

Approved Minutes of the Regular Meeting on January 16, 2010

BLUE LAKE SPRINGS HOMEOWNERS ASSOCIATION
MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS

DIRECTORS PRESENT: Vice President Dave Ryniec, Secretary Harry Tittle, Treasurer Teresa Rossi-Clay, Directors Roy Silcox, Angela Logan and Doug Rischbieter.

DIRECTORS ABSENT: President Frank Hengel

General Manager Tony Abila

Assistant General Manager: Marsha Hampton

Vice President Ryniec called the Regular Meeting to order at 9:00 a.m.

1. Member/Guest Introduction: Matt Salayko, Lot 114, Unit 8; Larry & Bobbi Haskell, Lot 731, Unit 5; Sherry Tittle, Lot 12, Unit 1; Norm & Anne Friborg, Lot 785, Unit 7; Larry & Marilyn Larson, Lot 119, Unit 13; George Paul, Lot 140, Unit 11; Joe & Lucy Morgan, Lot 282, Unit 2; Sheila Silcox, Lot 785, Unit 7; Doug Nunes, Lot 278, Unit 2.

2. Member/Guest Forum: No comments.

3. Approval of Minutes: Director Rischbieter made a motion to adopt and approve the Minutes of the Regular Meeting on December 19, 2009 with the identified changes. Director Silcox seconded the motion.

Vice President Ryniec called for the vote. **The motion passed with five ayes and one abstention.**

4. President's Report: Vice President Ryniec stated that, according to Adams Kessler, PLC, Corporate Counsel to associations, if a board member is planning to recuse themselves from voting on a particular motion, they should not be part of the discussion pertaining to the motion and/or leave the meeting while the issue is being discussed.

Vice President Ryniec notified the Board that CalFire is planning on starting their property inspections for compliance with their lot cleaning requirements the beginning of May 2010.

Vice President Ryniec reminded the audience that there will be openings for two Board of Director positions in June 2010.

5. General Manager's Report: Manager Abila gave the following report:
He has received three bids to replace the foot bridge at Fly In Lake and will bring those bids to the Board at the next meeting. Director Rischbieter suggested researching any requirements that the ADA (American Disability Act) may have.

The secondary foot bridge located at the upstream side of Fly In Lake is starting to shift. Fly In Acres

Homes Association has agreed to board up the bridge for safety reasons and they will make the necessary repairs.

Birthday night coupons at Snowflake Lodge Restaurant will be handled differently this year. When membership dues are paid, members will receive two \$15 off coupons mailed to them with their membership card stickers. The coupons can be used on any regular dining night.

6. Member Forum: There were questions about the necessity of the upper Fly In Acres Homes Association bridge. The bridge is a convenience for the Fly In Acres Homes Association subdivision. Without the bridge Fly In Acres Homes Association members would have to walk around the lake on Rainy Drive to get to the beach area.

7. Financial Report:

a) Financial Statement Review for the year ended 12/31/09: Treasurer Rossi-Clay gave the following report: Once the year end adjustments have been made and the CPA has performed the audit, the financial statements will be finalized.

The preliminary financials for year end show that the gross income is under budget due to over budgeting of the restaurant and Associate Dues. Expenses were also under budget, resulting in net income of \$82,000 versus a budget of \$52,000. The net income will be reduced if we increase our allowance for doubtful accounts. In summary, the recreation and snack bar income along with the curtailment expenses in all departments accounted for the profit of about \$30,000 compared to the budgeted amount.

b) Accounts Receivable Review-status of account receivable reconciliations: The required Accounts Receivable reconciliations remain incomplete and Treasurer Rossi-Clay asked that the CPA review all A/R accounts as part of the audit.

There was a lengthy discussion about the simultaneous use of a subsidiary accounting system (TOPS) with the general ledger (MYOB).

Treasurer Rossi-Clay stated that there has to be a reconciliation of each account in the two systems in order to determine the amount the Association should adjust for Doubtful Accounts.

