

# **LLOPA BOARD MEETING MINUTES**

**September 5, 2023 (approved)**

**Board members in attendance:** Jason Cheshire, Randy Meadows, Becky Dabbs, Paula Campbell, Denise Costa, and Barbara Tilley.

**Meeting called to order by Jason Cheshire**

- 1) Jason will also quickly request that everyone present to please hold their comments until the board gets through the minutes, reports and business. Jason will also state that he will open the floor to discussions once business is discussed and ask that Robert's Rules be followed. Speakers will have 5 minutes to make a statement.
  
- 2) Jason asked for a motion to approve the minutes from June 6, 2023. Randy approved and Ms. Tilley second the motion.
  
- 3) Treasury report from Paula Campbell. (Report attached.)

Becky Dabbs stated funds were correct and verified the balances.

A motion by Randy to approve the financials, second by Denise Costa

**ACC Committee:**

Jason stated No covenant violations.

We also had 5 tree removal approvals. One approval for a new roof.

**Old Business:**

Jason read some of the response to our questions from the Lawyers regarding the covenants. (See attached.)

**New business:**

**Jason stated the below comments.**

- 1) The ACC request form for storm damage tree removal only is no longer waived. The form must be filled out completely and approved for tree removal.**
- 2) BOLO for suspicious activity, especially drug related dealings, or disposal of foreign substances along our roadways. Mention accidental ingestion of toxic substance by a neighborhood dog and becoming ill. The dog getting sick is bad enough, but it could be a resident or one of our children next time. See something, say something!**
- 3) Please continue to monitor your speed, maintain your lane, and be alert especially around blind spots and curves. We appreciate the support from residents not parking in blind spots, this has gotten better. This is important to mention to keep accidents minimized.**
- 4) We also had an incident around a curve involving a resident child wrecking his bike and breaking his arm, no motor vehicle was involved during the time of the accident. The child received medical attention and is recovering. Keep in mind that a scene of this nature maybe around a curve or over a shoulder in the road, so please watch your speed and be aware while driving.**
- 5) Also, if 911 has to be called, resident calls from the subdivision ping from the 515 cell tower which will go to Pickens County. If faster response time is desired, please make sure to ask for Cherokee County**

dispatch. There was a 20 minute discrepancy in response time to the bicycle incident due to this.

A workday was set for Saturday October 21<sup>st</sup> at 10 am to repair and maintain the form entrance.

Main task that needs addressed:

-Pressure washing of rockery

-Cleaning of signage

-Masonry work repaired

-Weeds pulled and larger shrubs trimmed that Landscaper cannot reach

-Adjust rotors spraying in the road

A vote was made and passed, the majority voted in favor.

Discussion for a "no soliciting sign to be placed at the front entrance along with our Covenant community sign. A vote was made and passed, the majority voted in favor.

The floor was open for questions or comments.

A request of motion to adjourn the meeting by Randy and a second by Paula.

The meeting was adjourned.

Two handwritten signatures in black ink. The signature on the left is a stylized, cursive 'B'. The signature on the right is a stylized, cursive 'D'.

**Laurel Lake Property Owners Association**  
**Status of Cash & Receivables from Homeowners as of September 5, 2023**

2023 Dues are: 80.63% Paid (vs. 83.9% @ 10/4/22)

Bank Balances:	Checking	\$ 8,549.12
	Money Market	23,696.34
	Lake Committee	<u>1,070.09</u> *
		\$ 33,315.55

\* Includes \$500 loaned to Lake Committee from checking account.

Hi Jason,

Welcome to the Board! Audrey Crisa is no longer with our firm, and I'm now George's assistant.

I will forward your questions to George, and he will be back in touch as soon as possible.

Please let me know if I can be of further assistance in the meantime.

Thanks so much,

**Michelle Westmoreland | Legal Assistant**

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Jun 16, 2023, 7:58 PM

to AdminGN, me, gregandpaula@tds.net, barbara.a.tilley@gmail.com, Becky, bg.llpoa.vp@gmail.com, dlcosta62@gmail.com, Michelle

Good afternoon everyone.

Please see below for my responses. I suggest a conference call to allow for a discussion of my opinion and to answer the questions that will arise. Let Michelle know if you would like to discuss. She will arrange a time for a call.

George

My name is Jason Cheshire, I am the sitting president of the Laurel Lake property owner's association.

I am writing to you on behalf of the residents of Laurel Lake regarding numerous questions regarding our covenants. Would you please provide a simplified summary or statement, in your professional opinion, relating to our covenants in layman terms, so I may address the community?

I was told by other legal counsel that our covenants and by-laws have no legal standing due to the absence of a form called the "Succession of Power" from the original developers to the HOA not on record with the county or clearly visible within the documents. The succession of power is found in Article V Section 5.02 of the Declaration. It is clearly visible and is recorded in the county land records. It provides as follows:

- Also, if something is not clearly stated, such as issuing fines, the board has no legal grounds for action. That is correct. See my email copied below.

