

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

**July 20, 2019**

**PRESENT**

Bill McGowan, President  
Todd Davis, Vice President,  
Rick Crowley, Treasurer  
Allen Rudolph, Director  
Todd Davis, Director  
Biff Jelavich, Director  
Tom Bugary, Secretary

**ABSENT**

None

**WELCOME**

Bill McGowan called the meeting to order at 10:00 a.m. on July 20, 2019 at the Monterey Dunes Colony Clubhouse and established that we have a quorum of the board present.

**MINUTES**

The Board reviewed the draft minutes of the 5-18-19 Board meeting. It was M/S/C to approve the minutes as presented.

**TREASURER REPORT**

Rick Crowley gave a verbal report for May and June 2019. Rick noted that the payments to the Capital Reserve Replacement Fund and to the Mutual Water Association were current. Rick also stated that the end of the fiscal year is when we are scheduled to make annual payments on our solar loan and this year, we repaid the reserve \$20,931.12 from the two utility lines in the operating account. Additionally, Rick stated that all our CD and bank account balances and interest rates could be seen in a written report, which has been attached to and made part of these minutes.

**FINANCE COMMITTEE REPORT**

Rick Crowley, committee chair, gave a verbal report. He stated that the Finance Committee had met the previous day to review the Colony's unaudited finances for fiscal year 2018-19. He reported that the committee has engaged John Bellitto, CPA, Allen and Cook, Inc., to complete our annual audit for FY 18-19.

Regarding the Colony's operating expenses for the year, we had a \$23K loss versus a budgeted loss of \$14K. The overage is primarily due to maintenance items because of the relatively severe winter that we had with additional unanticipated operating expenses. There were also substantial unbudgeted expenses for the

operating line, "Coastal Projects".

Regarding the Colony's reserve expenses, it was noted that the asphalt project was approximately \$160K over budget due to additional areas that were chip sealed because of added easements, installation of a drainage field and curb system at the main gate and a major increase in areas where asphalt was replaced; however, due to savings from many other projects, the overall reserve budget was only \$3K over budget.

Overall the Colony spent approximately \$12K over what was budgeted. Rick noted that with a budget of \$2.1M, \$12K is a very small variance.

Regarding the Water Company, Rick noted that we had a substantial un-budgeted expense of replacing the water system control panel at a cost of \$25K. This panel had to be moved up 4 years on the reserve schedule but due to modern technology, we only used a portion of the budgeted \$43K for the replacement. Another unbudgeted expense concerns the loss of an employee. Ed Downie was our state licensed water systems operator and upon his departure, management temporarily contracted out the operation to an off-site company that manages small municipal water systems. Although these overages were offset by other saving and deferments, we did not realize the \$15K surplus that was budgeted and we simply broke even.

### **ENVIRONMENTAL CONTROL COMMITTEE (ECC)**

Fran Gentry, committee chair, could not attend the meeting so Tom gave the ECC report for her. He reported that the committee had met for a site visit at both unit #300 and #330 immediately following the last board meeting on May 18, 2019, and the following actions were taken:

- Unit #300 had requested an extensive unit remodel. After an onsite review, the committee approved the request with stipulations.
- Unit #330 requested to replace their fireplace system. After an onsite review, the committee approved the request with stipulations.

### **AD HOC HIGH SPEED INTERNET COMMITTEE**

Stuart Wentworth, committee chair, gave a verbal report regarding the status of high-speed internet at the Colony. Stuart reported that the committee is working on two things: 1) improving the internet we have with Redshift and, 2) making real fiber internet available to the Colony.

Regarding Redshift, they have installed a new tower where our old television tower was (in the maintenance yard) and they have put equipment in an undisclosed location in Castroville to feed the tower. The feed will be via AT&T and provide a decent speed, i.e. the initial user of this new system is downloading at 11 mbps. It was noted that subscribers will not automatically be transferred to the new system and will need to request an upgrade. If everyone switches to the new system, we can reduce the number of antennas at unit #210 (old system).

Regarding the fiber project, the committee has found an engineer who has been looking at how to physically bring the fiber to the Colony and they have some preliminary pricing. The committee is still working on alternate pricing, i.e. (we do much of the labor), and will not have a proposed price to share with the board until a later date.

### **GENERAL MANAGER'S REPORT**

## **MONTEREY DUNES COLONY ASSOCIATION**

This is a cumulative report covering reserve projects and other work as completed in fiscal year 2018-2019, (July 1, 2018 through June 30, 2019). It also includes management topics associated with fiscal year 2019-2020 and the July 20, 2019 director's meeting.

### **Engagement Letters for 2019 Audits of the Association and Water Company.**

Signed and submitted to Allen and Cook CPAs in June 2019.

### **Windows, Doors, Fences, Roofs, Decks, Garage Doors, Skylights and Meter Enclosures.**

The reroofing of residential units (330, 332, 334), (282, 284, 286), (276, 278, 280) were completed. Garage units (330, 332, 334), (276, 278, 280) and (282, 284 and 286) were also completed, permits finalized and warranties issues.

I have asked Coastal Roofing to bid on the next set of residential buildings and garages to be reroofed in the new fiscal year, (July 1, 2019 - June 30, 2020). If their cost per square foot is close to the previous year, I plan on giving them the project based on low cost and past performance.

Coastal Roofing replaced 26 skylights on units 252, 258, 146, 166, 268, 300, 306, 176, 310, 316, 144, 312 and 230.