Management explained that the TOPS system is set up as the homeowners' data base and it is difficult to match the TOPS receivables with the MYOB receivables as the two systems do not have matching accounts. Manager Abila further stated that management is searching for an account system that incorporates the general ledger with homeowner data.

Treasurer Rossi-Clay stated that the discrepancies between the two programs will need to be resolved before migrating to a new system and hopefully the auditor will be able to recommend the appropriate adjustments to reconcile the accounts.

Assistant Manager Hampton requested to separate the 'Other Membership Receivables' account in MYOB to match the Receivables Accounts in TOPS (the homeowners' program) for the 2010

fiscal year until another program is instituted. She explained that by matching accounts between the two programs, the receivable amounts will be easier to identify.

Treasurer Rossi-Clay stated the General Ledger accounts are summary accounts and she would not recommend adding detail accounts, however, if Management would like to add accounts, that would be up to Management.

Vice President Ryniec stated that Management should do that.

- c) Reserve Fund reimbursements to Operating Funds and Asset Capitalization: Treasurer Rossi-Clay stated that Generally Accepted Accounting Principals require capitalization of assets in the period that they were purchased and management has been recording the asset when Reserve Funds are transferred.

8. Committee Reports:

A. Finance: None

B. Summer Recreation: No report.

C. Winter Recreation: No report.

D. Marketing: Secretary Tittle reported that the committee has generated numerous marketing ideas for the Restaurant and also ideas for marketing other assets of the Association. The Texas Hold'em Classes & Tournament will be held in February.

E. Personnel: Deferred to Closed Session.

F. Architectural Review/CC & R's:

a) Status of ARC Reviews: Director Rischbieter reported that there were no new applications for review.

b) Revised ARC Policies: Deferred to March 2010.

G. Facilities: No report.

H. Long Range Planning Committee: Vice President Ryniec read the Interim Long Range Planning Report. In summary, there are five sub-committees. Each sub-committee gave their "work in progress" report to the Long Range Planning Committee:

FLY IN LAKE: It was the consensus of the committee that the Fly In Lake complex remain in a natural state to the extent possible, while adding some additional facilities using the natural theme.

LODGE LAKE & BEACH AREA: A detailed evaluation of the existing amenities is in process using the Summer Recreation activities and usage statistics.

LODGE & RESTAURANT: The committee is reviewing the present capabilities and opportunities for new revenue generation and potential growth.

MAINTENANCE FACILITIES: The sub-committee made a preliminary assessment for short and long term needs for the Lodge Lake; the wells and irrigation system; the general area and perimeter of the lodge parcels; and the lower shop and storage facilities.

SCENARIO PLANNING: This area is in the preliminary discussion phase and will be further developed as the other sub-committees work becomes more defined.

I. EPPOC:

a) Minutes: Vice President Ryniec gave the following report:

VIP inspections will tentatively start the beginning of May.

Calfire has had requests from residents with Allstate Insurance to inspect their property even though those properties have already passed Calfire inspection. In the future, they will be focusing on properties that have not met Calfire requirements.

J. Tax Exempt: There will be an introductory meeting on Wednesday, January 27th.

9. Old Business: None.

10. New Business:

a) Retraction of multiple billings pursuant to California Civil Code Section 1366.1.

(Excessive Fees Prohibited): The following is a verbatim transcript of this issue:

Note: If a word was not clearly heard on the tape there will be a ? in it's place.

