

**Minutes of the Rosedale Master Homeowner's Association Special Board Meeting  
December 18, 2023 – via Zoom**

A Rosedale Master Homeowner's Association Special Board meeting was held Monday, December 18, 2023 via Zoom. Purpose of this meeting was to review alleged defective construction of common areas / infrastructure improvements.

With a quorum present, the special meeting was called to order by President Peter Ingraffia at 6:04 PM. Notice was posted in accordance with Florida State Statute F-720. Including board members, Resource Property Management, and legal counsel, 31 people were in attendance.

**Directors Present:** President – Peter Ingraffia, Vice-President Sigrid Seymour, Secretary – Chuck Allen, Directors Ed Mazer, Rich Toscano and Brian Fischer. Treasurer – Bob Eisenbeis was unable to attend.

Peter Ingraffia opened the meeting restating that this was a specially set board of director's meeting with only one matter to be discussed and considered.

Over the course of the year, allegations of various construction defects were made known to this board of directors.

Considering the seriousness of the allegations, and recognizing that in light of the age of the community various legal time limitations may have already passed or may soon pass, this board of directors undertook an urgent effort to conduct a good faith investigation into whether legal action would be in the best interests of the community

Today's board of director's meeting was the culmination of these efforts.

Present at this meeting was a Board-Certified Construction Law attorney, Doug Peebles, who the board had consulted and worked with over the last several months to investigate these matters. He assisted in explaining what his conclusions were and answering questions of both board of director members and interested residents during the meeting. Also in attendance was the association's legal counsel, Robert Todd.

Since this discussion involved complicated legal matters, and given Brian Fischer's legal background, Peter asked that he assist in moderating the discussion.

Brian outlined the various allegations that had been brought forth:

1. Flooding on 88<sup>th</sup> Street due to the adjacent storm water ponds being too small
2. Sewer systems not being properly finished off causing damage to surrounding roads
3. Roads not being constructed properly causing rippling and collapse
4. Under surface of community roads not being corrected when repaving was completed
5. Eastwood Park not draining properly causing flooding
6. Dry Pond 5 not draining properly
7. Swales in the Links not designed properly causing localized flooding
8. Landscaping not being completed in various areas in the Links

9. Potential drainage issues throughout the community

Brian then provided an overview of the actions the board had taken prior to this special meeting:

1. Review and collection of all known documentation which involved:
  - a. Review of all storage areas
  - b. Review of historical minutes
  - c. Review of online documents
  - d. Review of materials maintained by Turnover Counsel
  - e. Review of historical email communications
  - f. Review of prior contracts and county records
  - g. Discussions with multiple residents making allegations
  - h. Discussions with multiple residents believed to have historical information
  - i. Discussions with turnover counsel
2. Consultations and Closed board of director meetings with Association Counsel for legal direction
3. Inquiry into appropriate Board-Certified Legal Counsel to assist with the investigation
4. Consultations and review of documentation with Counsel to outline allegations
5. Review and discussions of extensive legal review

Brian re-introduced Doug Peebles as the Board-Certified Legal Counsel the board had enlisted for legal assistance in this matter, upon advice of the association's legal counsel Robert Todd, and turned the meeting over to Doug.

Doug Peebles provided a background of his experience, which included 15-20 years in the construction business, then moving into construction law where he has been practicing since 1995.

Doug stated the laws governing construction issues was both complex and confusing, and listed a number of various causes of actions that could be taken. He also clearly outlined the differences in the construction laws for residential / homeowner associations verses condominium associations.

He then defined the two areas that impact the timing of any actions we might decide to take - the Statute of Limitations and the Statute of Repose. Statute of Limitations is 4 years. The state Statute of Repose was recently changed from 10 years to 7. Homeowner associations timing usually begins at the completion of the project. With Rosedale being built more than 10 years ago, most of the construction claims would be barred from both statutes.

Regarding the repaving project, Doug stated claim would solely be on the repaving itself; not the road condition themselves, as documents show the contractor reserved the right to analyze the base and hire their own engineer to determine needs and cost. Any concerns about previous board fiduciary responsibilities are also limited, given that due recourse was shown on the project itself.