Buildings on the schedule for reroofing in the 2019-2020 budget year are residential units; (336, 338, 340), (318, 320, 322), (168 and 170) and associated garage buildings.

Due to severe leaks and structural damage at unit 124, we had to replace the flat, built-up roof for that unit out-of-cycle. Addition flashing issues were addressed and the roof made watertight after warranty work.

Four domed flat roof skylights were replaced at unit 304 and 1 at unit 124.

Association staff has replaced 17 windows/sliding glass doors at unit 122 and 15 windows/sliding glass doors at unit 294.

Association staff installed 4 oceanside windows at unit 320 and all 4 of these new windows leaked during heavy rains last winter. Milgard replaced these windows and reimbursed association staff for the tear out and install of the new windows.

Light poles were replaced, (out-of-cycle) near units 178, 270 and 294.

Burned ocean side deck stairs and boardwalk were replaced at unit 204.

Association staff replaced the landside bedroom deck at unit 208.

The upper and lower oceanside decks at unit 206 and the entry deck at unit 118 were resurfaced with Trex material.

During the course of recent building inspections, units 202 and 204 were identified as having failing trellises in their courtyards. The main trellis beams are cantilevered into the flat roof system. The roof is sound and

is not scheduled for replacement until fiscal year 2030, however, it will have to be “peeled” back to expose the cantilevered beams for replacement and then “mopped” back into place. This roof repair will be an out-of-cycle expense to be completed as weather permits.

Garage doors were replaced at units 104 and 222.

Association staff replaced chimney chase covers at units 298 and 194.

The courtyard fence between units 338 and 340 was replaced.

A pedestrian door was replaced at unit 304 and billed as a CTO, (charge to owner).

The entryway trellis was replaced at unit 322.

Meter enclosures were replaced at units 108, 182, 206, 208, 216 and 280.

Association Staff reinforced deck benches at units 108, 112, 120, 122, 124, 140, 164, 270, 292 and reskinned the bench at unit 118. Additional deck repairs were made at units 152, 232, 242, 268, 278, 334 and 288.

### **Landscaping / Storm Cleanup**

Central Coast Tree and Timber removed a Monterey Cypress near unit 182.

Several windblown and damaged cypress trees were cleared and hauled away due to high winds and heavy rains. As a safety precaution, trees were trimmed back from the houses and garages.

Association staff installed drainage and cover near the mailbox structure serving units 162-176,  
And near unit 330

In May the Central Coast Tree Service completed the cleanup of the upper areas of the Monterey Cypress throughout the colony.

Association Staff has completed trimming the boardwalk areas throughout the colony, removed the wind-blown sand off the boardwalks and landscaped the fencing along the easement at the front gate.

### **Painting**

Association staff has painted the trim on units 318-320-322, 330-332-334 and 108-110 and 112

### **Trex Boardwalk Replacement**

Certain sections of the 1<sup>st</sup> and 3<sup>rd</sup> generation Trex boardwalk are starting to warp and separate from the runners. In these cases where the Trex is close to 20 years in service, we replace those sections with a new generation Trex material. Boardwalk was replaced on the oceanside of 294, 296 and 298.

### **Drainage Field, Chip Seal and Asphalt Repair**

We have completed the installation of a drainage field and new curb system near the guardhouse. The asphalt repair is complete and the chip seal is complete and swept 5 times. The centerline buttons have been installed and parking spaces remarked.

This winter, there are places throughout the colony where imperfections surfaced up through the new chip seal. I met with the lead foreman at the Don Chapin Company on April 25, 2019 and addressed these warranty issues. The Chapin crew arrived on site on May 2d and ground down some of the high spots on the roads to improve drainage, replaced some asphalt that could not be re-sloped by grinding and built up some of the lower areas. They returned several times in May and June, spreading oil and rock over patched asphalt to match the existing chip seal and then swept up the excess rock. Association staff will be adding additional road markers this summer to enhance visibility on the roads at night.

### **Tennis Court Repair and Resurfacing**

Vintage Contractors resurfaced the tennis courts and the multi-sport court area on the week of April 8 through 12. In addition to the existing striping, we added striping for two “pickle ball” courts and purchased paddles, balls and nets for this sport. This equipment is available to homeowners at the colony office.

The tennis court fencing is scheduled to be replaced later this summer tightening up the chain link and stabilizing the fence.

### **Increased Septic Maintenance**

At the recommendation of our septic maintenance company, I increased the septic maintenance, (pumping and inspection) from once a year to twice a year for systems #1 and #2, (June and February). At some point in the near future Systems 3 through 9 will also have to be increased to twice a year due to additional volumes of use.

The holding tanks in systems 1 and 2 were repaired due to hydrogen sulfide gas corrosion that caused deterioration of the upper areas, (non-submerged areas) of the tanks.

### **Coastal Projects**

Haro and Kasunich and Associates completed the Record of Dune and Beach Elevation Coverage 1970-2017. Digital and limited hardcopy of the document is available at the association administrative office.