Director Rischbieter stated, As our correspondence received this month indicates, this issue isn't going away and there are still some polarized opinions on what's the proper approach & procedure, and by proper, I mean legal. We've had multiple discussions on this. I mean I have a transcript from August 8th and there is nothing material or substantial in that transcript that was discussed that would be referred to code or to law or to governing documents that supports the issue of making some members pay double of what every other member pays. And as many months as we have been discussing this, we continue to add to a list of references and citations that question the propriety of doing things the way we propose to do them for 2010 and underscoring what I still believe was the proper correction of past mistakes ? we took in 2009. If this section of the Civil Code is something that we hadn't entered into our discussion before and as Tony presented us this updated Blue Book last month, I then, looking through and reading quite a few references, I found quite a few new ones, but I wanted to call your attention to the one in the middle of the page 163 ? it's very succinct, two lines basically, and it says that 'An Association shall not impose or collect an assessment for fees that exceeds the amount necessary to defray the cost for which it is levied.' And those of you who are well schooled in Clinton Administration know that there is multiple definitions of the word 'is'. And perhaps you may argue that there are multiple definitions of the word 'for'. I don't subscribe to that belief, I believe that we assess dues for a purpose. I believe those purposes are clearly articulated in the CC & Rs which are the only power that the owners have ceded to this corporation. And we pay those dues for the use of the recreation facilities owned by the Association. CC & Rs also direct the corporation of what to use those fees for and when it comes to how these various correspondents may approach their dispute with their association about the dues assessment, they have as I have tabulated them, three different recourses.

1. The first is laid out in our assessment collection policy which I'm not sure if it is mailed every year.

In paragraph 16 there is instruction to owners when they dispute charges. “If an owner questions the accuracy of the calculation account or the amount charged the assessment account ? must be made to the board within 30 days of when the notice is sent for the charge or balance. A telephone call doesn’t reserve the right. The disputed amount may remain unpaid during the investigation but undisputed portions of the account must be paid. No action will be taken to collect the disputed amount until the completion of the investigation, and a decision is made by the Board of Directors.” The owner disputing the assessment must provide the following information regarding the matter and that is the means by which owners can object to the assessment, not pay it and reserve their rights to have a response in writing.

2. The Davis/Sterling act gives members another option instructing them on what’s called an assessment dispute but you don’t have a right to withhold an assessment. You have to pay it under protest and then you can try to recover that in small claims court.

Vice President Ryniec: So that would take precedence over our policy?

Director Rischbieter: What I’m saying is that our policy allows them to withhold payment but if they do make payment under protest they can reserve the right to challenge the association in small claims court. I don’t see them as being mutually exclusive, just a different approach.

3. The third possible approach is something I can infer from in the Civil Codes under “enforcement”, Section 1354 regarding the CC & Rs and again I’m going back to the CC & Rs that is the only real contract between the owners and this corporation as far as what our powers are with their rights ? The last paragraph of that section 1354c: “In an action to enforce the governing documents the prevailing party shall be awarded reasonable attorneys fees and costs.” There is a limit in Small Claims Court but Superior Court is unlimited. I wanted to lay that out there because again I’m very uncomfortable with the record, the way the governing documents have been interpreted and again I personally, if I take advantage of this dispute collection policy and send a letter enumerating my reasons which I have voiced many times here in this forum, I hope you will not blame me if I’m skeptical that my letter is not going to have a lot of credibility so I’ve asked somebody to present the letter with these A, B, C, D points on my behalf. So although the Association is going to be receiving that so I’m availing myself because I am a member of this policy that we have so again, members who take issue with this have at least two different recourses that again I would like to avoid the Association’s expense and time adjusting ? that.

Dave: so this member letter. Doug: I’ve sent a member letter to the Association and I expected it to be here by now but sometimes when you want stuff done on time you have to do it yourself or when you have somebody else do it maybe you don’t have.....

Vice President Ryniec: So just a brief summary. You started out with 3 items, courses of recourse ? .

