

Minutes of the Executive Session

Meeting of the MNA Board and the MCA Board

May 5, 2021

The MNA Board was invited to an Executive Session from 3:30-4:00 pm to discuss these questions. Then the normal MCA Board of Directors meeting commenced at 4:00.

MCA Members Present: Tim Brislin, President
Jack Eichorn, Vice-President and Secretary
David Newell, Treasurer
Ed Lyons, Community Manager

MNA Members Present: Cassandra D'Antonio, Chair of the Infrastructure, Development & Environment Committee
Kelly Heimgartner, Secretary

Question 1

As laid out in the May 4, 2021, letter to the MCA Board of Directors (attached), the MNA once again asks for an election to be held to place a resident on the MCA Board of Directors per both the MCA Bylaws and the NM State Property Law Chapter 47 Article 16.

Answer to Question 1

Tim Brislin said that MCA's counsel is in the process of drafting a letter to the MNA which details their counsel's conclusion that after review of the governing documents they believe that the 25% pertains to the combination of both Planning Area I and Planning Area II. Therefore, the total number of units needed to be sold is 1,707 before residents will get to have representation on the MCA Board. Tim noted that he thinks the 2019 rezoning works in our favor as these R-4 lots will sell more quickly than the E-1 would have which will allow us to reach the 1700+ number sooner than we would have without the rezoning.

When Cassandra brought up the issue that Harvard does not even own the land in Planning Area II, Tim responded that if Planning Area I sells out "quickly", Harvard might in fact be interested in buying the Planning Area II land.

When Kelly brought up the fact that even if their counsel believes that they are not required to have a resident on the Board, that the MCA could nevertheless still hold an election in the spirit of collaboration with the residents, particularly given that the resident would only have a 33% voting power and therefore could not outvote any item that the MCA strongly opposed, Tim said that it is

standard practice at this stage of development in a Master Planned Community not to have resident representation on the Board. The MCA feels that they have gone the extra mile in that residents have a say in the Social and Lifestyle Committee and input on the Architectural Modification Requests made in completed neighborhoods. They feel they are listening to residents and making accommodations where they can. Bottom line is that they will not add a resident to the Board until they are required to do so.

Question 2

As laid out in the May 4, 2021, letter to the MCA Board of Directors (attached), the MNA notes that there have been numerous complaints made over the last several months regarding the failure of the MCA to require builders to adhere to the Guidelines for Sustainability. Will the MCA enforce the Guidelines for Sustainability as required by the CWA Section 404 permit?

Answer to Question 2

All matters related to SWPPP are handled by the City of Rio Rancho and so while Jack Eichorn said he has repeatedly spoken to builders about their compliance to SWPPP, the MCA has no authority in the control process for those regulations.

Jack said that all lots have a drainage and grading plan that go through an engineer and receive approval and that they all meet the Guidelines. He said he has repeatedly explained to various MNA members that we just don't understand that earth moving can occur outside of the building envelopes in the transition areas during the construction phase.

Kelly followed up by asking Tim if he feels the vision is the same as the original vision and Tim said, that while that is a very subjective question, he does feel overall the vision has not changed.

Question 3

The MNA greatly appreciates the MCA's willingness to complete the sidewalks in the three neighborhoods where they are incomplete and we look forward to their completion.

However, we want to clarify whose financial responsibility this truly is. Isn't it the builder(s) of the neighborhoods who should have poured sidewalks in the first place?

We just want to ensure that the HOA dues are used appropriately and that if this was the builder's responsibility, we would ask that they are held to finishing their commitments.

How are the sidewalks around the common areas in Jemez Vista and Redondo being handled? Are those builders financially responsible for their completion?

Answer to Question 3

David Newell explained that there are two types of sidewalks, deferred and non deferred. The sidewalks right in front of a home must be completed by the builder before the Certificate of Occupancy (CO) will be granted. However, other sidewalks, like those in question here, that surround a common area are to be put in by the developer. However, since the original developer, High Desert, is no longer in the picture, it has fallen to the MCA to complete and therefore HOA monies will be used to pay for the sidewalk completion.

May 4, 2021

To: Mariposa Community Association, Inc. Board of Directors

From: Cassandra D'Antonio, Resident and Chair of the Mariposa Neighborhood Association's Infrastructure, Development & Environment Committee

Below are our concerns and questions regarding two topics that are becoming increasingly important to resident members of the Mariposa Neighborhood Association. The first topic focuses on the MCA's adherence to its Bylaws, and the second topic focuses on the Founder's adherence to its sustainability guidelines and commitments made by the original Founder through its application for a federal Clean Water Act Section 404 permit, approval of the original Master Plan, and annexation into the City of Rio Rancho.

Bylaws* of the Mariposa Community Association, Inc.

**Bylaws are rules adopted by an organization chiefly for the government of its members and the regulation of its affairs.*

The Bylaws that are posted on the MCA's website www.Mariposa-Living.Frontsteps.com or www.mariposa-living.net were signed by the founding officers of the MCA on behalf of the MCA on August 27, 2004, and recorded with the Sandoval County Clerk on December 23, 2004. They were also submitted to the New Mexico Public Regulation Commission with their Articles of Incorporation on June 22, 2004, and to the City of Rio Rancho for recognition. And, to our knowledge, these are the Bylaws upon which the MCA is supposed to be currently governed, and they have not been amended since 2004.