### **Drywood Termite Maintenance Program Update**

#### **Residential Unit Local Treatments: (Wheeler Termite Company)**

8-7-18	Units 148, 184, 318
10-16-18	Units 222, 162, 118, 334
10-24-18	Unit 118
11-14-18	Unit 152, (Decks)
11-14-18	Unit 176
12-19-18	Unit 210
1-9-19	Unit 296
2-27-19	Unit 242
4-9-19	Unit 260
5-22-19	Unit 318
7-10-19	Unit 298
7-10-19	Unit 142, (Re-inspection due to real estate inspection/findings)

Garage Local Treatments: (Wheeler Termite Company)

8-7-18 Units 126, 148, 308  
12-6-18 Unit 212  
5-22-19 Unit 212

Garage Fumigations: (Wheeler Termite Company)

9-13-18 Units 126, 128, 130  
9-13-18 Units 132, 134, 136  
9-13-18 Units 138, 140, 142  
9-15-18 Units 184, 186, 188  
9-15-18 Units 190, 192, 194  
9-15-18 Units 318, 320, 322  
11-7-18 Units 114, 116, 118  
2-12-19 Units 202, 204, 206, 208.

Residential Fumigations: (Wheeler Termite Company)

5-7-19 Units 144, 146, 148

**MONTEREY DUNES COLONY MUTUAL WATER ASSOCIATION**

**Water Conservation Billing**

During the May 2019 billing period, there were 13 units that exceeded the Tier 1 water conservation limit. Eight units were under the \$5.00 billing limit. There was 1 unit in Tier 2 and 1 unit in Tier 3. There were also 3 units fumigated in the May billing period. Fumigations use a considerable amount of water from the units and those units fumigated are exempt from usage limits during that billing period.

During the June 2019 billing period, there were 20 units that exceeded the Tier 1 water conservation limit. Seven units were under the \$5.00 billing limit. There were 5 units in Tier 2 and 8 units in Tier 3.

Owners who are in the Tier 2 or 3 water use zones are billed for their usage in accordance with Association Policy.

**Changes to Water System Management**

With the departure of Ed Downie, I have turned control of all water system operations over to a company called Carmel Lahaina Utility Services. They have water distribution system operators on staff with the necessary licenses to test and operate the system. The association will continue the maintenance side of the water company and the septic systems in the hopes of keeping the cost of water production and distribution as low as possible.

TESCO Controls completed the installation of the new Programmable Logic Controller and electrical panel controls. This project took two days of wiring and programming and was a success. The system has been on line since the evening of Thursday May 9<sup>th</sup> without issue.

I contracted with Salinas Armature and Pump in Salinas to rebuild both of our water distribution booster pumps and purchased a third booster motor/pump combination to put on the “shelf” in the event it is needed

during the year I have done the same for the chlorine pump and several sizes of repair couplings for the distribution system.

I purchased a sandblaster and associated OSHA equipment to clean up the rust on the water tank. This purchase should reduce our annual maintenance costs on the 2 water tanks, 8 fire hydrants and associated pump room equipment. Contracting for sandblasting has been a costly maintenance line item and scheduling is subject to the limited group of contractors who do this type of work.

In March and April 2019, Castroville plumbing and association staff replaced the spindles and flowmeters at both wellheads. These new meters helped track water acquisition and it was my hope that they would help in narrowing down the location of (possible) water loss in the colony.

Since installing the new meters at the well heads, we have replaced 10 water flowmeters at high-volume-use units and turned the old meters in for testing and calibration. Our acquisition to discharge rate still has a considerable variance so hopefully this testing will show the reason that disparity. If not, the next step is to conduct listening tests throughout the colony for possible leaks in the distribution system.

## **OLD BUSINESS**

### **FY 2019-20 BOARD OF DIRECTORS ELECTED BY ACCLAMATION**

Bill McGowan stated that at the May board meeting, the board appointed an ad hoc nominating committee chaired by Bill Michaels, #268, and members were George Maciag, #310, and Jim McFeeters, #158. All five current board members announced they were running again; however, there were no other volunteers, so the five nominees were elected for the 2019-2020 year by acclamation. The new board (same as the old board) will seat on October 19 – the day we have our annual homeowners meeting and barbeque. A homeowner in the audience suggested having the BBQ later (it's at noon), lighter food, and developing teams for the various activities we offer (pickle ball, tennis, bocce ball, etc.)

### **BOARD DISCUSSION/VOTE ON CLUBHOUSE REMODEL**

At the last board meeting, the ad hoc clubhouse remodel committee made a report to the board with some suggestions and price quotes. After listening to homeowner comments and concerns over the last year (including last month), the board M/S/C the motion to approve the clubhouse remodel committee's suggestions at their stated prices. Bill thanked the committee – Karen Matteis, 324, Sumerle Davis, 340, and Monica Gentry, 184 - for the last two years of work on the committee.

### **UPDATE ON NEW ASSOCIATION WEBSITE**

Bill announced that the Association's new website has almost been completed. It will be much more user-friendly compared to our current website and will include a landscaping page with tips on the best plants to plant and which weeds to pull and when. Our current website is not being helpful at all, so all our existing information has to be manually entered into the new website creating a little bit of a delay. It was suggested that we form an ad hoc committee to review and maintain content for the new website in order to keep it informative and up-to-date.

## **NEW BUSINESS**

### **HOMEOWNER CHALLENGE TO LEGALITY AND PERMIT STATUS OF SHORT-TERM RENTALS IN THE COASTAL ZONE**

Bill began the discussion by stating that we had a homeowner in the colony who contacted the Resource Management Agency of the County as well as the California Coastal Commission regarding the status of the people who rent here maintaining a permit in order to rent.