Also from a previous email, which I will forward below, you sent to a former president, I am understanding that from a previous declaration renewal on, November 27, 1990, the declaration eliminated our ability to renew the declarations. That is not correct. The November 1990 amendment eliminated the ability of the members to amend the Declaration. Article VI Section 6.04 of the Declaration recorded in August 1990 stated the covenants would automatically renew for 10 years unless 2/3rds of the lot owners agreed to modify the covenant in whole or in part. The word modify is synonymous with the word amend. The November 1990 Amendment changed 6.04 to require Lot Owners to sign an extension agreement. It removed the ability to modify in whole or in part. Accordingly, the ability to amend was removed. The 2010 amendment renewed the covenants for successive periods of 10 years each. It also did not include the ability to modify. So, the 2010 amendment states the covenants would renew every ten years as is. There was no provision to change. Despite that language of perpetual renewal, the 2020 amendment was filed. It also changed Section 6.04. That time it states that that the covenants shall be extended ten years from the date of recording. So, it stated that the covenants would only be valid for 10 years. There was no provision for extension beyond 2030. I hope you see that the 2010 amendment provided for perpetual duration without a change and then 2020 changed Section 6.04 from perpetual duration to a single extension to 2030, also without the ability to change.

Also, the renewal that comes up in 2030 does not provide for renewal, is this correct? Yes, as just explained.

Can we legally hold the parties involved with the improper declarations accountable? The Declarations were not improper. It is the consequences of the changes. I believe you are asking if there is a responsible party for the consequences of the changes. That would depend on what the members were told about the effect of the changes that they then approved. The best

evidence would be a letter/email from the law firm explaining the changes each time with the results not being what was explained . In the absence of that evidence, the members who voted in favor of the changes would have to give evidence that they were misled or that the changes were not what was requested. Even with that evidence, the reality is the lot owners approved the changes. The law of contracts is clear that a person is bound by an agreement as written, regardless of the understanding of what the document says. Lastly, the drafters of the amendments were hired by the Association, not the individual lot owners. The Association would have to bring a claim of malpractice. I am not sure the Association suffered any damages. Rather, it is the lot owners who are damaged by the results of the changes. Not being a malpractice attorney, if this is something the Board wants to look into, I can give you the names of attorneys who bring malpractice claims .

Also, what legal actions could new board members face due to these matters or future endeavors? I cannot think of any actions that can be brought against current and future Board members for the past actions of the members in approving the changes.

If covenants are not legally binding, can we legally collect dues? The covenants are legally binding until 2030. However, there is no provision in the Declaration that makes the payment of dues mandatory. Any payments were made voluntarily.

If the answer is no, is it possible residents could ask for a refund of dues or legally sue for back dues paid? I understand most of the dues have been collected for maintenance of common areas and legal expenses. No. A person is not entitled to a refund of a payment that was made voluntarily.

I wanted to make sure my above statements are accurate. If this information is true, then what steps can we take to make the covenants legally binding, or even if we can? Again, the covenants are legally binding until 2030.

If our documents are null and void, can we legally revise the documents to have up to date and accurate terminology? That answer is no. Then current covenants cannot be revised and adopted because there is no authority to adopt amendments. What can be done is to draft a new

**Declaration. It would not be an amendment. That difference means that only the lot owners that sign the new document will be bound. Whereas an amendment binds all lot owners if approved by the required vote, adopting new covenants is then a choice for each Lot owner. Without 100% approval, there could be a patchwork quilt of Lots subject to new covenants and those that are subject to the covenants that expire inn 2030.**

**If so, then could you provide a proposal with the legal cost for a rewrite, and recording the new documents with Cherokee County? The board also discussed having a covenant committee to rewrite the covenants and by-laws, then give these revisions for your office to look over and make the proper legal additions. We charge a flat fee of \$10,000.00 to prepare a new set of covenants. We do not edit the work of covenants prepared by a client. The reason for that is without fail, many of the provisions are not legal. Also, since so many of the provisions are dependent on other provisions, the time and cost to edit and conform the edits to the other provisions perform can be as expensive as us preparing the documents for the committee to review and suggest edits. The Board will have to decide if there is support in the community to spend the money knowing the new covenants will apply only to the lot owners that sign the document.**

**It is common for clients in impossible situations to say that there has to be some way to fix the problem. I have considered other fixes. I considered attacks on the validity of the all of the amendments to get us back to the original Section 6.04, which allows for renewal and for changes. I believe the validity of the 2010 and 2020 could be successfully challenged since the ability of the lot owners to amend the covenants was eliminated in the November, 1990 amendment. We would then have to challenge the validity of the November, 1990 amendment in order to get back to the original Declaration. I do not see a way to do that. The reason is that the original Declaration authorized the Developer to amend the covenants at any time. The Developer did that with the November , 1990 amendment, so that amendment is valid. I do not recommend attempting to invalidate the 2010 and 2020 amendments because the November 2010 amendment required the vote of the members to renew the covenants, which was not done in 2010 or 2020. The result would be the covenants expired in 2010.**



Thank you for your time,

Jason Cheshire

Section 5.03 of the Declaration states that "Lot owners in the subdivision for each unit, one or more units or all units of the subdivision may at any time form a property owners association which shall have the right to adopt its form of government, by laws and other rules and regulations that it may desire, subject to these declarations."

**The purposes for which the corporation is formed are as follows:**

- a. To own, manage, and maintain the common areas located in the residential housing development commonly known as Laurel Lake Subdivision, in Cherokee County, in the State of Georgia.**
- b. To collect periodic homeowners' association dues.**
- c. To pay expenses in connection with said common areas.**
- d. To maintain insurance on said common areas.**
- e. To enforce the restrictive covenants filed in the Cherokee County, Georgia Clerk's office on August 8, 1990, in Book 887 at Page 522, as amended on November 27, 1990, and filed in Book 926 at Page 176.**
- f. To perform such other and further acts as are necessary and appropriate to accomplish the foregoing purposes.**

**ARTICLE IX**