend the motion for RealManage to send the Board meeting minutes in the same manner and with the same charges as before. Director Capesius seconded the amended motion and it was unanimously approved. The amended motion was unanimously approved.

Item 10 – Adjournment

Director Strout made a motion to adjourn the meeting. Director Capesius seconded the motion and it was unanimously approved. The meeting was adjourned at 8:55 p.m.

Attest: 

Ed Strout, President
Forest Oaks Homeowners Association, Inc.

Final Draft 102411

FOHA DCCRs conflicting and ambiguous items:

Author: Don Garritano 102411

Section 1

Item 1) Pg. 13 Article 3.3 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of insurance, or cause the cancellation of insurance, on any Lot, Common Area or any of the Improvements located on either.

Conflict: If a homeowner received ACC approval to construct an addition onto their home it would most likely cause an increase in their homeowner's insurance premiums.

Item 2) Pg. 15 Article 3.12 Unsightly Articles: Vehicles.

No unsightly article shall remain on any Lot in a Visible Location. Without limiting the generality of the foregoing, trailers, graders, trucks (other than pickups of one ton capacity or less), boats, tractors, campers, wagons, buses, motorcycles, motor scooters, and garden maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from Public View. Each primary dwelling structure built within the Property shall have sufficient garage space to house all vehicles to be kept on the Lot. Any dispute as to whether an article is unsightly shall be resolved by the Architectural Committee, in its sole discretion.

Conflict: This provision does not clearly address a conflict that arises when an owner wants to convert their garage space into living space using a wall or the partition. It also creates a conflict for the ACC because on one hand it states that every house must have a garage but then allows for the ACC to rule at its own discretion. In addition, homeowners who own motorcycles are clearly disadvantaged.

Item 3) Pg 15 Article 4.1 Residential Use. All Lots shall be improved and used solely for single family residential use, inclusive of a garage, fencing and such other Improvements as are necessary or customarily incident to residential use. No building, outbuilding or portion of either may be built on a Lot for use as income producing property (*i.e.*, for lease to tenants who do not occupy an entire Lot). A "single family" shall be defined as any number of persons related by blood, marriage or adoption, and shall also include foster children and domestic servants. This Declaration shall not, however, exclude from a Lot any person who is authorized to so remain by any state or federal law. **If this Article 4, Section 4.1 is held to be in violation of any law, this Section shall be interpreted to be as restrictive as possible in order to preserve as much of the original intent of this Section as is permitted by law.**

Conflict: The final sentence is unclear and seems to be in conflict with the rest of the section.

Item 4) Pg. 16 Article 4.2 Incidental Uses. The lease of an entire Lot to be used for single family residential purposes shall not be deemed the conduct of a trade or business from a Lot; provided, however, that the term of any such lease shall be no less than six (6) months.

Conflict: The last sentence seems to conflict with Texas contract law. Most likely no owner would want to enter into a short term lease anyway.

Item 5) Pg. 17 Article 5.6 Roofing Materials. All roofing materials must be approved in advance by the Architectural Committee; provided, however, that the following materials are specifically permitted: gray "weathered wood" fiberglass composition shingle with a weight of no less than 240 lbs. per square foot.

Conflict: All houses in Forest Oaks Village with three tab (20 year) shingles are in direct violation of this article. Also, the majority of homes in the original Forest Oaks sections and houses in Silver Oak with 30 year dimensional shingles are also in violation. There are absolutely no 20 year three tab shingles that meet this weight requirement and the only dimensional shingles that meet the requirement would be upgrades (typically 50 year and above) which would require additional expense from a homeowner at the time that they would replace their shingles. The Article should simply use the terms "dimensional" or "three tab".

Item 6) Pg. 18 Article 5.11 Greenbelt/Open Space Lots.

Lots adjacent to greenbelt or open space areas shall comply with all of the following: all fences which are visible from the greenbelt or open space areas shall be built of wrought iron or decorative metal as specified by Declarant on all sides of the Lot which are adjacent to the greenbelt or open space area; back yards shall be fully-sodded with at least two 3" caliper (measured 3'above grade) hardwood trees. No sheds or outbuildings shall be permitted on such Lots.

Conflict:

- 1) the area between Lynwood across from the city park and Darkwoods is a ravine that is certainly open space although not necessarily designated as a greenbelt. Nevertheless all of those homes have wooden fences which seems to conflict with this requirement.
- 2) Homeowners are clearly disadvantaged by virtue of their owning a greenbelt lot.

Item 7) Pg 20. Article 5.21 Outbuildings. Except for garages complying with this Declaration, no outbuilding or structure, whether of permanent or temporary construction, and including without limitation a tent, barn, storage facility or greenhouse, shall be used, placed or built upon any Lot for any purpose; provided ,however, that the Architectural Control Committee shall have discretion to permit guest quarters, pool houses or similar structures when it determines that such structures are compatible with the overall ambiance of the property, and to permit sheds for the storage of tools and equipment provided that such sheds (a) are of wood or masonry construction, (b) have a pitched roof of the same pitch as the main dwelling structure, and (c) are painted the same color as the trim on the main dwelling structure. Metal sheds are prohibited.