Bill: There is a lot of other noise going on here, but that is basically what the deal is. Those who engage in short-term rentals and the permitting process – What are the regulations? What does the County require? What does the Coastal Commission require? and, what is the legality of these issues? The second thing we want to talk about is does this illegal activity of renting, if it is indeed illegal, void or negate our overall insurance coverage that we maintain for our Association here at the Dunes. I want to start with, kind of anecdotally, this is probably an exhibit of bureaucratic mumbo jumbo, but it is quite amazing to me the lack of rules and regulations that pertain to this particular issue. I'm sorry that Dick Matthews is not here today – he is an official with the Monterey County Renter's Alliance, which works with people who rent their units all over the County, not just here. There are some 600 people in this renter's alliance that rent property here in Monterey County, and he is probably current or more current than anybody I have met on what the regulations are and the processes. He attends the County meetings and Planning Commission meetings on all these particular issues. He has been in France enjoying a vacation, so he is not here today, but I have been in contact with him and have some information he wishes to share. First of all, what has happened to date is that several of our renters and several of our non-renters have received letters from the County – inquiry letters – regarding the activity of short-term rentals without a County permit. This question basically comes from the Resource Management Agency. The Coastal Commission does acknowledge that you need a coastal development permit to be able to rent your property here in the coastal zone – that's pretty clear. However, the Coastal Commission says, "not my war" and the County has the facilities and responsibilities to enforce this so go talk to the County. The County has a list of recommendations and guidelines about short-term rental activities and a whole bunch of other things because the Resource Management Agency does supervise short-term rentals and other things, but they have a list of guidelines, not statutory or regulatory statements, but guidelines that do instruct enforcement officers from the County to pursue nuisances from short-term rentals. This is part of their world – nuisance monitoring – and nuisances can be anything from parking noise and the list goes on and on. What has been filed against the people who rent in our community here is nuisance activities and that has perpetrated the letters our people have received. People who don't rent and the Association, who does not rent any units here, have also received a letter that basically says that they are doing short term rentals without permits which is just not the case. This is a scattergun approach and I have no idea how many people are getting these letters, some are getting them as recently as yesterday, but if you get one just be advised that that's what it is and that's what's coming. I, personally, have investigated administrative guidelines concerning short-term rentals, once again this is not rules and regulations (I'll talk about that in a moment) and they do say that you need a permit. How do you get a permit? Well, that's a different story. I don't know how you get a permit. The permit that is available for short-term rentals in inland regions and in the coastal zone are meant for a bed and breakfast and it cost twelve thousand bucks. Well, we don't do bed and breakfasts here – it's not statutory or regulatory (as I have pointed out), that's a guideline. For those of you who rent, in order to get a short-term rental permit in the coastal zone, and this is all on the County's website so any of you can go to the County's website and look it up, but it says that in the coastal areas of the County, short-term rentals may be allowed by obtaining a coastal development permit under the category of similar use. The permits cost approximately ten thousand dollars. To start the land use permitting process, we recommend that you call area code "831-755-big disappointment" and ask to speak to a permit technician or email your questions to so and so at Monterey County. Once again, this is a guideline. And the fines for not having a permit are currently in the works. *Is this confusing? You're getting the idea.* On April 19 of this year, the Monterey County Resources Agency proposed a 19-page document on amendments to the County Statutes, in other words making short-term regulations a law, not guidelines anymore. These are scheduled to be submitted to the Planning Commission on July 24, but they've been going to be submitted to the Planning Commission and the County and the



Supervisors for how long I don't know.

Tom: More than 30 years.

Bill: More than 30 years. This is very much in movement. Now, after we heard that our homeowners were receiving these letters about short-term rentals we contacted our attorney, Steve Weil of Berding and Weil LLP, who are prominent homeowner association attorneys and who are our attorneys and are relatively local, and asked them to research this problem for us – both the insurance issue and the short-term rentals. I am attaching a copy of his response here. It was written to one of our homeowners but I'm going to put it in the minutes so that everyone can see what it basically says and he kinda gives you a summary of what I just said, 'short-term rentals may or may not be legal at this particular point because the permit you get is a bed and breakfast.... It may be passed by the supervisors eventually and there will be a mechanism to get this coastal development permit that one would need to rent their property.' *Clear as mud? Yeah. So enough of that.* At this particular point, Steve Weil also addressed the insurance issue and we assigned the insurance issue to our board member Rick Crowley and I'm going to hand it over to him to address the issue that our insurance is voided by people either renting their homes without a permit or the Association allowing people to rent their home without a permit and how that might affect our insurance coverage.

Rick: I have spoken with our broker multiple times and also, in fact, read through all the policy documents as well as the attachments. As with most liability policies there are no specific exclusions for rentals – there is no mention of rentals in our policy. There does not appear to be any exclusions for County or City ordinances and remember the Colony isn't the renter per se so how would the Association be drawn into a potential issue. I think the broker would say, there is de minimis risk, at least that is what I was told. That doesn't mean there is zero risk, there could be some problem with the policy or some illegal renting short-term basis by some homeowner here. The Association was sued 2-3 years ago for a wrongful death – I don't know how you get a more major claim than wrongful death – we were named in that lawsuit about the death of a renter caused by a fall at a rented property. Our insurance company stood by us, very forcefully, actually, once we were named. Our CC&Rs provided us excellent coverage with respect to saying that if you are going to rent, the homeowner must supply us with commercial liability up to \$1M. Because it was a wrongful death, they felt that they would draw on the deeper pockets of the Association. The judge ultimately tossed the Association out of the lawsuit and it continued with the homeowner. So, again, our CC&Rs (that the attorney also reviewed again) are very protective of us. Another example is, that even with that lawsuit, this insurance carrier has continued to provide our liability insurance and has renewed it. They have inspection rights and have inspected the Colony and really hasn't asked questions about the legality of short-term rentals. Those are the main points. I think that until the County passes a law and we have an issue, that's the potential risk but I don't see any issue where we'll have an exclusion because of a renter, I mean a renter or a homeowner could do something illegal today that could potentially draw us into an insurance claim and our insurance would cover it. That's my read and that's what I can pass on from what our broker said to me, but I think we should continue to monitor it.