After thorough review of the documents at hand, Doug's opinion was it would be very difficult to find a law firm with the skill and desire to take this case, even on a contingency basis, given the low probability of a favorable outcome and the low number of people to go after. If we were able to get someone, Doug believed it would be only on an hourly fee basis, and we should expect \$500,000 to \$1,500,000 in attorney fees, plus an additional \$250,000 - \$500,000 in engineer and expert consultant fees. It would be a considerable up-front expense just to get a lawsuit started.

Brian Fischer asked if this would mean an additional assessment to Rosedale residents. Peter Ingraffia replied that while the reserve fund was well funded for expected long-term capital repairs, there was no funding for such an action as this, and therefore would require an additional assessment.

Additional risks were discussed, such as risks involved with state and county approvals for work that may be proposed, and regulatory agencies, given circumstances and laws had changed since the development was created. Doug stated that if Rosedale decided to move forward with such a lawsuit, proper notice to the parties would have to be made, which could take months. Furthermore, should Rosedale win the lawsuit, they could expect appeals, which would take an additional amount of time and expense.

Doug Peebles stated that based on his legal review of construction claims, there was a poor chance of success and recovery, with a high risk of liability and opposing legal fees.

Robert Todd stated that his opinion was the board had done their due diligence to investigate and determine course of action for these alleged claims. In his opinion, the actual cost of the repairs could be the same or less than what the association may pay in moving forward with a lawsuit. If the association lost the lawsuit, the repairs would still need to be made, which then would be an additional cost to Rosedale residents.

Doug Peebles agreed, stating the practical outweighed the potential in this case. He claimed that 95% of claims were settled before they went to trial, but in most cases, the settlement was far less than the original asking amount. He claimed in his experience, in most of these cases, litigants claimed they would have just fixed the situation themselves if they had known what it was going to cost and what they got out of it.

At this point, Peter Ingraffia opened the meeting to questions from resident participants.

Dave Kuchinski asked if the developer had to have everything working when it was turned over to the residents in 2020. Didn't the developer have the responsibility to fix any issues? Doug Pebble replied that HOA laws started time when development was built, and it would be difficult to prove things were not working properly at that time. Given the age of the property, arguments could be made for other issues that could have impacted conditions.

Bill Moran asked if the association's Director and Officers insurance would protect past board members if this measure were pursued. Doug replied that insurance would be one of the areas

the attorneys would go after. He is assuming the association had D&O coverage at the time but did not research what level of coverage was being maintained at the time.

Scott Boyd asked if Manatee County had any responsibility in this matter, as the developer had to show plans to the county, get approval of plans, then build to those plans. Doug responded that the government does not have culpability for inspection and approvals of plans. They insure plans meet current codes.

Brian Fischer asked what the Statute of Limitations and Statutes of Repose limits were for governments. Doug responded he was not sure, but assumed they were the same as the private sector. He added that very seldom is the government involved in a claim such as this.

Jerry Tippen stated he was not surprised with the information presented, as he didn't think we had a case. Jerry wanted to know what the board was going to do now.

Doug Peebles commented he felt it was important to preserve a good relationship with the county and regulatory agencies, as moving forward, we may need a variance for some needed repairs and may need their help in obtaining such.

With discussion and questions completed, Peter Ingrassia thanked the residents for their questions and Robert Todd and Doug Peebles for their analysis and input into this discussion. He went on to state that after listening to expert counsel's cost-benefit-risk analysis, and upon earnest review of all available competent and substantial evidence, and consideration of the options afforded by legal counsel, and considering likely potential lapse in statute of limitations and repose, and considering likely economic potential for recovery, he moved that the Board not pursue a lawsuit at this time. Chuck Allen seconded. A roll-call vote was taken. Rich Toscano, Brian Fischer, Sigrid Seymour, Chuck Allen, Ed Mazer, and Peter Ingrassia all voted in favor of not pursuing a lawsuit at this time. Motion carried.

**Adjournment:** Rich Toscano moved to adjourn the meeting. Brian Fischer seconded. All in favor; motion passed. Meeting adjourned at 7:39 PM.

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Chuck Allen, Secretary

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Date