

**COMBINED MEETING OF THE BOARDS OF DIRECTORS
MONTEREY DUNES COLONY ASSOCIATION
AND
MONTEREY DUNES COLONY MUTUAL WATER ASSOCIATION

SPECIAL WORKING MEETING**

May 17, 2014

PRESENT

Frank Williams, President
Bob Dickinson, Vice President
Jeff Schwartz, Director
Bill Michaels, Director
Tom Bugary, Secretary and General Manager
Tom Nolan, Homeowner

ABSENT

None

WELCOME

Frank Williams called the special working meeting of the Board to order at 12:00 PM, May 17, 2014 at the Monterey Dunes Colony Clubhouse. The purpose of the meeting is to review the 2nd draft of the restated governing documents – the Bylaws and the CC&R's – of the Association.

REVIEW OF 2nd DRAFT RESTATED GOVERNING DOCUMENTS

The Associating's legal counsel developed a 2nd draft of our governing documents based on input from interested homeowners and the Board of Directors.

Below is a summary of homeowner and Board's recommendations during this meeting. Please note that, in several instances, the Board is responding to an email from Tom Nolan, unit 148, dated May 6, 2014 in which he raised several issues; the numbers on the responses correspond to the numbers in his email to the board.

CC&R's

1. (Concern) If an Owner, Owner's family members, or Owner's guests are injured as a result of negligence by an employee or employees of the Association, they may not sue the employee(s) or the Association. (7.23; 11.3; 5.11.5; 9.8)

The Board agreed that section 7.2 relates to the ECC, section 11.3 excludes liability for negligence by owners and section 9.8 limits liability to willful misconduct and gross negligence,

all of which seem reasonable. In section 5.11.5 regarding pets, the Board agreed to remove the word “presence” in line 34.

2. *If they do sue, Owner is personally required to defend the Association and pay all the costs and damages caused by the negligence of the employee(s)’ actions. (9.9; 5.9; 5.11.5)*

The Board agreed that the recovery of damages and costs by the Association if it prevails in a legal action seems appropriate.

3. *Owner surrenders all homestead rights. (8.22)*

The Board agreed that an owner only surrenders homestead rights to the extent of a lien created by a delinquent assessment. The Board elected to keep section 8.2 as is.

4. *Owners are given “self-help” rights to take action into their own hands. (13.5)*

After discussion, the board felt that the language regarding Enforcement Rights in the current CC&R’s at section 11.5.1 is more appropriate than the proposed 13.5. and decided to substitute the old wording (section 11.5.1) for the proposed 13.5.

5. *We have Party Walls? Owners are responsible for maintaining the Party Walls. (Article 10;4.6)*

The Board concluded that there are no party fences within the colony that are not the responsibility of the association for maintenance and repair, (unless an approved ECC action on behalf of an owner), so all references to party fences in article 10, should be removed. The Board concurred with Article 10.1 minus references to "Party Fences" and also 10.2. The Board elected to omit 10.3 through 10.6, and let the general rule of law concerning party walls and fences apply.

6. *The CC&Rs make “suggestions.” (11.5) [See the word “requirement” in 11.5.1(v)]*

The Board agreed that section 11.5 needs to be reworded to be consistent with the concept that while owners bear certain financial responsibilities, they are not required to purchase insurance to cover them. The word “requirement” in Section 11.5.1(v) is one example of that inconsistency. It should be replaced with “responsibility” to match the wording in line 21 on page 57.

7. *The Association is entitled to recover attorney’s fees, even in small claims court.*

The Board felt that it was reasonable for the Association to recover its costs when it prevails in a legal action, including attorney’s fees for preparing for a case in Small Claims Court.

8. If Owner rents out his or her property, the tenant may not have a dog on the premises during the rental. (5.11.7)

The concern about tenants' dogs on premises during a rental was resolved when it was pointed out that the pet restrictions on renters do not apply to long-term renters, defined as those with leases over 30 days.

9. The Association and the Board have the right to interfere with, join, control, and pursue legal causes of action against Owner's tenants for violations of the rental agreement, even if such actions should be contrary to Owner's wishes. If they do not like any resolution Owner may reach or settlement Owner may make with the tenants, they may pursue additional remedies and monies. In such cases, Owner would be responsible for attorney's fees and costs. (6.5; 6.6)

Article 6 pertains to the enforcement rights of the Association when tenants are in violation of the rules and owners are unable/unwilling to intervene, or when absentee owners do not pay assessments and continue to collect rents. We have only two long term renters, one of these is renting from the Association, and we have appropriate leases that cover these enforcement rights. After discussion, the Board agreed that keeping this Article as is would be appropriate.