Bill: Thank you Rick. One thing I wanted to emphasize though, that, in accordance with our CC&Rs, those of us who rent and who have a normal HO6 policy, it does not cover rental activity. If you rent, you really need a commercial liability waiver on top of that HO6 to protect yourself. The Association liability doesn't extend to you in that regard.

Angela: I have a question about the rental situation, I know that if we change something in our unit, if we do something different we have to sign an agreement that indemnifies the Association and it gets filed with the County that basically says we are taking full responsibility for the change (i.e. ECC action). Can people who rent sign something that would indemnify the Association?

Bill: In our litigious society, it is hard to cover everything. I hope that everybody gets a copy of our umbrella liability policy, I get mine through the mail, for the Colony. I think everybody should get a copy from the insurance carrier acknowledging what the limits of liability are - \$32M bucks in damage.

Angela: This would be more for homeowners to say, "I indemnify you with my commercial policy and all the paperwork is in place." It's more of a summary judgement when you get to court vs a ....

Bill: Right. But I think each one of us has different limits for toleration of liability and that sort of thing and I think individually, and it probably goes without saying that each person should look at their own individual situation and ask themselves am I adequately insured for the unknown here.

Karen: Can I say something? I'm Karen and I'm the one who has gone through this and I just want to let you know that I am an Air B&B vacation rental owner. I have 488 5-star reviews and I have been through all this through... I've actually been on the receiving end through Santa Cruz County, I got hit for TOT (Transient Occupancy Tax), I got hit with not having a permit, so I've been all through the processes from the receiving end. So, having had to go through all that stuff, I understand a lot... I understand the laws... I am a very pro vacation rental owner. So, I moved here thinking that maybe I would even be a vacation rental owner but when I moved here, I was having various issues. I would try to go to Tom and some other people and didn't feel I was being received well and I would hear that they were saying I was making things up. So, I began to document, whenever I could, with video and things like that, which I proceeded to try and take to the Board and they didn't even want to look at them. I had a private meeting with Bill and with Todd, they did not even want to look at my videos. So, it's just been escalating over the last year or so with problems because I do live here full time, I work at home until 1:00, I am a financial adviser... I trade in the markets. When the markets close at 1:00, I go to either San Jose or Monterey. So, I see a lot of things that happen here. I've had people in my hot tub, I've had people come up on my deck and harass my dogs through the plate glass windows, I've had people lost in the Dunes show up at my house after dark – it scared the shit out of me because they are lost and frantic – Biff told me to just keep my doors locked. I've just been the subject of ridicule and it's been building and the reason **I did go to the County** was that I had just returned from Costa Rica with an pneumonia and I was walking my dogs. I took them all the way to the end of the property and cut the corner where Todd lives and there was a guy, you know the golfers were all here, there was a guy with his penis hanging out and he was urinating. I cut back around the corner and called security and said can you just let them know this is a public area and he said no, Tom said you call the police, it's your word against theirs. I said excuse me, I'm sick and I'm tired, just let them know it's a public area. So, I sent an email to Todd and said please let them know to be more discreet and he said call security; I said I already did and then he said to call the police for an investigation. I said I'm tired, can you please just contact them, and I said you really don't want police coming out and dealing with this. He didn't respond back so I did call the police and the police said this isn't a police matter and they said call this number which led me to the Resource Agency and they said well, let me look up the address and they said well, Todd doesn't have a permit. I said well, I'm sure he's an attorney and wouldn't want to break the law just like me. You never want to break the law when you have professional licenses and he said there are no permits here. I said these guys have been doing this for decades, there's like tons of rentals here, the HOA collects fees, they pass out... And I kept trying to say no, I think that Biff has a management company, they've been grandfathered, there has to be something... the only reason I'm here is that Todd told me to get an investigation going and so, she said there's been no permits. I have all the documentation, I am a documenter, I have never been sued, I've been in my financial industry business for 20 years, you don't make it that long without being a good documenter. So, I kept trying to get confirmation and they sent me all the way to Melanie Beretti, the top person – I am happy to forward all the documentation (back and forth) – and they're saying no, you need these permits, here is all the documentation and here is what you have to do. So, I called to apply for permits for myself, so I'm actually in the process of going to be permitted. Then I sent all this information to them, I don't believe anybody here has called Melanie Beretti, according to

Elizabeth Ruiz, so nobody from the Board has contacted the County as of the last time I talked to them. But then I was dealing with my property that I sold in Rio Del Mar that had an Air B&B in it, I have an attorney suing me for \$1.5M because she slipped on a flower bud on the stairs – I also have an insurance license – and so she says was this related to your Air B&B at all because you would probably not be covered and I’m like what...It turns out that she said don’t worry about it and I said well we have all these Air B&B’s that are not in ordinance so she told me your supplemental policy is not going to be covered if it’s related to someone who is not following ordinances and she sent me documentation that states “If a unit owner who uses Air B&B violates state or local ordinance codes such as violations could result in an increase in insurance premiums for an Association as well as difficulty recovering on a claim under existing policy. Condominium unit owners who occasionally rent their units out on an occasional basis can also be unknowingly violating their insurance policies” and it goes on. So, then I contacted our insurance company and they told me that this was a gray area. That other law suit was not in common area. If a renter is in violation of ordinances burns down a property or if they injure themselves in common area, it could possibly be a gray area. I have an insurance license, they will try and slip their way out of paying.

