

Approved Minutes of the Regular Meeting of April 18, 2009

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

DIRECTORS PRESENT: President Norm Friberg, Vice President Dave Ryniec, Treasurer Matt Salayko, Secretary Angela Logan, Directors Dick Lawlor, Teresa Rossi-Clay and Doug Rischbieter

General Manager: Tony Abila

President Friberg called the Regular Meeting of the Board of Directors to order at 9:00 a.m.

1. **Member/Guest Introduction:** Michael & Joann Merriman, Lot 80, Unit 12; John & Bev Vasquez, Lot 182, Unit 10; Larry & Marilyn Larson, Lot 119, Unit 13; Roy & Sheila Silcox, Lot 785, Unit 7; Sal & Cindy Culcasi, Lot 104, Unit 11; Sandi O'Neill, Lot 64, Unit 8; Anne Friberg, Lot 785, Unit 7; Martha Votaw, Lot 205, Unit 2; Marie & Tom Jones, Lot 785, Unit 7; Art Blevins, Lot 172, Unit 12; Ken Sanders, Lot 665, Unit 5; Mary Peterson, Lot 151, Unit 11; Frank Hengel, Lot 127, Unit 2; Patricia Alden, Lot 726, Unit 5; Luann Baugher, 801, Unit 7; Joe Morgan, Lot 282, Unit 2; Claudette Lawlor, Lot 83, Unit 8; Michelle Stahlberg, Unit 128, Unit 10; Pete Padelford, Lot 70, Unit 11; Pete Van Dyke, Lot 80, Unit 11.
2. **Member/Guest Forum:** President Friberg requested that the Member/Guest Forum take place after the President's Report.
3. **Approval of Minutes:**
  - a) Approval of Minutes for the March 21, 2009 meeting. **Treasurer Salayko made a motion to approve the Minutes of the March 21, 2009 regular meeting with corrections. Director Lawlor seconded the motion. The motion passed unanimously.**
4. **President's Report:**
  - a) Appointment of Election Officials: Vice President Ryniec stated that he has three candidates for these positions: Jeannie Multhaup, Lot 732, Unit 5; Jerry Getty, Lot 208, Unit 12 and Gary Davey, Lot 810, Unit 7.  
  
**Vice President Ryniec made a motion to accept the three candidates named above as the Election Officials for the June 5, 2009 Election. Director Rischbieter seconded the motion. The motion passed unanimously.**
  - b) Attorney's Communication: President Friberg stated that there were three questions posed to the Association Attorney and he informed the Board of his intent to read the proposed questions with a brief and concise summary of the attorney's opinions.

Director Rossi-Clay expressed concern that this was attorney /client information and releasing the quoted Privileged statements of the attorney would negate the attorney client/ privilege and put the Association at

risk.

President Friborg stated that the Board owes it to the members to inform them of what the Attorney said.

A discussion followed about the consequences of releasing the attorney's opinion on the questions posed. Director Rossi Clay stated that to divulge the privileged statements of the first response from the Attorney would be jeopardizing the attorney/client privilege for the Association.

Director Rischbieter stated that the Board is still in a dialogue with the attorney on question #1 and it would be counter productive to provide incomplete information. Director Rischbieter requested that the Board not include any discussion about item #1 here today until we have elaboration and clarification to make the answer to #1 complete.

**Director Rischbieter made a motion that the Board does not discuss Item #1 for the reasons stated above and that the Board go ahead and discuss Item #2 & #3. Director Rossi-Clay seconded the motion.**

**A roll call vote was taken: Director Rossi-Clay, yea; Director Lawlor, nay; President Friborg, nay; Vice President Ryniec, nay; Secretary Logan, nay; Director Rischbieter, yea; Treasurer Salayko, nay. The motion was declined.**

President Friborg read the questions and response from the attorney as follows:

#1 Question: Can the Association exempt certain lots from paying the annual assessment?

Answer: No. All owners must pay dues. The CC & Rs for Blue Lake Springs provides that each Owner of property shall pay dues for the use of the Recreational Facilities owned by the Association. And said dues shall be fixed by the Association. Property means any lot, parcel, or plot of real Estate, improved or unimproved. Therefore, all owners of property must pay dues, including owners of second undeveloped lots. Nothing in the governing documents requires all owners to pay the same amount of dues.

#2 Question: Is the Board obligated to place the exemption issue before the membership for a vote where approximately 80 members have requested that it be done? If so, is it a prudent move?

Answer: The Board has no such obligation. We conclude that all owners must pay dues; thus, there is no need for the board to place the exemption issue before the membership. If the question is whether the Board is obligated to put to the membership the issue of whether different dues may be assessed different Classes of members, the answer is no.

#3 Question: Must a director who owns a second undeveloped lot abstain from a board vote that affects the amount of assessments allocated to that lot?

