Special Meeting Minutes

1. A special meeting of the Walden Woods Conservancy Inc. Board of Directors was held on April 23, 2014. The meeting was called to order by Board President Dale Herrick at 7:03 p.m. Directors present were: Debra Denker, Glenn Brand , Kevin MacIlvane, Susan Raupach, Andrew Lattimer (Treasurer), Cori-Lynn Webber (Secretary), Brian Onessimo (Vice President) , Diane Bernier and Michael Coffey. Directors Sean Buda and Joe Palladino were absent. Mr. Chris Kohnle of Elite Property Management, LLC was also present for the meeting.
2. This meeting was noticed for the purposes of discussing the Proposed Declaration Amendment a.k.a. “Walden Woods 59th Amendment of Amended and Restated Declaration” with the Conservancy’s counsel Attorney Matthew Perlstein. Attorney Perlstein brought with him his partner Attorney Scott Sandler.

Attorney Perlstein represented that his office was asked to create an amendment to the existing community Declaration to include and incorporate the surveys recently commissioned which show Council boundaries. Attorney Perlstein explained that our prior documents can find Council areas to the councils but the actual boundaries were never recorded on a map at the town hall. When “Country Walk” developers stepped in with the 2005 amended Declaration, it was anticipated that maps with Council boundaries would be incorporated into the Declaration amendment. The documents talk about Council areas but don’t actually show the designated boundaries. Attorney Perlstein represented that his office suggested that the Conservancy come up with boundaries and amend the Declaration to include boundary lines and conform the Declaration to those boundary lines within the text of the Declaration. He stated that there have been markups and drafts and suggestions made for mostly technical changes regarding boundaries of the Council areas and where they should be. Right now, he is seeking confirmation that the lines are where they’re supposed to be on the maps drawn by the surveyor, some of which are outlined in a letter addressed to the Board of Directors dated February 24, 2014.

The first question addressed by the Board is Attorney Perlstein’s recommendation that it change the boundary lines noted by Mr. Lenihan as “the tree line” to something that doesn’t move. He advises that the lines need to be permanent, anything less could result in boundary disputes. He suggests that we have the surveyor use something more concrete than the tree line.

He raised technical questions about some of the Council areas. First, public roads are usually wider than the pavement such that the sidewalk is actually part of the road which is owned by the Town of Windsor (hereafter, “The Town.”) On public roads, abutters have an obligation to maintain the sidewalk which is owned by the Town. The Declaration states that common expenses to the community include maintenance repair and upkeep of the principal entrance road which is undoubtedly Walden Meadow Road. He therefore recommends that the designation of some of the Walden Meadow sidewalk as council area should be changed to move the sidewalk out of the Village, into the Conservancy. Specifically, the sidewalks in question are on the Meeting House side of Walden Meadow road from the corner of Mercer to On The Green and from the corner of On The Green to Pierce Boulevard. In the alternative, his letter indicates that a change to the Declaration designating the Council areas responsible for certain parts of the main entrance road would also fix the problem. Director Webber asked if these boundary lines are policy decisions and the idea is to make things within a Council area that Council’s responsibility, why would we move sidewalks back into the Conservancy? While we’re changing the documents, why don’t we change them to be consistent?

In response to a question regarding how we can tell what structures are now in the Council areas versus are in the Conservancy, Attorney Perlstein suggested that the community flag certain items which you cannot identify on the maps like the retaining walls on the Knoll or in the Townhomes, or sidewalks into a list for his office to process to determine where they would belong. Attorney Perlstein stated that he believes retaining walls are part of the Council areas and that should be made clear in the maps.

On the topic of inconsistencies in the maps, Director Herrick noted that the Jacobi mailboxes are co-used by the duplexes and townhomes and they should share the cost of maintenance. The secretary gave Attorney Perlstein a copy of the September 19, 2012 board minutes. He will go through the items in that list as well to determine whether or not they are actually appropriately classified on the existing maps/documents.

When asked regarding allocation of areas to council area versus the Conservancy and how they would impact liability, Attorney Perlstein advised the Board that liability would not change with a boundary adjustment. He stated with property insurance if the policy covers you, you should share the cost within the community. If the unit is covered by the property policy, they share in the cost of that premium. In a liability policy, that coverage is common to all units, so all share in the costs of the deductible. The current Declaration section 23.2 addresses damage so far as Attorney Perlstein was aware there is no deductible on a liability claim just with respect to a property claim. Where the Conservancy is responsible for work being done, its policy will cover the costs of any liability or damage.

Director Onessimo asked whether the existing maps define the Ridge boundaries. Attorney Perlstein was unsure; all he could represent to the Board was that all of the boundaries do not exist. The new boundaries for “Country Walk” (marketing name for the townhomes and duplexes) were set, and some Council boundaries were set by the new maps. If you have any questions on the changes, he asked that they be brought to his attention. Attorney Perlstein also explained that limited common elements are not boundaries or cost allocations concepts -- they’re just use allocations. This doesn’t automatically mean that the unit owner pays for limited common elements. Council boundaries are for the purposes of cost expense in his opinion.