Conflict: Does an enclosed area constructed underneath a deck constitute a shed? The definition of "enclosed " is not clearly defined. Is an area under a deck that is shielded by a wood lattice considered as a shed or an enclosure?

Item 8) Pg 21 Article 5.25 Alteration or Removal of Improvements.

No repair or alteration (other than normal maintenance) which alters the exterior appearance of any Improvement, and no removal of any Improvement, shall be performed without the approval of the Architectural Committee. For example, any exterior repainting of any Improvement with a color or colors, or in an area or areas, other than those originally approved by the Architectural Committee shall require Architectural Committee approval.

Conflict: It is unclear whether the declarant meant this to apply to all surfaces or just siding and trim. Could someone stain or paint their driveway, brick or stone, mortar or stucco?

**Note: All of the above Items 1-8 above are included in this filing date
Pg. 35 : IN WITNESS WHEREOF, Declarant have executed this Declaration
on this the 29th. day of August ,2000.**

Section 2

Item 9) Pg 43 Article 3.12. Unsightly Articles: Vehicles.

Conflict : See item 2 above

Item 10) Pg.44 Article 4.02 Use

Conflict : See item 3 above

Item 11) Pg. 44 Article 4.03.

Rentals. Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that all rentals must be for terms of at least six (6) months.

Conflict. See Items 3 And 4 above.

Item 12) Pg. 45 Article 4.05. Fences and Sidewalks. Milburn shall design and install, by customer option or standard issue, uniform fencing. Fences shall be of wood, wrought iron or decorative metal construction, or a combination thereof, and shall not exceed six feet (6') in height

Conflict : This section, enacted in 2002, seems to apply to the Forest Oaks Village which have 4 ft. high plastic fences. Additional proof of that assumption is that the next section 4.06 clearly indicates smaller homes constructed of siding.

Item 13) Pg. 59 3.13. Unsightly Articles: Vehicles.

Conflict : See item 2 above

Note: All of the above Items 9-13 above are included in this filing date

Pg 49 : IN WITNESS WHEREOF, Declarant and Milburn have executed this Declaration on the dates set forth below to be effective February 28, 2002.

Section 3

Item 14) Pg. 60 Article 4.02 Use:

Conflict : See item 3 above

Item 15) Pg. 60 Article 4.03 Rentals

Conflict : See item 3 above

Item 16) Pg. 60 Article 4.05 4.05. Fences and Sidewalks. Milburn, as to the Milburn Property, shall design and install, by customer option or standard issue, uniform fencing either in accordance with the Amended Restrictions set forth by Declarant or in accordance with the overall appearance of the Milburn Property. Notwithstanding the foregoing, The Architectural Committee may, in its discretion prohibit the construction of any proposed fence, modify' the requirements as to how slats of a wood fence shall face, specify the materials of which any proposed fence must be constructed, or require that any proposed fence be screened by vegetation or otherwise so as not to be visible from Public View.

Conflict: This article is in the section registered on Jan. 15,2001. This is clearly in conflict with the previous sections detailing fence height and material and creates ambiguity.

In WITNESS WHEREOF, Milburn have executed this Declaration to be effective on the 15th day of January .2001.

Section 4

Item 17) Landscaping Generally

Conflict: There are numerous references to landscaping in the DCCRs but none of them clearly address the issue of zeriscaping which exists on numerous lots and whether any form of rock or semi-pervious cover other than grass is permitted.

ACC Guidelines Revised 1/24/11, Originally Adopted 2001

9. Landscaping: All significant landscaping improvements need ACC approval. Other general guidelines regarding landscape material are:

- Trees and other foliage over 2' tall need ACC approval.
- Masonry retaining walls need ACC approval.
- Ground cover is defined as a planting of low plants (such as ivy) that covers the ground in place of turf. (Rock or stone are not acceptable for use as a ground cover).
- Any landscaping or screening of utility boxes must be approved by the ACC before Installation

DCCRs Pg 9 Article 1.13 Landscaping.

"Landscaping" shall mean any proposed modification to a Lot, including but not limited to any berms, irrigation systems, subsurface drainage systems, paving, **introduced gravel or rock**, nonstructural retaining walls, and introduced vegetation.

Conflict: This section creates a conflict because it indicates that introduced gravel or rock is acceptable. The section cited (above) in yellow is in the Guidelines but not expressed in the DCCRs. Do the DCCRs dictate policy or the Guidelines adopted 1/24/11? The ACC guidelines probably fall under the rule making authority given to the board. If we want to approve rockscape, we could probably do so as long as it does not violate the DCCRs. Given the drought conditions we have and most likely will continue to experience, rockscapes may be a reasonable option. Are they permissible?

This section gives the Board the power to amend the restrictions.

Item 18 Pg. 22 and 23 Power of the Board (original section filed 8/29/2000)

Article 7.4 Powers and Authority of the Association. The Association shall have the power of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

(a) Rules and Bylaws. To make establish and promulgate, and in its discretion to amend or repeal and re-enact, the Association Rules and Bylaws. The content of the Association Rules and Bylaws may be established by the Board, provided the

same are not in conflict with this Declaration.

Conflict : The FOHA Board can amend or repeal the bylaws, but the bylaws themselves clearly state that the bylaws can be amended only by an affirmative vote of 67% of the homeowners pursuant to SB 472 Signed 6/17/11.