10. The Association wants to control the private behavior of Owners by enforcing rules of the Association, such as: a) violation of **any** law at **any** time or place (13.1; 13.2; 13.3); b) violation of a policy of the Association (2.20); or c) having a vehicle with a lawful but offensive odor. (5.14.1)

The Board discussed the articles referenced in this concern and agreed that they are not inappropriate.

11. Enforcement by the Association of a claim that one person has **EMBARRASSED** another. (13.9; 5.8)

The Board discussed section 5.8 (Unlawful Conduct) and agreed that the words "or cause unreasonable embarrassment" could be deleted (line 26, page 16) and if deleted, would not weaken the intent or ability to enforce the provision against nuisances, and would remove possible ambiguity.

12. The Board may employ a lawyer to consult, advise, and bring legal actions regarding an Owner. Costs would be the responsibility of Owner personally regardless of the outcome of the process. No legal action, lawsuit, or finding against an Owner would be required. (13.19)

The Board agreed that section 13.19 of the proposed CC&R's is an elaboration of Section 11.11 in our current CC&R's, and is confusing as written. The Board agreed to replace the proposed Section 13.19 with the existing Section 11.11.

13. Some Board terms last a full year; some Board terms are terminated as early as six months into the term. (5.7)

The Board agreed that in the proposed Bylaws Section 5.7 (“Election by Acclamation”), the word “board” (line 20, page 9) should be replaced with “annual” to follow our long standing practice and to eliminate confusion.

14. If your property is damaged by lightning, fire, wind, or other event covered by the blanket hazard insurance policy, the Owner of the affected property is required to pay any deductible of such policy. If, on the other hand, the damage is caused by flood, everyone in the Association shares the costs of rebuilding, including the deductible. (11.7.2)

The issues regarding insurance coverage and the varying requirements for flood, earthquake, and fire insurance were discussed. The Board agreed that, while the varying requirements were confusing, the proposed Article 11 makes the appropriate distinctions and should be maintained.

15. Individual Board members and officers have blanket immunity for any act they commit that causes damage to an Owner’s property, even if such act was not committed in the performance of their duty. (5.18)

The Board elected to delete the words “employees and agents” in line 19 of the proposed Bylaws Section 5.18 (page 11).

Bylaws:

1. A financial charge can be assessed for members to obtain copies of Board minutes. (6.3)

The Board elected to replace “upon reimbursement of the Association’s costs” (line 11) of the proposed Bylaws Section 6.13 (page 14) with “the Association may require reimbursement of its costs” to conform to the wording in the Civil Code.

2. Members may not be able to listen to Board meetings via telephone or Internet. (4.8; 4.9; 6.2)

The Board discussed the request to have remote access to Board meetings via telephone or internet; management agreed to look into what other associations are doing and to see how the HOA industry was handling these requests. The concern was to ensure there was only one official record of the meeting to avoid later controversies. This did not seem to be adequately addressed in the draft Bylaws.

3. Notice posted outside the Association’s office should not be a sufficient method of communicating such notice. (2.11(c))

The board discussed posting requirements at length. The proposed Bylaws 2.11, 2.13 and 6.7 are all in agreement with the Civil Code; our practice is to post notices and agendas in a prominent place, to email if requested, to mail if requested, and to post on the Association website. Bob Dickinson suggested that we could post to our website and automatically email all members who have agreed to accept Association communications electronically.

4. *It appears inappropriate for a Board member, seeking renomination to the Board, to have a seat on the Nominating Committee. (5.4.1)*

We discussed the Bylaws section pertaining to the Board nominating committee and its process and agreed it was inappropriate for a current Board member seeking reelection to serve on the Committee. Bob Dickinson suggested removing all language about who should be on the Committee, other than the preceding exclusion, since the Board could make appropriate choices when appointing the Committee members each year. Frank Williams suggested adding after “Colony,” (line 35, page 8) the following sentence “Consideration should also be given to increasing the diversity of membership on the Board.”

5. *The Board wants to prevent golf carts in perpetuity. (5.14.1)*

The board discussed golf carts in proposed CC&R’s 15.14.1 and agreed that, should a member require a golf cart for mobility at the Dunes, the board would never disapprove such a request.

Bob Dickinson pointed out that the language in 9.4 about owner responsibility for termite damage was inconsistent with the practice of the Association taking full responsibility and should be changed accordingly. The Board concurred to change this provision.

ADJOURNMENT

The Board thanked Tom Nolan for taking the time to make his suggestions. Frank adjourned the meeting at 1:30 pm. There will be a meeting to review the governing documents after the attorneys make the changes made at this meeting. There will be a teleconference to discuss Ted Swanson’s resignation from the Board and appoint his replacement on 5/23/14 at 3:00 pm.

FOR THE BOARD OF DIRECTORS:

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Thomas J. Bugary, CMCA, CCAM
General Manager and Secretary