

An Analysis of the Issues that divide Mobile Manor Subdivision Residents

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Having become a recent resident of Mobile Manor Subdivision, and in an attempt to understand the deep divide within the community, I have explored those issues I believe are at the core. I have had a professional lifetime developing subdivisions and establishing/working with governmental and community boards.

The of the primary core issue seems to be related to the actions of the board of Mobile Manor Inc and Mobile Manor Water Co Inc. (same board) and their members. An effective board must understand the needs of those it purports to represent and maintain good public relations with both its members and those who are affected by its actions. In the case of MM Inc's boards (past and present), numerous questionable decisions/actions, or lack of, have led to the situation where only around 60% of the owners are members.

Some residents feel that, decisions are made without adequate consideration of consequences, That there are arrogant and disrespectful behaviors by the board presidents towards residents, lack of financial transparency, improper executive meetings, restrictions on resident input at board and community meetings, restrictions on resident use of community facilities, violations of the 55+ Subdivision policy, office staff pay, installation of speed bumps, voting irregularities and management. I will try to review each concern and give my opinion as to validity and if valid, potential corrective actions will be offered.

I have met or talked to most of the current board members and I find them to be unusually competent and well meaning. There is however a reluctance to establish/enforce acceptable levels of behavior for its members. In particular, in dealing with known negative personal interactions by the president with other lot owners/residents. The president represents both the board and the members, and his conduct is the responsibility of the board. It is clear the president and possibly some members have great disdain for non payers. This "looking the other way" by board members has encouraged the president to make decisions and take actions that grossly exceed the legal authority of his position and the board. The board should be clear; this is not acceptable behavior for any board member and will not be tolerated. This has not happened to the best of my knowledge and underlies the root cause of the division.

Specific Issues that have validity:

Executive Sessions:

Executive sessions are held by the board routinely for reasons in violation of most open meetings standards. Executive/special sessions by the board should be reserved only for personnel matters, all other meetings should have at least 2 weeks community notice with

agenda, be open to all, voice recorded and have duplicate recordings available. All meetings except proper executive sessions should be held in an area large enough to enable observers. There should be a "members input" on the agenda for member input. In my conversations with a variety of residents, there is unanimity in the belief that all owners/residents should be active supportive members. It is up to the board to create this open, inclusive atmosphere

Financial Records:

Members/owners/residents have had difficulty viewing records of MM Inc. and the Water Company, and records are stored in several places other than the office. All financial records should be safely stored (preferably in a fire safe) and available for inspection at the office, upon request by all interested parties. Those interested parties should include all parties served by the water system and all residents paying or not, as they are directly or indirectly affected by the financial activities. All records should be digitized to be more available to interested parties.

Restriction of "non member/payers":

All lot owners should have reasonable access to all community property. I believe, based on my review of recorded/ unrecorded and court decisions, that all common areas (community center, office, and parks) were intended for the use of all lot owners, without any requirement for membership in any organization. The roads are owned by the owners, with an access easement granted to all owners. It is likely in spite of a lack of documentation, MM Inc. would be granted a prescriptive right to maintain the roadways, community buildings and parks by virtue of its continued maintenance. This would, in my opinion not be extended to the placement of obstructive structures such as speed bumps.

Speed Bumps:

Speed bumps can cause liability to all lot owners, can cause vehicle damage, are improperly sized for the speed limit, are strongly discouraged by fire and ambulance providers, and road design engineers. In the specific case of Mobile Manor Subdivision, the speed bumps were improperly sized, approved by only 34 of the residents, affecting over 300 property owners and their unimpeded easement right of access. I believe the board exceeded their authority, and disregarded professional advice by installing these obstructions.

Because the subdivision was not created with valid, recorded covenants and restrictions and a valid line of authority for MM Inc. over the lot owners, they lack the authority to compel lot owners or their delegates' to any restrictions. The only authority having enforcement jurisdiction within Mobile Manor Subdivision is Lee County.

