

**“MINUTES”**  
**SPECIAL MEETING OF BOARD OF DIRECTORS**  
**OF SUNSHINE ESTATES PROPERTY OWNERS, INC.**  
**(Unapproved)**  
**April 5, 2023 at 2 PM**  
**Hybrid Meeting Retzlaff Hall & Google Meet**

1. **Call to Order** – Meeting was called to order at 2:00 PM
2. **The meeting was being recorded via Google Meet video. The recording can be viewed at this link:**  
[https://video.wixstatic.com/video/2851bf\\_57c58de78cca4ee5b9531f09e4d5f583/720p/mp4/file.mp4](https://video.wixstatic.com/video/2851bf_57c58de78cca4ee5b9531f09e4d5f583/720p/mp4/file.mp4).
3. **SEPO Board Roll Call:** Share Nelson, Linda Davis, Jim Kennedy, Randy Davis, Tom Perrier and Frank Tewell. Mark Owen was not present.
4. **Verify the Notice with Agenda was made available to the community by the required day/time.**  
Agenda was posted Sunday 4-2-2023.
5. **Board Members consideration/adoption of any amendments to the posted agenda.**
  - a. Linda asked for the review and consideration of approving minutes of the Special Board Meeting of 3-22-2023.
  - b. Share added possible move to Executive Session.
  - c. Randy requested to add a discussion on policies and procedures.
6. **Review and consideration of approving the meeting minutes for the Regular Board Meeting held March 13, 2023.**
  - a. Share asked if there were any additions or corrections to those minutes.
  - b. Tom stated that he wanted them corrected in his report as stated in additional statements he gave Linda on what he said in the meeting.  
Frank made the motion to approve and Jim 2<sup>nd</sup> the motion. Motion passed by all board members in attendance.
7. **Review and consideration of approving the meeting minutes for the Special Board Meeting held March 22, 2023.**  
Tom made the motion to approve and Jim 2<sup>nd</sup> the motion. Motion passed by all board members in attendance.

**8. Share read the opinion letter from our Attorney Randell Friebele regarding Texas Avenue/dog leash issues.**

Share requested that her statement she made in the meeting be added to the minutes as follows:

A copy of that letter is attached hereto. In summary, it states that the Board of Directors having created and/or allowed areas in which pets could be off leash would not constitute a waiver of the covenants as to pets being off leash in other unsecured or undesignated areas. After having received the letter, Share read an email she had sent to the attorney as follows: "My assumption is: We do not need to add anything to our policies and procedures saying that dogs can be off leash in the dog parks and on the Texas Avenue unfenced area. Is that correct?" Share then read his reply: "No need to rewrite your policies and procedures. However, if any pet owner starts letting their pet off leash other than in the dog park or Texas Avenue location the Board should step in to insist that the owner keep the pet on a leash."

Linda stated that the board could not cater to just one group of people (dog owners) and ignore the request of a resident to set aside an area in the park where non dog owners could enjoy without dogs running up to them.

After much discussion on the issue Randy made the motion to have dogs off leash in the two fenced in dog parks and on leash on Texas Avenue Park area.

Linda 2<sup>nd</sup> the motion. Vote was 3-2 against. Tom, Frank and Jim voted no, Randy and Linda voted yes. Motion did not pass. Dogs will be allowed off leash in all 3 areas.

**9. Review of Suggestion/Complaint/Idea Forms received since previous meeting.**

**a. Neighborhood watch requested information on the security of the front gate.**

Tom responded that the gate is being opened at 6 AM and closed at 7 PM manually by himself and Lalo. Case closed.

**b. Resident requesting area on Texas Avenue to be designated non dog area.**

Share produced photos showing both the east and west sides of Texas Avenue area. She pointed out that west of the Gazebo there were benches and a garden. She reminded the Board that we (as a Board) represent all the residents and suggested that maybe those with dogs could use the east end and leave the west end for those who wish to use the area as a park. Realizing this would

probably have to be voluntary she said she was just planting a seed for thought at this time.

Linda stated that it would be impossible to control a dog off leash in an unsecured area to keep them from running up to someone.

