

KENSINGTON COURTS COMMUNITY ASSOCIATION
Meeting Minutes – Board Meeting
April 10, 2016

Call to Order:

The primary agenda for this meeting was (a) to serve as a follow-up to discussion items raised in our previous meeting on December 13, 2015, (b) to address additional concerns, and (c) to provide a status on ongoing projects. In connection with the discussion anticipated on ‘additional concerns’, four members of the Town Commission were invited and attended. These included Mayor Robert Alt, and Commissioners, Charles Givens, Mary Jo Jablonski, & Earl Piner.

Old Business- The board began the discussion by announcing that all of the previous meeting minutes had been restored to the website, and the out-of-date items had been removed *from* the website. Additionally, all of the previously mailed out ‘State of the Association’ messages were uploaded to the website at an adjacent link.

New Topics- Members in the audience raised a concern that had been the subject of a previous Town Commission meeting, involving a public safety concern relating to the incomplete state of construction of Whitehall Road between Route 213 and our development, and in particular, relating to the missing sections of sidewalk, which leads to inappropriate pedestrian traffic in the roadway, including at night in very poor lighting conditions.

Mayor Alt & the Commissioners each had an opportunity to address the concern, and all expressed respect *for* the concern. They also pledged to ensure that funding for the sidewalk addition is included in this year’s budget, and they provided assurance that they would cooperate with Cecil Count officials in addressing the more general concern about the roadway incompleteness itself. It has come to the attention of the Board that this sort of cooperation will be required since this section of Whitehall Road is partly owned by the town and partly owned by the county.

Other members in the audience raised a *second* concern about the defects in the design and construction of our storm water management system within our development, which leads to flooding and inadequate water runoff. The question was raised as to whose responsibility it is to perform the needed correction. The board attempted to respond by explaining that ‘responsibility’ is not an entirely black and white issue, that it varies depending upon the specific location and specific defect, but it was recognized that this response was not sufficient to clarify the concern for the community.

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Note: Clarification added here: *Primary* responsibility lies with the developers and the engineering company that designed the landscaping for our community, because they *installed* the defects. However, due to a number of factors, enforcing a corrective action against the developers would probably be difficult, time consuming, expensive, and would have an uncertain outcome. The Town of Elkton also bears some secondary responsibility because they reviewed and approved, both, the planning *and* the execution of the construction of our storm water management system. The State of Maryland imposes a duty upon all municipalities within the state to ensure that contractors meet state standards when projects are constructed, and to the extent that the town failed to *fulfill* this duty, it is possible that the state could enforce a corrective action. Again, however, this could involve a difficult, complicated, and time consuming process.

Generally speaking, our Homeowners Association does not bear any direct legal obligation to correct these defects, primarily because it is not guilty of putting any of those defects *in place*. There are 3 potential theories, under which a homeowners association might bear responsibility. The first is ‘direct culpability’. If the HOA had *installed* a defective system it could be held accountable for the consequences of that defective installation. That does not apply here. The second is ‘covenanted responsibility’. If the covenants of the HOA were set up with the HOA having express responsibility for maintaining storm water management systems to expressly identified standards, it *could* then be held accountable. However, in that situation, the HOA would presumably also be given sufficient resources to

enable it to live *up* to such a responsibility. Clearly \$100 per year per member does not provide for such activities, and our covenants did not contemplate that the HOA would have that burden. The third theory arises under ‘environmental law’. Generally speaking, an owner of an environmental violation can (in some circumstances) be required to correct those environmental violations, and installations which cause unnatural flooding might be argued to fall within that concept. However, this would be unlikely to apply to KCCA under the present circumstances.

First, to be held responsible the party believed responsible must *own* the property where the defect is located. This would immediately rule out HOA responsibility for any defects which are located on private property owned by residents (thus eliminating many of the areas in question). *Second*, the party believed responsible must have caused the defect. Under environmental law, a party that innocently inherits property with a preexisting defect will not be held to inherit responsibility for that defect. This applies to KCCA. *Third*, even an innocent inheriting party can occasionally be held responsible for implementing minimally necessary remedial measures. However, these generally apply to scenarios with high toxicity and a potential to leach and impact adjacent properties. It is doubtful that it would be held to apply to rainwater, which results from an ‘act of God’.

This does *not* mean that the HOA has no responsibility at all. Our association does have a *moral* duty to assist all members in addressing any problems or concerns that they have, which involve our common grounds or community-wide concerns. *Because* of this, the board is committed to helping to figure out how to bring about corrective action, *whatever* that ends up requiring, *short* of driving the association into insolvency.

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Back to the Meeting: In the course of discussion with the Mayor and Commissioners, they acknowledged town responsibility to help, based in their general responsibility to ensure functional storm water management within town limits, and based in their corrective action responsibility, given that the town issued approval to a system that is clearly not working as required by the state.

The Mayor and Commissioners present then assured us that the town would not back away from that responsibility, and would apply town engineering resources towards examining the problem and towards finding a reasonable and practical solution.

It is the intent of the KCCA Board to follow up with the town and to monitor progress.

New Business-

Gate- A status was given on the waterfront gate project, which is working towards installing a security video system at our gate, so that it cannot be vandalized in the future (as it was the last time we initiated keycard access only) without having video evidence of sufficient quality to support prosecution. It was announced that (a) we have already successfully bench-tested our equipment, (b) completed construction of the mounting equipment, and (c) begun installation of the equipment into the mounting equipment. We are anticipating the finalization of complete installation *very* shortly, and will restore the gate to key card activation immediately thereafter.

Billings- Dues billings are still under way for those who have not yet paid. Members were asked to please get their payments in, so as to help us to minimize our billing costs, to avoid the necessity of taking members to collections, and to ensure eligibility for membership privileges. Please note that members, who are sufficiently past due in their dues, do not have common grounds access rights, may not hold office, and cannot have their votes counted in our elections.

Election- As mentioned in our last meeting, a KCCA Board election is scheduled for this summer, with actual date to be set shortly after receiving responses from the membership on pertinent materials to be mailed out

At this point all topics of interest seemed to be addressed and the meeting was Adjourned.

Board of Directors, KCCA