Understanding the limitations above, it is reasonable the owners should form an organization to maintain both the private water system and the common areas. Any and all lot owners or their proxies' should be eligible to join, pay fees that they agree to, elect officers and vote. Ideally all lot owners should contribute to maintenance by paying the monthly fee, or contributing in other ways, but this is strictly voluntary. The addition of

owners/proxies should be encouraged by an atmosphere of inclusion and desirable activities.

Voting Security and Requirements:

Members /residents have expressed concern about the appearance of insecure handling of ballots and the preconditions for voting membership:

It goes without saying that all voting procedures should be above any appearance of impropriety. A separate mailing address should be enabled for mail returned ballots and on site returns should have an on site locked box. This lock box and mail box could be dual locked and a representative for both an incumbent and the person running for that office could have keys, if there is a contested position. There is also the ridiculous requirement that an owner must be a paying member for two years prior to December 31st to be eligible to vote. This is in violation of all reasonable "residency" voting requirements. I would suggest no more than three months period. My hope is that these issues are being dealt with by the board as it re-writes the bylaws.

Resident Use of Community Facilities:

Current policy of MM Inc. is that members can bring guests to community functions and facilities, unless they are also non member residents. This is unreasonable discrimination against community residents, a violation of the rights of members and is counterproductive in the effort to encourage all residents to become participatory members. This policy should be rescinded.

Management:

There appears to be a lack of contingency planning within MM Inc. and MM Water Inc. regarding operations and maintenance. There is not and needs to be a clear operations manual to include all information needed to transfer responsibility, should that become necessary. A management company could provide smooth continuity for either entity. A vote of all members/users of the Water Company could be taken to determine if this is desired by the membership. The board could decide if the management company should be retained for include MM Inc. My experience is that day to day management is best accomplished by an independent outside contractor, given the voluntary status of board members and officers.

Residents feel they are losing their 55+Community:

The 55+ issue is controlled by Florida Statute 760.29.02 (direct paste from Fl.gov website)

Intended and operated for occupancy by persons 55 years of age or older that meets the following requirements:

- a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.
- b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph. If the housing facility or community meets the requirements of sub-subparagraphs a. and c. and the recorded governing documents provide for an adult, senior, or retirement housing facility or community and the governing documents lack an amendatory procedure, prohibit amendments, or restrict amendments until a specified future date, then that housing facility or community shall be deemed housing for older persons intended and operated for occupancy by persons 55 years of age or older. If those documents further provide a prohibition against residents 16 years of age or younger, that provision shall be construed, for purposes of the Fair Housing Act, to only apply to residents 18 years of age or younger, in order to conform with federal law requirements. Governing documents which can be amended at a future date must be amended and properly recorded within 1 year after that date to reflect the requirements for consideration as housing for older persons, if that housing facility or community intends to continue as housing for older persons.
- c. The housing facility or community complies with rules made by the Secretary of the United States Department of Housing and Urban Development pursuant to 24 C.F.R. part 100 for verification of occupancy, which rules provide for verification by reliable surveys and affidavits and include examples of the types of policies and procedures relevant to a determination of compliance with the requirements of sub-subparagraph b. Such surveys and affidavits are admissible in administrative and judicial proceedings for the purposes of such verification.

The gist of this is: a duly established board (MM Inc.) would likely have standing for judicial intervention, should the provisions of this chapter be violated. Mobile Manor is registered by the State of Florida as a 55+Community, however the 80/20 rule has not been exceeded at this time. The board seems to be aware of this issue.

Valid/Invalid Issues:

Office staff pay:

Most owners/members seem to be in agreement that the board has the right to set/negotiate staff pay, that current levels are not excessive and performance is satisfactory. The process should be more open, however.

The opinions expressed are mine and are based on the information made available to me, discussions with past board members and long time residents. I sincerely hope that the recognition of, and actions to correct these issues will encourage more residents to join and participate in the community. If anyone has documentation or information that may alter my conclusions, Please do not hesitate to contact me.