Director Rischbieter: One recourse is by our policy; second is in Small Claims Court to pay under dispute; third recourse is to challenge, make it a contractual dispute and challenge it in Superior Court. And I should add with that third recourse which again I’m frightened of and don’t ? and would not wish it on the Association. This book goes on in the corporation’s code there is a section you might want to look at on Chapter 7, begins on page 285, its short and lists the statute of limitations for certain aspects and things like a contractual dispute for matter of written contracts and accounts there is a four year statute of limitations, if you want to acquiesce that its not a matter of written contract and account and claim that it’s a matter of fraud or

mistake it's a three year statute of limitations. I would predict that if an action gets pursued in Superior Court that a prevailing party would be able to claim that there are grounds for refund three or four years back. Again, that's not something that we want, that's not a rock we want to turn over when we try to straighten things out and correct mistakes ? mistakes of the past a year ago.

Vice President Ryniec: I appreciate you pointing that out because I doubt that all of us would have looked that deep into it.

Director Rischbieter: I have the specific sections dog-eared if anyone wants the page numbers.

Director Logan: So the question here is?

Director Rischbieter: I'm still uncomfortable, I would like some folks to share my discomfort that it was improper for us to bill some members twice as much what the majority members are paying.

Director Logan: You have to buy into that the membership fees are for use of the recreation center. If we're not buying into it ? .The fees are not just for the recreation center.

Vice President Ryniec: That's the last Board's decision. The final decision was every lot pays and the issue is, is every lot a member, and the answer is no.

Director Rischbieter: I'm going to say that there is a three step checkmate to that claim. OK you're not going to buy into that, alright then to my protest, or anyone's protest, on this policy you're going to get a written response which tells them what dues are really for and then in writing I'm going to take that to a judge and say, "hey, this corporation is claiming that this is what the dues are for, no, the CC & Rs, our governing document and their Articles of Incorporation, which there is only five, which tells you what the purpose of the organization is for, says that this is the purpose of the Association. So, there the things it's for are not legal purposes of the corporation.

Treasurer Rossi-Clay: And the members obtain no pecuniary gain. This Civil Code that Doug has brought up here in one sentence seems to clearly point then, if we go to that Section 2 in our CC & Rs to, another clear problem with the 2010 dues, the way it's structured.

Vice President Ryniec: There is a lot of room for interpretation and that's where we'll be, that's where we are.

Director Rischbieter: And it will be expensive for a judge to rule against that interpretation.

Vice President Ryniec: It could be either way.

Director Silcox: I am perplexed then because last year this Board went to all different gyrations to say it's a social club, everybody's got to pay the same.

Director Rischbieter: That's still true.

Director Silcox: But the last 19 years we had a two tier situation where unimproved lots paid less than a developed lot. In one year the Board made a decision to flip it, no, everyone's got to pay except for those exempt lots, which is to me a total distortion, but anyway you've gone from a tier situation to an everybody

pays the same, whether it's a member lot only because we want to keep our tax exempt status. Now we get professional opinions from two sources, that says no, everybody pays, every lot pays the same. So this Board went along with, OK, we're a social club, we all have to pay the same, that means everybody has to pay the same. Now you're disputing the fact whether it's a lot vs. a member, it seems to me, we can argue all we want here, but if we get some bona fide professional advice, which we already have and based upon that we voted, we're just beating a dead horse. We have something we can hang our hat on. If someone argues and wants to go into court, we have our CPA, our Attorney to argue back for us. We're not going to argue it.

Vice President Ryniec: I think Roy, you're right on with that. There are documents that say this is how the decision came to be. If a member wants to challenge that through one of these 2 or 3 items that Doug has pointed out, they are welcome to do that. And then we have to go back to that person and answer that person. That's when we have to get the professional help.

Treasurer Rossi-Clay: As Board Members, we are taking the totality of information including input from the attorney, however much credit we want to put into that, given the amount of time spent on it, etc. Its still our duty to take that information and make the decisions on what we deem best for the health of the Association in total, including potential suits, either way, and I realize this discussion can continue but, I would like to **make a motion on this item**, if Director Rischbieter would like, **that the Board retract the multiple billings pursuant to California Civil Code Section 1366.1, with consideration for Section 2 of our CC & Rs. Director Rischbieter seconded the motion** and stated, " although I sense enough skepticism in the room that it may not go anywhere since we need four votes ? but for the record to make an honest effort towards trying to encourage compliance with the codes as they've been.