Stuart: You know, we don’t need to know all this shit.

Karen: Pardon me.

Stuart: We don’t need to know all this ...

Karen: Yeah you do need to. Can I just finish please? So, I contacted them, and she said notify your HOA and I did. So, then the attorney said that he doubts we may be covered. I said I just want to see it in writing that we will be covered from the insurance company, that’s all I asked for...something in writing from the insurance company that we will be covered which seems reasonable and that’s all I’m asking.

As far as the Coastal Commission goes, she says we are very pro rental, we are pro coastal access, she wasn’t interested in enforcement, they do not enforce, she was interested in my videos of renters on the dunes and things like that, she said but we don’t know whether they are renters or owners that are tramping around the dunes and flying their kites and the things that I have documented over time that you guys didn’t really want to look at and that were not being reported by Troy and other people. Whenever I call and ask them to come out, they said ... these are problems though if these renters are going to tromp around the dunes, like in the videos, these are problems. So, these are things I have been documenting, asking the Board to take a look at and do something about it. I’ve been doing this for the past year...

Bill: I think we get the point, please, you’re next (pointing to another audience member).

Colleen: I am Colleen Floyd Carroll. My family has been here for 38 years and things are changing with Air B&B, VRBO, and the reality of economics. My family bought here 38 years ago, they bought a beautiful 4-bedroom place for \$250,000 and we have been able to enjoy this beautiful place for all these years. Certainly, for folks who are buying today, and with the cost of maintaining a second home, being able to rent regularly only makes sense. I am hoping to retire here one day. I feel like the only way we’re going to deal with the rental issue is if we have a really solid in-house team to help us address these kinds of issues and come up with clear policies that direct people how to manage this stuff well. We had an ad hoc committee that I served as part of with Dick Matthews and I would like that to become an established, functional committee so that we can come up with some strategies. I think that there are answers to all these questions. Dick Matthews, who is not here today, I have been in communication with him over the last couple of weeks prior to this meeting. Dick is in France and trying to enjoy himself and he is sending me long pages of policy and documentation around some of the issues that we are dealing with here today. I think we can address some of these issues without dragging everybody through all of the details. Air B&B,

VRBO, and others have short-term rental insurance - you can name the homeowners association as an additional insured to cover us there. I carry a \$2M umbrella policy, in addition to my insurance, to make sure that if anything happens it's not going to impact anybody and I'm going to be covered. It's not going to impact you all and I am not going to lose my house in the process. I feel like there are people who really know this stuff, and the Board does not necessarily have to get bogged down in all the details. If you let those of us who are working on these issues – I am working on the Monterey County Vacation Rental Alliance (I am as active as I can be given that I live in Philadelphia) – and I am excited about the idea of having a conflict resolution committee. I feel like some of the personality issues have gotten in the way of us dealing with some of the core things that need to happen here, and I would really like for us to find...I think that there is a path forward. I would like to volunteer for the conflict resolution committee, my background is as a social worker, a community organizer, and someone who actually works with people on justice and other issues. I have a lot of experience on this topic, I'm sorry that Dick's not here today, I'm hoping that we can find a way that we all live peacefully together and that people, regardless of what their personalities are – some people raise the flag on lots of stuff and some people just kinda go along to get along – that everybody be treated with respect. The reason why anyone who has received a notice from the County – I haven't been able to find anything in my inbox yet – this has all happened because we didn't have a good policy for how to deal with rentals when...if someone calls me and says that my renter is causing a problem, I'm on the phone with them within a minute.

Karen: Colleen has been excellent

Colleen: Within 60 seconds, I am texting, I am emailing, I am calling. I am finding out what the issue is, I am asking if it is their car in the guest parking space, did they bring additional vehicles (they are only allowed three cars). I've only had one incident of my almost seven years of renting and that was actually when I had a property management company, that shall go unnamed, that had an instant book at my house and created a problem that I didn't know about and I had to deal with the consequence of that. I want us to have some clear policies around how we deal with these kinds of issues and who is responsible. I think that the homeowner should be responsible – be on the first line. I would have been directly in contact with security, I would have asked them to come down right away. The reason why we're dealing with the County now is that we didn't deal with it in house, we stayed out of the cross hairs of the County to-date because we have in-house security and when that doesn't work, then the sheriff is called and then we've got the County and now everybody is pushed. The reality right now is that the permit system doesn't exist, the California Coastal Commission never approved the (it's been decades) what the County put forward, so it's been a gray area. Some people say that because it is not explicitly within the law that short-term rentals in the coastal zone are not approved makes it a non-issue. It is a gray zone and it is now at the discretion of the County. No one that I know of, with my involvement in Monterey County Vacation Rentals, has successfully gotten a permit in the coastal zone to-date. The process is opaque (non-transparent), there is no guidelines for what will get you approved or not approved. They used to have, until recently, basically what was a bed and breakfast permit; you needed to have commercial kitchen inspections and you needed to have someone on-site at all times. It was designed for something we do not have.