In response to questions from Director Webber, Attorney Perlstein indicated that he did not draft the original documents, though he is responsible for the re-stated Declaration in 2005. He explained that CWD was anticipated to produce the maps with the Council boundaries on it at the time that it prepared its A2 maps. The original intent was to have the Council boundaries outlined at that time. Culbro just wanted to sell the property to a builder and make a profit; it didn’t really care about ensuring that those boundaries met with the promises made to the homeowners. She asked about the section of the Declaration currently at 25.4 which outlines that Woodmoor is not required to prepare and submit a budget to the Board like all other Council’s as it is *not anticipated to need one*. When this was drafted, Pierce Boulevard to Thoreau walkway, Thoreau Circle and the pillars all existed and were being maintained by the community as a Conservancy expense. So the original Declaration documents contemplated Woodmoor never needing a budget. With Woodmoor objecting to being forced into a budget, Director Webber asked, why is this happening? Attorney Perlstein stated that he doesn’t know why the community has decided to move this way, but he does know that if we as a community do not resolve this dispute and there is litigation, is very hard to predict what a judge would do. When you take a case like this to court, you are never sure of the judge’s knowledge of condominium law, who the judge will sympathize with, but you do know that what the judge does will likely not be palatable to one of the parties. Litigation is also expensive to all parties involved. In his experience, it is infinitely easier to make a compromise and agree and move forward on the Declaration amendment. He strongly urges the community to do so.

Director Webber further asked about the existing document allowing Woodmoor to agree to a budget if it determines it needs to. Since Woodmoor has not determined it needs to and may not do so in the future, does that lack of action by Woodmoor refusing to set its own budget -- as provided for in the existing Declaration -- give Woodmoor special property rights based upon the longstanding documents and years of operational history? Attorney Perlstein stated that, in his opinion, no. He does not believe there is a property right in maintaining the *status quo* in a condo community. The documents are fixed in time and they are amendable. If a majority of the unit owners want to change the documents, they have the right under the condo laws to do that. In Attorney Perlstein’s opinion, even if a majority of Woodmoor units vote against or refuse to sign a proposed Declaration Amendment, the other unit owners can force them to change their Council boundaries and accept financial obligations later if they have the votes.

Director Webber asked if that leaves the Conservancy vulnerable to a court challenge from homeowners that are adversely affected such as those in Woodmoor or Pond Bridge, that it will likely lose? It was Attorney Perlstein’s opinion that the current proposed Declaration Amendment does not address the Declaration sections referred to: sections 15.10 and 15.11, because those sections are specific to certain changes and Attorney Perlstein does not believe the boundaries that are being designated by this Declaration amendment: incorporating the surveys is contemplated in the sections. Accepting this Declaration Amendment can be the subject of a court challenge, just not under that statutory section.

Director Webber then asked if 67% of the Conservancy unit owners vote to assess a $100 per month charge to each unit in the Ridge, is that valid? Atty. Perlstein stated that the structure of the community is such that Directors of each Council suggest what needs to be done and the Board comes together to review and make decisions. The Board can in fact do that should it so choose. Attorney Perlstein did not define where the line is on what the Board can do. It is his opinion that the Board can probably force a Council to set a budget and can go to court and make that Council prepare a budget. He stressed again that a lawsuit on this type of the topic would be big, complicated, and technical. When the developers of this community decided to create five separate and different communities within a master plan, it made that decision including common areas. He hopes that the five councils can figure out a way to agree and move this process forward. Attorney Perlstein was very clear in warning that going through litigation would be costly for everyone. As an example of a worst-case scenario, the court could determine that the community requires a professional manager appointed by the court.

Director Lattimer asked whether or not communities with diversity like ours are common. Attorney Perlstein stated that there are other communities like ours but there are not a lot of them.

Attorney Sandler then asked a question of the Board which is: What is the cost of the items being moved into the various councils or the Conservancy. Examples were given of estimates; however despite *multiple requests* from many homeowners, the Board and the Property Manager have never provided that information to the community. Attorney Perlstein stated that this is wrong: this information should have been provided by the property manager. He made the suggestion that the property manager try to come up with a sample budget to give the unit owners comfort when they think about what the budget in 2015 would be if the Declaration amendment is accepted. How would the budgets change? What would the various Council budgets look like as compared to 2014 and what with the Conservancy budget look like? He suggested that perhaps if those numbers were given to people, there would be less acrimony.

The question was posed regarding assessing deductibles back against unit owners for property damage. Attorney Perlstein stated that if the unit is covered and you share in the cost of premiums, the deductible for your property damage can be charged back -- not so with liability policies.