Case closed.

**c. Resident requesting enforcing the no feeding of ducks on the golf course.**

Randy sent out an email to all residents reminding them not to feed the ducks on the golf course. Case closed.

**d. Approval of Women's Club to replace the lights in Retzlaff Hall.**

The following sentence was not stated in the meeting but was on the suggestion form:

The women's club donated \$2500.00 for the lights.

Randy made the motion to approve and Tom 2<sup>nd</sup> the motion. Motion passed by all board members in attendance. Case Closed.

**10. Tom withdrew his previous motion made in the March 13<sup>th</sup> meeting regarding adding language to the Policies and Procedures in PETS.**

**11. Adjournment**

**a.** Frank made the motion to adjourn and Randy 2<sup>nd</sup> the motion.

**b.** Time of Adjournment 2:45 PM

**c.** Stop Google Meet Recording

**d.** Stop Google Meet Session

**Respectfully submitted:**

**Linda Davis**  
**SEPO Board Secretary**

**RANDELL W. FRIEBELE**

**ATTORNEY AT LAW**

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March 30, 2023

Ms. Sharon Nelson, President  
Sunshine Country Estates  
4110 N. Expressway 77  
Harlingen, Texas 78550

RE: Waiver of Restrictive Covenants Regarding "Off-Leash" Pets

Dear Ms. Nelson,

You have requested a legal opinion regarding the issue of whether the Board of Directors failure to strictly enforce a covenant constitutes a waiver of that covenant. In response to your request, I would provide the following:

**ISSUE PRESENTED:**

The Covenants require a pet to be on a leash when not on the owner's property.

The Park provides two (2) fenced areas ("dog parks") which were created by the Park so that the dogs could run "off leash".

There is an unenclosed area (the "Texas Avenue area") which is not enclosed, but which pet owners have used as a dog park and allowed their dogs to run "off leash"

**QUESTION PRESENTED:**

Does the fact that the Park has created two areas in which a dog may be off-leash, and allowed the continued use of the Texas

Avenue area to be used as a unenclosed dog park, constitute a waiver of the covenant requirement that a pet must be on a leash when not on the owner's property?

**OPINION:**

Allowing the pets to be off-leash in either the dog parks or Texas Avenue locations would not constitute a waiver of the restrictive covenant.

**DISCUSSION:**

Texas Property Code §202.003(a) states: "A restrictive covenant shall be liberally construed to give effect to its purposes and intent".

The purpose of the covenant requiring pets to be on a leash when not on the owner's property is clearly for the purposes of 1) safety of other people and pets and 2) preventing unsanitary conditions potentially arising from pets allowed to "do their business" on other resident's property.

The creation of "dog parks" to allow pets to be off-leash when not on the owner's property would not be inconsistent with the purpose and intent of the restrictive covenant.

Texas Property Code §202.004(a) states: "An exercise of discretionary authority by a property owners' association or other representative designated by an owner of real property concerning a restrictive covenant is presumed reasonable unless the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or

discriminatory.

**CONCLUSION:**

Therefore, the Texas Property Code authorizes the Board of Directors to exercise its discretion in interpreting and enforcing the restrictive covenants in order to give effect to their purposes and intent. The creation of areas in which pets could be off-leash would not be, in my opinion, inconsistent with the purposes and intent of the restrictive covenant. The fact that the Board of Directors has created and/or allowed areas in which pets could be off-lease would not constitute a waiver of the covenant as to pets being off-lease in other unenclosed or undesignated areas.

Of course, one can envision all kinds of scenarios in which an unleashed pet were to cause injury to another pet or person. The injured party could basically contend that the Park's failure to enforce the covenant as written was a contributing factor to the injury and attempt to make the Park liable for the injury. However, I am of the opinion that such an allegation would be unsuccessful. Furthermore, such an allegation could be made regardless of any attempts by the Board to strictly enforce the covenant. That is why the Park carries liability insurance.

I hope that his opinion alleviates any concerns the Board of Directors has regarding the enforceability of this covenant. Should you have any additional questions regarding his issue, please contact me.