Karen: That's all changing.

Colleen: It is changing. And so, what we've been trying to do is lay low. The County has been promising a good, solid short-term ordinance which we have been asking for a fair ordinance for years and years now and we keep hearing that in 6 months we're going to get that. We have a hearing this Wednesday, those of you who want to preserve your home values or if you want to sell at some point in time or if something happens and you do need to rent at some point in time I would think that you would want to have those options available to you. I think if the 40% of us who rent here are all of the sudden no longer allowed to rent and have to put our houses on the market, it will affect all property values so it is in all of our best interests to

have...the train has left the station, rentals are here, this was developed as a second-home community and having full-time residents is new. I'm glad for it because I hope to one day be a full-time resident, but, you know, we have 10-11 full-time residents and 120 homes here, so I feel like we need to come up with a policy that really makes sense going forward. I would really like to find a way so that we're not dealing with things willy-nilly as they come up but, rather, that we have a proactive approach.

Bill: Thank you Colleen. One thing that I do want to point out is – I want to thank you for your information – we have received from Dick Matthews, who presented here a number of months ago, a white paper on the things you need to consider when you are renting your property. It was an outstanding job. We didn't need a committee, he took it on, and his Renter's Alliance has been very effective to help people who do rent, which I know you are a part of (Colleen), so these are all good points. One thing I do want to emphasize here is that the regulations have been written, they're not adopted yet, but they do take some of the things that Colleen was just talking about – the ambiguity, the non-enforcement, the non-regulatory issues that are there – and make them regulation if it's passed and I have to tell you that the regulations are unbelievably ominous, they even go into the point of saying “where is the road in here?” and “do you have a water system? we want to inspect the water” and “do you have parking? We want to inspect the parking?” “Are you more than 5 minutes away from the fire department or sheriff's department? We want to inspect that”, they also want to know about insurance, everything they're going to have their nose in. This is serious business and I totally agree. Thank you for both of your comments (Karen and Colleen).

Julia: This is the first I've heard of this, I haven't been really involved in it, but if I had a renter who was going to the bathroom in the wrong place, I would call Troy or whoever was there and I would expect them to come.

Bill: Yes, the person did come down there, inspected it, and the report is available for review.

Karen: He did not.

Bill: He didn't find anything at that particular point and that was the end of it.

Karen: He did not come. He said I'm not coming.

Bill: I'm not arguing that. I'm telling you what the report says. The sheriff was called, as Karen pointed out, and the sheriff said we don't get involved in those kinds of crimes.

Julia: Well of course. We pay extra to have the concierge and security.

Bill: Well, he was called, he went down there, he didn't see anything and that was it.

Donna: I think what Julia is asking is as an owner, whether it's your rental unit or you see somebody doing something, are you supposed to call security?

Bill: Of course.

Donna: Well that was the question because security is saying no, call the sheriff. But we are supposed to call security.

Bill: That's a 'he-said' 'she-said' kinda thing, but yes, if you see something going on like that notify security.

Stewart: When we rent out our places, do we pay a tax to anybody?

Bill: Yes, you have to Monterey County transient occupancy tax.

Stewart: That is acceptance in itself.

Colleen: It's a gray area. We've had an attorney look at it, but I would love to hear what you have to say.

Bill: Part of the arm of the County enjoys the occupancy tax and collects millions of dollars from it, but that's not the Resource Management Agency – they are the agency that has the guidelines. The way it works today is that if the Resource Management Agency gets a nuisance complaint against you, they will send out a letter, like they have, saying 'this is a problem'. If you get a second complaint, the fines are material. In the new proposed regulations, the fines for complaints are a civil penalty not to exceed 175% of the advertised rental rate per day or \$1000. A third complaint is a civil penalty not to exceed 275% of your advertised rental rate per day. So, we're talking some bucks, and that's just for nuisance complaints to the Resource Management Agency and that's in effect now, it will become law if this passes. I'm not saying that this is going to pass because, as has been pointed out, they've been trying to do something like this for 30 years and haven't done it yet.

Colleen: There is a hearing this Wednesday, actually at the Board of Supervisors, and if you're renting, I encourage you to come down. I think we're meeting at 10:00 a.m. If you are interested, check with me after this meeting and I would be happy to meet with you.

Karen: I think it is at 9:00 a.m.

Bill: We beat this to death. Are there any questions.

Colleen: Let me just say one more thing. The white paper Dick presented was done by a committee, there was a whole group of us, and I would like to make that committee permanent.

Bill: Thank you for that.

Wim: You said we beat it to death, but I would like to add one more thing. When I come here during the week, it is quite empty and it seems to be an incentive for people that are on the beach to move up a little towards the houses, even houses. And they come right up on the Dunes. I like to have renters at the Dunes, because people are here, and it discourages people from the beach from coming up here.

Karen: We started Next Door to report that because we have seen fishermen come up here. On the record, I'm not anti-renter.

Colleen: People should document problems. Because security isn't there to document it, doesn't mean it didn't happen and so there should be a process by which we can submit documentation of problems.

Bill: Thank you very much. <Bangs gavel> Ladies and gentlemen that is enough of that. We've had it with that business. Any questions out here.

Beth: To clean the decks, what is recommended to get the Mildew off of the decks?

