

## Highland Haven Property Owners' Association

### Minutes of Work Session

March 10, 2008

Session opened at 6:00 with all board members present. Various members were also present.

The meeting was called to address the issue of a fountain being built by Tommy Melton, 103 Dove Road. The job contractor had contacted President Christi Lundby asking for permission to lay concrete up to the edge of the POA boat ramp. The board started questioning if the fountain was only located on Mr. Melton's property. Christi contacted the city engineer, Curtis Fry and requested that the property be surveyed. Curtis surveyed the property and reported that half of the fountain was on POA property. Christi contacted Mr. Melton, the contractor and Pete Freehill the mayor and requested that all work stop.

Mr. Melton was invited to the meeting along with the public to discuss the situation. Mr. Melton told Christi that it would be a few weeks before he would be back to Highland Haven. The building contractor attended the meeting.

The board asked to hear thoughts of the community members. Their oral responses are outlined below.

#### Pete Freehill

- Stated that a permit was not required for a fountain but was for a patio.
- The fountain looked real nice.
- It was a good idea. Would beautify the park.

#### Christi Lundby:

- Mr. Melton wants to solve the problem amicably. He has a maintenance contract for the fountain.
- Willing to trade property the fountain in on for property in his vacant lot on the corner of Highland Drive and Dove. He would pay for any expenses involved in the transfer of property.
- He still believes that the fountain is on his property.

#### Jerry Swab:

- Discussed the price of waterfront property and felt that at current prices, \$4,000-5,000 a linear foot - the property in question is worth approximately \$50,000.
- The park is one of the most desirable parks that POA has and one of the most valuable because of its large size.
- He had spoken with his son-in-law, an attorney, who pointed out that if the POA board did not address the issue, it could be construed as implied consent to use the property even if specific consent was not given.
- When the term amicable solution is given, the solution should be acceptable to the entire community.

- When the 103 Dove property is sold in the future, the new owner could claim adverse possession.
- The POA had to be very careful to make sure the association was well protected in the future.
- Additional cost to the POA members for insurance, etc. We didn't do anything wrong, get ourselves protected from liability.

Kris Wilson (Judge for the City of Highland Haven):

- Use of the property with the fountain could cause problems with future sales of the property.
- Public use can cause property to be designed as public even though it was once private.
- Liability issues for the property owners and POA
- Other issues that need to be thought out

Pete Hicks:

- The POA property is not worth top dollar because it is at the end of the channel and collects trash

James (fountain builder):

- Can't put value on land as waterfront because it couldn't be used for waterfront

Dan Varick:

- Dan asked Giles Summerlin if there would be title issues in the future if the fountain is left as is..joint ownership..he responded yes, that it should be 1 person's property.

Karol French:

- This is not an issue of how beautiful the fountain is. There is no argument about that and obviously a great deal of work and planning went into the design with the colored pictures. The contractor has worked hard and money was spent for labor and materials.
- The issue is about responsibility. Mr. Melton had the responsibility of knowing where his property lines were. When planning for this project he had the responsibility of making sure that the fountain was on his property – not POA's.
- The board members of POA have the responsibility of taking caring care of the POA property like they would their own. Board members also have a fiduciary responsibility and can be sued not protecting the citizens and POA property.
- Christi, I and the surrounding neighbors of Mr. Melton's received a letter from the city on Saturday, 3/8/2008, stating that Mr. Melton wanted to build an addition to his house and expand within the 5 foot set-back of his lot. Obviously that would require him to know where his property lines are when he approached the city.
- Mr. Melton is also in violation of the city ordnance preventing building over a property line without a variance. The city meet Tuesday on a request from a

property owner who built his house on one lot and the drive on the other. A variance was given the first time but was not approved the second time when his plans did not correspond to what was built. A five foot set back is required and that has not been met.

- POA is not responsible for this mistake.
- As state by other citizens tonight, when POA has tried to solve other people's problems it has not been to the benefit of the members of POA.

Gene Taylor:

- It is a good looking park and belongs to POA. Any transfer would require a vote.
- Possession is 9/10<sup>th</sup> of the law. Whoever possesses the property could claim it. He agrees with what the judge said.

Ed Miner:

- There is a basic problem – if someone builds a structure on your property you wouldn't like it – they just did. In the area where he worked, if that happened the structure had to be torn down – and the builder was lucky if he was not charged a penalty.
- Mr. Melton could donate the fountain the Property Owners and they agree to accept it at a general meeting. If left as is it will be a problem forever. If the property owners accept it, it will still have to be dealt with.
- This is like trees that someone cut down by his property. Before you build something, you need to know where to build.

Kris Wilson:

- It is pretty common to make sure that you are building on your own property.

Angelo Anzivino:

- There are two re-plats of lots 74, 75 & 76 on file at the courthouse

Kevin King:

Are you just going to let him take the property?

Fred Tarbox made the motion that the Property owner have the survey done at his expense to determine the property line and once established remove any construction on POA property. The motion was seconded by Ed Miner.

Vote is as follows:

Ed Miner: yes

The motion passed with a 4 to 2 vote

Daniel Varick: yes

Christi Lundby: no vote

Jo Taylor: no vote

Karol French: yes

Fred Tarbox: yes