Director Lattimer asked whether or not accepting the changes to the Declaration will resolve all of our issues regarding cost allocation going forward. Attorney Perlstein said no, that is not the case. This Declaration amendment with the maps will not answer all of the questions on cost allocation. There will still be gray areas that are not covered by these maps. If compromises are not reached on these as well, litigation is again a possibility.

Director Webber asked whether or not it is clear from this Declaration amendment that future boards cannot take council common expenses and allocate those to the Conservancy if the Declaration amendment and maps are accepted by the unit owners? What will stop future boards from changing the expense allocation in the future? Attorney Perlstein stated that what the docs address will need amendments, and can be changed by future boards. He stressed again that reasonable minds need to apply these things; otherwise, disagreement and dissension will continue.

Director Webber asked whether or not it there is a way to assure that future changes of the locations and boundaries should also include allocation of expenses, because isn’t that what this whole thing is all about: allocating expenses? Attorney Perlstein stated that the Declaration allocates expenses. Common practice of the community even over the last 20 years doesn’t create boundaries, because they’re not outlined in the documents. The proposed surveys supplement existing documents going forward. Director Webber asked, why we can’t just change the Declaration to say that we want to adopt the last 20 years of precedent. Couldn’t we dictate that our common practice will now be the boundaries? Attorney Perlstein stated that the document boundaries need to be written somewhere, the community decides what they look like. There’s a proposal on the table which is part of what he’s been asked to put onto paper. Director Herrick pointed out that the proposed Declaration amendment has a new requirement in it that any further boundary changes or Declaration amendments require 80% of the unit owners to sign off on any new Declaration amendments. This is a high standard and will probably stop a change of any expense reallocation unless it is already set out in the existing maps.

Director Webber asked is there anywhere in the Declaration amendment draft that says that if something happens within a designated area, that that expense belongs to the specific Council area and that cannot change without the new 80% vote of unit owners? The short answer to that is no. Attorney Perlstein suggested the that we come up with the list mentioned above and have his office check the amended document to obtain some clarity with respect to specific examples.

Director Webber asked what the Board’s obligation is with respect to administering the individual councils. As the Board operates now, the councils independently make decisions which are rarely ratified by the Board. For example, a decision not to use ice melt until a certain threshold is met was made by the Duplexes, Townhomes, and Village. Attorney Perlstein stated that as a Board, you have the ultimate decision-making power. Whenever an issue of safety is raised, there should be no compromise; the money should be spent by the Board and the homeowners should have to pay whether they like that or not. For issues that are not safety related, the Board can make a determination as to how much it wants to be involved in individual day-to-day decision-making within the Councils.

Director Webber asked what makes Thoreau Circle, which is on a public road, and the Lochview Circle, which is also on a public road different. Thoreau Circle is a Council common area under this new “fairer” proposed Amendment, yet Lochview Circle is designated a common element within the Conservancy. Attorney Perlstein stated that the developer agreed to accept the responsibility for maintenance to get his subdivision plan approved. The community has to take care of the promises made by the builder. Just as happened with Thoreau, this is a community decision to treat them differently, as are most of the boundary changes. Policy is set by the majority of the Board with community approval. Several other questions were asked about moving items historically covered by individual councils into the Conservancy. The answer was consistent that these are policy decisions, not legal questions.

In response to a question from a Woodmoor homeowner if 67% of the community can force an unwilling council to have a budget and pay for historically covered Conservancy areas in a newly forced council budget which is contrary to the existing documents, can that council,l having no voice and being constantly ignored and outvoted. choose to leave the Conservancy? Though skeptical, Attorney Perlstein and Attorney Sandler stated that the Community could be dissolved by agreement and recreated, with the Town’s permission.

Attorney Perlstein asked what the Board wants them to do now. No votes can be taken at special meetings, but Director Herrick asked that they check to be sure the September 2012 vote is incorporated into the proposed Declaration Amendment and that counsel make changes based upon Board feedback at the meeting.  Attorney Perlstein confirmed the current Declaration has no timeframe to follow to complete Amendments so there is no required timeframe to get any of this done.

Perlstein suggested that we create a list of items for his office to push through the Amendment so they can identify holes in the maps and fix them pre-vote. He suggested that we try to focus on particular items that are identifiable in one sentence (or if needed 2). He didn’t feel we need the sidewalks and retaining walls in that list unless cost is unclear. He also suggested that those with questions schedule a walk through to see if they can answer their questions from the maps.

Question was posed “If we don’t define the boundaries this way, can’t we just allocate everything evenly?” The Answer was No, because the Declaration requires council common expenses, you’d end up in court with something that may not be right or fair. Attorney Perlstein recommended again that compromise be sought and reached rather than going forward with litigation.

The meeting adjourned at 9:19 p.m.