

## **Board Policy On Non-Implementation of the Voting Member System**

APPROVAL DATE – MARCH 24, 2015

**GENERAL PURPOSE AND SCOPE** - The Board adopts this policy as a summary of its recent review of the Voting Member provisions included in the Kelly Plantation Declaration. The board has convened twice to discuss the nature of the Voting Member provisions and the historic use or non-use of the system by the Developer and the original Association counsel over the years prior to turnover and the approach of the Board of Directors post turnover. The purpose of the policy memorandum on the subject is to reflect the reasoning supporting the decision by this Board not to implement the system at this time.

**THE VOTING MEMBER SYSTEM** – Section 3.4 of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Kelly Plantation includes procedural language which establishes a system of Neighborhoods, designed and designated by the Developer, within the boundaries of residential areas of Kelly Plantation. The Neighborhoods were to be created by the Developer through the filing of amendments/supplements to the Declaration. The Developer was charged with initiating elections by Unit Owners within each Neighborhood within one year of the sale of the first Lot in each Neighborhood. The elections were to produce a popularly elected Voting Member who would represent the Owners within that Neighborhood in any matter during the course of their one year term which required an Owner vote. The Developer was further empowered to establish Voting Groups made up of two or more Neighborhoods which would control one or more dedicated seats on the master Board of Directors.

**HISTORICAL TREATMENT OF THE VOTING MEMBER PROVISIONS** – The system was not implemented by the Developer at any point prior to turnover to Owner control. Interviews with Developer representatives with historical knowledge on the subject indicated that it was a conscious choice to maintain a one owner – one vote structure for the first stages of the development of the Kelly community and further, that the system was then considered too difficult to implement at later stages closer to transition with too little perceived balancing benefit to justify the exercise. The legal basis for continued operation on the one member - one vote basis was the authorizing language in Subsection 3.4(b) the Declaration which allowed for individual Owner voting until such time as the Developer or Board initiated the election of Voting Members. In addition, the Board has established that it also relies on the provisions in Section 4.3 of the Declaration which provide the Association/Board with discretion to choose not to take action to enforce covenants which the Board reasonably determines to be inconsistent with applicable law.

**FACTORS SUPPORTING THE CONTINUATION OF ONE MEMBER – ONE VOTE SYSTEM** – In the course of its recent discussions of this subject, the Board considered the following specific reasons as some of the strongest reasons for not deviating from the historical treatment of the Voting Member framework.

1. The history of Owner self-representation/determination makes change from status quo difficult to accept at the Owner level.
2. The Neighborhood structure is only partially implemented in the current governing documents with several major areas governed under the Declaration not designated as Neighborhoods.

3. The election structure for Voting Members provided in the Declaration lacks procedural safeguards to protect against abuse or misuse of the process by a small number of Owners within a Neighborhood and is contrary to statutory protections provided in Chapter 720, Florida Statutes.
4. The lack of interest in HOA government leadership positions, indicated by lack of candidates for Board positions this year as an example, make it unlikely that sufficient number of candidates would step forward for Neighborhood elections.
5. The implementation of the system would require that all existing neighborhoods and all new neighborhoods created to incorporate previously undesignated areas of Kelly be represented by Voting Members. A mixed bag of represented and unrepresented groups would not be fair under any scenario.
6. The existing representative voting system has been tested this past year with the adoption of amendments to the Declaration on capital contributions via individual Owner voting. The existing system works to get the membership business done. More effective use of member voting aids, like electronic and proxy voting tools, can improve communication and involvement over the course of the coming years without requiring an "electoral college" style representative voting system.

#### AUTHORITY

See Attached Excerpts from Declaration

This policy has been reviewed by the undersigned legal counsel in his capacity as lead counsel for the Association and is approved as consistent with both past Association practice, both before and after transition to Owner control, and with current governing authority contained in Association governing documents and applicable state statutes.

Hall & Runnels, P.A.

  
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For the Firm