After a careful reading of said Bylaws, it is obvious that they are not being currently adhered to by the Founder and the MCA Board, to wit:

- The formation of a Voting Delegation, with Voting Delegates elected by their respective Neighborhoods to represent Owners' interest at MCA meetings.
- Within 30 days after the time that Owners other than Builders own 25% of the Units permitted by the Master Plan, the MCA Board President shall call for an election by which the Voting Delegates shall be entitled to elect one of three directors, who shall be elected at large. (Note: The New Mexico Homeowner Association Act of 2013 (51st Legislature State of New Mexico SJC/SB 497) a/k/a NM State Statutes Chapter 47 Property Law Article 16 Homeowner Associations 47-16-1 through 47-16-18, mirrors this provision and according to the MCA Bylaws take precedence.)
- The formation of a Nominating Committee, which shall be appointed 60 days prior to any election of directors by the Voting Delegates, consisting of a chairman and three or more Owners or representatives of Owners. To prepare for an election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine.

Based on information from the Sandoval County Assessor's office, there are currently 651 Owner units in Mariposa East. This represents approximately 26% of the 2,500 Units permitted by the 2019 revised Master Plan. Prior to the 2019 rezoning, the Master Plan permitted 1,650 Units. Moreover, our fear is that the Master Developer is going to request another round of rezoning of plats contained in the proposed Monarch Subdivision from R-1 to R-4, further increasing the number of permitted Units and prolonging Owner representation on the MCA Board.

Our recommendations are:

- Strictly adhere to the current Bylaws or
- Amend the Bylaws with input from a committee comprised of Owners, in so far as the amendments do not have a material adverse effect on Owners’ substantive rights, which can be broadly interpreted, or contradict state law.

It is of our utmost interest that Owners are represented on the MCA Board so that their input is carefully considered when important decisions are made, especially those prioritizing needs. It is also important that MCA Members have a set of bylaws by which the association is truly structured and governed and by which the MCA Board is fulfilling its responsibilities and duties. If the MCA Board had adhered to their Bylaws and formed a Voting Delegation, it is unlikely there would have been such a strong need or desire to form a neighborhood association.

Sustainability Guidelines

There are two sets of Sustainability Guidelines that are posted on the MCA’s website www.Mariposa-Living.Frontsteps.com or www.mariposa-living.net--one for Neighborhood Builders Home and another for Estate and Highland Homes. According to anecdotes from long-time residents, these sustainability guidelines were formerly strictly enforced. However, through eye-witness accounts and complaints from residents, these guidelines have not been recently enforced. Examples include total disregard of SWPPP best management practices; grubbing, clearing, and grading beyond building envelopes (over-lot grading); adequate site planning; conservation/preservation of natural vegetation and drainage contours and patterns; and drainage management mitigation.

Several residents have been told by Mr. Eichorn that they are just guidelines that can be selectively enforced based on difficulties encountered by construction crews, etc. However, our argument is that these sustainability “guidelines” were actual standards committed to by the original Founder in their application for a federal Clean Waters Act Section 404 permit, as well as commitments made during the numerous public hearings regarding the Master Plan and the annexation into the City of Rio Rancho. In fact, numerous news articles mention the sustainability guidelines as the major reason High Desert did not suffer the pushback other proposed Rio Rancho subdivisions did by various environmental and smart growth groups.

According to the CWA Section 404 permit application, all owners and builders will be **required** to follow the sustainability guidelines. It also states that a *Natural Resources Management Plan* will be created focusing on water conservation, habitat enhancement, cultural resources management, and environmental education, with the overarching goal of integrating the developed community with its natural surroundings. Has this plan been completed?

And most importantly, the permit application states under section g) Governance:

Mariposa East promises to be a place that is a “model of community and sustainable development.” But, this promise raises a series of questions: How is this model to be created, enforced, and perpetuated? Who makes sure that High Desert Investment Corporation and its successors continue to follow the goals set forth?

The answer lies within the Mariposa East governing structure, and a framework of comprehensive documents that will provide structure to the community. The Mariposa East governing structure will encompass several New Mexico nonprofit organizations and several key documents. When recorded in the land records for Sandoval County, these documents will become enforceable covenants running with the land under New Mexico law.

The objective is the creation of a practical, workable, and durable structure to govern the community, with the power to make Mariposa East a reality for now and the future. This structure is intended to guide all owners and occupants of commercial and residential property, regardless of type or use, in the achievement of the goal of building a cohesive community and sustainable development.

The foregoing statements capture the very essence of the original Founder's vision for Mariposa East and represents the overarching goals of the MNA. Is it the current MCA's and the Founder's vision? If not, please describe your current vision. There have been numerous complaints made over the past months to the City of Rio Rancho and SSCAFCA regarding NPDES SWPPP violations, solid waste containment, dust mitigation, and drainage mismanagement on estate lots. Shouldn't the Founder and the MCA be monitoring these illegal activities in accordance with their own governing structure?

It is difficult for one or two people to monitor and enforce guidelines. So, why not partner with the Owners by creating a Voting Delegation and/or resident committees to assist the Founder and MCA in realizing these objectives? We are willing and waiting.