

## Questions and Answers:

### **The 2023 Reconstitution of the Little Whale Cove Condominium Association**

In August 2023, a handful of COA Homeowners attended an informal Q&A session with Gene Grant, a retired real estate attorney and Innisfree resident. Gene has been volunteering his time to the entire LWC community and lending his legal advice as the COA navigates its way through the first-year startup process.

The intent of the Q&A session was to give interested parties an opportunity to ask any questions or clear up any lingering confusion they may have regarding the newly reconstituted LWCCOA and the development of a Management Agreement between the COA and LWCHA.

This record of questions and answers is published to the LWC website as a continuously available reference document for all LWCCOA homeowners, current and future. It is intended to be a one-text “living document”, that is, as new questions are asked and answered over time, the document will be updated.

**The board of the COA welcomes questions and inquiries from all its homeowners. To help keep order, please send your questions to the community manager via email and they will be forwarded to the board.**

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August 2023:

#### **Who Maintains the Meadow House Garages?**

We discussed how to interpret the 1999 Merger Declaration provisions that say LWCHA will be responsible for Meadows House garages etc., with later provisions that say benefited owners must pay for the cost of these MH elements. Gene explained that functionally these provisions are not in conflict but are calling for special assessments to the MH owners for the association cost to maintain, repair and replace these elements. The wording is less than ideal but the legal effect is to give the COA the ability to assess the benefited owners for the cost of keeping these elements in good condition.

#### **Where do Meadow Home driveways begin**

We also discussed that the MH driveways begin where one leaves the MH private way (sometimes called “the Meadows spur” by homeowners), just as with any other units in LWC whose driveways are off a private way, like The Pines street.

#### **The 1999 Declaration of Merger: Valid and Invalid Sections**

We discussed the legal doctrine of severability that is used by Oregon courts to avoid terminating an entire agreement because some part of it is illegal and therefore void. In this

case the 1999 merger was void but that is separate from the other provisions of the declaration that an Oregon court would preserve by severing the illegal part from the legal terms of the declaration. Nothing is certain when you go to court but in Gene's opinion, there is a high possibility that the declaration would be enforced other than the illegal merger provisions. Gene also believes that the court would likely say that the declaration is functionally a management contract and would reform its mistaken provisions to enforce it as a management contract. So, the new management contract is essentially consistent with what he expects a court would do by correcting the mistakes in the declaration and treating it as a management contract rather than a complete merger of the associations.

### **How Meadow House Garage and Driveway maintenance will be funded**

We also discussed that the amended and restated condo declaration, which is under development as of fall 2023, is where we should put greater detail about these unique elements of the MH units, and how they will be maintained and reserves provided on a special basis rather than being included in the ordinary common expenses of the LWCCOA. The Oregon condo law allows for these special assessments and reserve accounts when there are elements that are exclusively benefiting certain unit owners and not all owners.

Gene explained that the reserves will be allocated to LWCCOA and will be deposited in a bank account that will be controlled by the LWCCOA board. This control of the reserves and the need to annually renew the management contract will give the LWCCOA board negotiating leverage to assure the LWCHA board satisfies the reasonable requirements of the LWCCOA.

### **Work in Progress: The Amended and Restated Declaration**

If necessary, the management contract between the COA and LWCHA can be revised to be consistent with the final amended and restated declaration of the condominium (which is in the beginning stages of development). Our goal is to avoid anything in the amended and restated declaration that would require unanimous approval of all the owners, as that is generally impossible to achieve. The Amended and Restated Declaration *may* require 75% owner approval, depending on how it is worded, but it would be best if we could avoid even that requirement. The percentage approval requirement depends on whether we are actually changing the terms from the original declarations.

### **Property and Liability Insurance for Common Lands and Structures**

Gene explained that the best way to handle the liability and property insurance issues may well be to have one master policy that names both the LWCHA and the LWCCOA as insured parties. LWCCOA could be named as an additional insured because it is merely a sub-association of the master association, and all its property is included in the property of the master LWCHA. Duplicate insurance policies actually cause problems, and it would be preferable if one policy of insurance could cover both associations.