Answer: No. Although there are statutes concerning director conflicts of interest they do not apply in this matter. The director's duty remains the same, to act reasonably and in good faith and in the best interest of the Association and its members.

c) A Word of Appreciation: President Friborg expressed his appreciation for the 32 members who donated their time to help with the First Mailing. He stated that it is the volunteers that help make this Association

operate and many of the faces that show up for the mailings are the same ones who are here today. He further stated that the Board appreciates their involvement and your help in making BLS move along.

5. **Member Forum:** Several of the above named members shared their concerns to the Board of Directors. These concerns are summarized as follows:

Exemption of dues for second undeveloped lots was a mistake and this mistake should be admitted to and rectified.

There should be consideration for those property owners who have combined their lots at the County level.

There was a lot of money spent on an Attorney and yet the Board appears not to accept his conclusions.

Director Rischbieter stated that it remains his position that no mistakes were made. Other governing documents some of which supersedes the CC & Rs, are entirely consistent and support the position that we have taken. The answer that we received for question #1 from the attorney is not even an explanation and contradicts the conclusion. It remains a fact that all owners pay dues. There is nowhere in that governing document where dues are ascribed to the lot, instead they are assigned to the owner. He cautioned that HOAs are not all created equal and if you look at our governing documents which includes not just the CC & Rs, but our Articles of Incorporation which were amended and adopted in 1983, which state the Corporation hereby elects pursuant to the Corporation Code of the State of California, to be governed by all the provisions of the new nonprofit corporation law, California Corporation Code Section 5000. We attributed our conformance of all the different classes of membership to the same rate based on our taking advantage of our tax exempt status.

That's on the basis that all members have equal access to the facilities. He stated that he looks forward to asking the attorney to elaborate on details where this reasoning is incorrect, and related points he did not address.

6. **General Manager's Report:**

a) Operations Review: General Manager Abila gave the following report:

The Auditor's report for the Association will be submitted the end of April.

b) The TV was fried during a power surge. He will file a claim with PGE.

c) Annual Dinner: Not discussed.

d) Return postage was not put on the By Law Election ballots, however the number of return ballots was sufficient for a quorum. There was a discussion about how to encourage members to return their ballot.

**Vice President Ryniec made a motion to spend approximately \$200 on a raffle prize for return Ballots. Director Lawlor seconded the motion. The motion passed unanimously.**

e) Dead Trees: There are a lot of dead trees in the subdivision. Letters have been sent to those owners who are currently in violation. Many such violations have already been reconciled.

7. **Member Forum:** There was a concern among several members that it is difficult to understand what the Board is discussing without having access to the information provided in the board packets. Manager Abila responded that the Board can describe the subject matter that is being discussed but not

provide the exact information that is in the packet. There was a suggestion made that the Board could name the topic, explain the issue, and provide the conclusion so there is some sense of what is being discussed.

## **8. Financial Report:**

a) Review March 2009 Financials: Treasurer Salayko gave the following report:

Total income for March 2009 was \$79,292.47, a shortfall of (\$10,591.53) or (11.8%) against the budgeted amount.

Total expenses for March 2009 were \$66,394.10. The expenses were under the budgeted amount by (\$13,684.90) or (17.1%).

P/L for March 2009 was \$12,898.37, exceeding the budgeted amount by \$3,093.37 or 31.5%.

YTD income for 2009 was \$272,313.81, a shortfall of (\$40,122.19) or (12.8%) against the budgeted amount.

YTD expenses for 2009 were \$238,246.41. The expenses were under the budgeted amount by (\$2,356.59) or (1.0%).

YTD P/L for 2009 was \$34,067.40, a shortfall of (\$37,765.60) or (52.6%) against the budgeted amount.

The beginning balance in March 2009 in the Reserve Account was \$458,414.11 and the ending balance in March 2009 was \$458,683.61.

b) Overview of 2008 Financials: Manager Abila requested that the Financial Committee meet this year and every year to do an overview of the year end financials.

**Vice President Ryniec made a motion to accept the March 2009 Financial Report. Director Ross-Clay seconded the motion. The motion passed unanimously.**

Director Ross-Clay gave a summary of the Operations Report/Financial Analysis for the 2008 fiscal year. She reported that the Snack Bar had done very well and there should be consideration given to expanding the hours of operation for this activity to further develop this success. The restaurant outside events and other events had done well. Winter Recreation activities were within budget and had done well. Restaurant dining (Friday and Saturday) resulted in a net loss of approximately \$83,000 for the year which was an average loss of \$15.31 per meal. Suggestions for future discussion and consideration included reducing expenses by adjusting payroll methods and/or less expensive menu items, increasing revenues by raising menu prices, etc. In an example extrapolated for a couple who dined at the restaurant 3 times a month (or 36 times last year), the Association would have subsidized their meals in excess of \$1,100.00.

## **9. Committee Reports:**

A. **Summer & Winter Recreation:** Vice President Ryniec reported that Winter Recreation is looking for a co-chair and secretary for next year. The Easter Egg hunt went well. St. Patrick's Dinner Dance was cancelled due to lack of attendance.