Vice President Ryniec: I didn't call for discussion yet. Any discussion?

Secretary Tittle: Yes, according to Robert's Rules of Order, items for reconsideration can only be brought back to the table by someone on the prevailing side of an issue, who has changed their point of view. Now, just in that statement, that nullifies your motion because we know there are people sitting at this table who are not going to change their point of view. So if they don't change their point of view, we have no reconsideration. Therefore this motion should not even go forward. and this is again, from Roberts Rules of Order.

Treasurer Rossi-Clay: This is a new motion.

Director Silcox: Based upon an old motion made last year.

Treasurer Rossi-Clay: This is a new motion.

Secretary Tittle: And further this prevents those who have lost a vote from bringing back an item over, over, and over again. It's called frivolous items.

Vice President Ryniec: OK, the point of this discussion was Doug had some items that he wanted to bring for information and he did that. He did a good job and thanks. If we wanted to have discussion we could but it was not a motion item. It was a discussion item and it was good information for this Board to know because that's probably going to be out there. It's going to be out there by somebody for sure, and as far as having a

motion, I don't think that gets us any further down the road whether it's frivolous or not. I don't know why we would do a motion. But if this Board wants to vote on it, we'll vote on it.

Director Rischbieter: If we are still in the discussion, I would just like to clarify what Roy implied, that we're shifting gears here upon how we are viewing and approaching this problem and I don't see it that way, when we were considering a policy two or three months ago about what the foundation of our dues structure would be. There were itemized 8 references, 8 points of various codes and obligations of the Association and now the list is eleven and this is one. Very clear ones that have been added to that list of which the Association will receive copies.

Vice President Ryniec: So it's an information item. Would you like to retract your motion?

Treasurer Rossi-Clay: No.

Director Silcox: Can you repeat the motion?

Treasurer Rossi-Clay: **The motion is to retract multiple billings pursuant to California Civil Code Section 1366.1 which is excessive fees prohibited in consideration of our CC & Rs Section 2.**

Vice President Ryniec called for a roll call vote: **Treasurer Rossi-Clay, aye; Secretary Tittle, nay; Director Rischbieter, aye; Director Silcox, nay; Director Logan, nay; Vice President Ryniec, nay. The motion did not pass with four nays and two ayes.**

11. Member Comments:

Secretary Tittle was asked if non members could attend the Texas Hold Em' Tournament. Secretary Tittle replied that they could attend and the event has been advertised in the Lodge Log and by word of mouth.

Three members expressed the following concerns in response to Director Rischbieter's request for the retraction of multiple billings of members:

The Board of Directors is elected to represent and serve all the membership, not a select group.

There are Board Members who are using this place as a platform to project their own individual desires.

This issue has already been addressed by professionals whom the Association has paid for their advice. If a Board Member wants to bring this issue up again, they should have a professional to support their position.

Director Rischbieter stated, "I would just like to make it clear that the obligation of all of us up here to ensure legal corporate governance and it serves the Association well that we act in a manner that tries to minimize and avoid liabilities and potential costs. It serves all members well to spend our dues money on recreation and not on administrative and legal costs."

12. Correspondence: Vice President Ryniec asked that all Board Members read the correspondence.

There was discussion about the requirements that members must follow when requesting names and addresses of Association Members. Manager Abila stated that Policy 500A-7 requires a letter stating the reason for the request. The reason cannot be for personal gain.

Director Rischbieter stated that he was uncomfortable with what appeared to be misinformation that was published in the Lodge Log, which he stated was the source for a number of the letters that the Board received.

13. Adjournment: Vice President adjourned the Regular Meeting of the Board of Directors at 11:15 a.m.

14. Closed Session:
a) Employee Claim

Respectfully Submitted:
Marsha Hampton, Recording Secretary
Approved for Posting: February 20, 2010