### **B. Marketing:**

a) Marketing Review Committee Report: Secretary Logan reported that they have gathered all the data. They will be meeting next month and will present their report at the next Board Meeting.

C. **Human Resources:** Director Rossi-Clay reported that the issue of participating dentists in the offered Benefits plan had been resolved.

**D. Architectural Review/CC & Rs:**

- a) Status of ARC reviews: Director Rischbieter reported that Bob Asher has joined the committee. There is one request for a variance that the water company will redo, then ARC will review the request. There is one paint request that was reviewed and another paint request that has not been reviewed due to insufficient information submitted.

**E. Facilities:**

Long Range Planning Committee: Vice President Ryniec reported that there are five working committees. The present day assessment is close to complete and will be given to Manager Abila. The future long range planning is now the committee's predominant focus and will report to the Board at the next meeting. The group will continue to work, while awaiting the new Board's approval to continue.

- F. **EPPOC:** Millers and Rowleys will continue the yard waste drop from April 15<sup>th</sup> to November 15<sup>th</sup>.

**10. Facilitator:** No report.

**11. Old Business:**

- a) Discussion of Implementation of Attorney's Communication: Director Rischbieter suggested having a telephone conference with the attorney to address the inconsistencies and omissions that the Board perceives. The Board agreed that a telephone conference was a good idea and they will provide their questions for the attorney to Manager Abila by April 24<sup>th</sup>. Manager Abila will contact the attorney to set up a date for the conference.

**12. New Business:**

- a) Attorney Client Privilege-Maintaining Confidentiality, (moved from Closed Session):  
Director Rossi-Clay read from an article taken from Davis/Stirling which states,  
"Because communications, i.e., letters, e-mails, etc. between the board and legal counsel are privileged, members do not have the right to inspect those communications. These are not part of the 'books and records' of the association subject to inspection."

Additionally the article further states that "it is inappropriate to grant a member access to any letters, or emails sent by the association's attorney to a board member or to the association manager if that letter or email is subject to the attorney- client privilege. The same goes for the attorney confidential oral advice if it is recorded in meeting minutes." "But if it contains merely an explanation of (and this is an example) how many votes are necessary to amend the By Laws, etc. that information will not be privileged."

Director Rossi-Clay stated that as far as the Agenda item under New Business (BLSMWC Request to Share legal opinion) her interpretation of that would fall under non confidential information as a general process related clarification.

- b) BLSMWC Request to Share Legal Opinion: Director Rischbieter explained that the BLSMWC requested that BLS share the answer they received from their attorney on item #3 (Conflict of Interest). The Board agreed to give the BLSMWC the publicly disclosed portion of the answer to #3.

### **13. Member Comments:**

Comments from several of the members present included the following:

Frank Hengel: The current CC & Rs that were adopted in 1994, received approval from the court instead of approval through the voting process. This was due to an unattainable voting requirement that the Association obtain a quorum in order for the revised CC & Rs to be adopted.

Director Rischbieter stated in response to Mr. Hengel's statement that there wasn't just the issue of obtaining a quorum. There were also 10-12 specific provisions of the updated CC & Rs that were in dispute. He is currently researching the history of the Amendment and the involvement of the Court.

Roy Silcox: The question of whether the restaurant is profitable or not has continually come up over the last seven years. The restaurant is an amenity that the Association provides for its members along with many other amenities. What difference does it make whether it is profitable or not? The Association is providing a service. The other amenities such as the pool are not analyzed on whether they are profitable or not. We don't all use the facility the same way.

Secretary Logan responded that she doesn't think anyone has posed the question whether running the restaurant is a worthwhile endeavor or not, but having the information doesn't hurt anybody.

Director Rossi-Clay agreed with Secretary Logan, that having a financial analysis of the restaurant is informative. She stated that we do not have the ability to capture the usage of the recreational facilities in the same way. We have the data on the usage of the restaurant. Members may want to know to what extent they are subsidizing the restaurant.

Joe Morgan: The restaurant is our key epicenter of our social program, of who we are and what we do.

Bev Vasquez objected to the term "subsidy" when describing the restaurant budget. She stated that some members use the pool, some like the restaurant, some the tennis courts, etc. She stated, "We are not subsidizing anything. We are one big homeowners association, we pay little dues for everything we give to our members."

Director Rischbieter responded that regardless of whether the financial status of the restaurant was researched before, we have a fiduciary responsibility to stay abreast of changing trends and elements in our budget. He acknowledged Mr. Morgan's comment that there was an "infrastructure value" in having a viable restaurant to serve special functions—an enhanced availability and range of services we could provide to our members range of social and service organizations.

### **14. Adjournment: Director Rossi-Clay made a motion to adjourn the regular meeting. Secretary Logan seconded the motion. The motion passed unanimously. President Friborg adjourned the regular meeting at 11:55 a.m.**

**15. Closed Session:** The Board met briefly in closed session to discuss individual perceptions of Director-To-Director communications.

Respectfully Submitted:

Recording Secretary Marsha Hampton

Approved for Posting: May 16, 2009