Tom: You have to pretty good to use a pressure washer because your chances of cutting into the deck are really good. There is a product from Ace Hardware, (didn't remember name but is called), "Mold Armor"

that you can spread on your decks, it will cut through the mold, and rinse off. Even a pet can be out there. I've used it on my decks, and it will cut right through the algae. It was noted that homeowners are responsible for the cleaning of their decks.

### **APPOINT CONFLICT RESOLUTION COMMITTEE**

Bill recommended a Conflict Resolution Committee that will be different from the Internal Dispute Resolution Committee. Whenever we find a person or situation that is conflicted, we can turn to somebody to analyze the problem and make a recommendation to the Board for action. Tom Nolan who is a long-time resident and acknowledged litigator, has volunteered to be Chair of the Committee and I've heard that we've had some volunteers to be on that committee. The Board M/S/C to approve the formation of the committee with Tom Nolan as the chair.

### **OWNER'S STATEMENTS**

#### **CLARIFICATION RE: HOW LONG A GUEST CAN STAY AT A UNIT WITHOUT BEING COUNTED AS AN OVERNIGHT OCCUPANT**

The #278 owner has requested clarification as to what time a visitor can stay at a unit without being counted as an overnight occupant. During discussion of this request, there was a suggestion that it be referred to the Conflict Resolution Committee and it was also suggested that nothing be done. It was decided not to create a new rule; however, it was noted that the homeowner needs to exercise their own good judgement.

#### **ATTENDEES AT A DINNER PARTY**

Since the rules state that all gatherings with more than 10 people require the active presence of an owner or owner's child over the age of 21, the #264 homeowner asked if a renter were having a dinner party and they had 12 people, could they seat 10 people inside the house and put the other two people at a table in the courtyard. The answer was no.

#### **CONFLICT OF INTEREST OF THE BOARD OF DIRECTORS**

The board members are responsible for recusing themselves if they ever have a conflict of interest in an issue before the Board that might affect their fiduciary responsibility to the Colony. It is the president's job to police this issue for the Board and it was noted that there have been several occasions where one of our board members has been fined for rule violations by his renters and, of course, that person has recused himself from the discussion or the vote. This issue has been pretty well monitored and has never been problematic. It was noted that to some extent everyone at the Colony has a financial interest in any and all decisions made for the Colony. Your Board is made of two people who rent their homes and three people who do not rent their homes, the same percentage allocation of renters vs non-renters at the Colony, and all decisions made for the Colony are with the good of all homeowners as our objective.

### **GENERAL MANAGER'S STATEMENT**

Tom made the following statement: "I have two issues. I have sat here and listened to this whole thing and did what I was supposed to do and kept my mouth shut for most of it, but two issues. One, I would like to clarify that I and my staff are not a management company. I am a direct employee of the Association and my boss, per my employment agreement, is the Board of Directors through Bill McGowan (President) or whoever sits in that chair. I don't have additional insurance, I am an officer of the Board so I am covered under the D&O insurance and I am not the same as a management company – god bless them but I'm not

part of that kind of thing. That said, please understand that I'm one of you guys, I'm not from a company that you can just discard. Secondly, the guards, the guards have been a part of this organization since I've been here, since before I've been here. They are \$14 an hour labor, ladies and gentlemen, they are not law enforcement officers. They don't get into it with people, they observe. They are not afraid to walk up and talk to somebody if they feel they're not threatened. If they are threatened or feel that they are threatened, their directions from me is to stand off and call the police. That's the law enforcement that is supposed to be here and take care of anything that has to do with bodily injury or something like that. Now, if they see somebody in the water, they go out there and get them out of the water if they feel safe enough to do that; however, my guidance to them is that they are not law enforcement, you don't put yourself in harm's way and get this association sued, you don't get yourself in trouble, you're not a cop and that's what we have police for. So, my guidance to those folks are if you can call the police yourself, if the person doesn't want you to call the police, advise them to call the police and report it to me. I got to tell you that every time there is an incident the guards will call me, they call me directly and give me a direct report and my answer to them is to write the report and I want it on my desk the next day and that's the way it is handled. So, any misconception that these are Wyatt Earp coming out there to handle any kind of confrontation is just not the way it is. Otherwise, we need to pay \$50-60 an hour and get an armed security company out here to do that kind of work, that has the permits and has the insurance.

Bill: Can they shoot the horses?

Tom: They wouldn't be our problem, they would be contractors, so they can do what they want.

Donna: Tom, I don't understand what you are saying. We still call the guard and then they make the decision on whether they are going to call the police or not?

Tom: Absolutely. They will respond, they will look the situation over and they will react accordingly, and I am the one that directs them. They work directly for me. They are not under operations, they are not under administration, they call me directly so I am responsible for the guards.

Colleen: But in the case of a renter, if someone is renting here, the person who organized the rental should be responsible for putting that person in check.

Tom: You're right and then we notify you (the contact person).

Colleen: If you call me, I'm going to deal with it. I have another person on standby in the area who will respond. I have three backup systems.

Donna: The person that is being bothered shouldn't have to call the homeowner, we should be able to call the guard.

Tom: What happens is that the guard will verify and then call the concierge or me. The concierge will immediately call the owner – they have the list down there to call the owner for the problem. If it is just a renter that parked in the wrong spot, their job is to walk up and explain to the renter; if the renter immediately corrects it, it is good and they just put it in the report and thank you very much.

Colleen: I told Troy if you have a problem, call me right away, please let me know.

Tom: Now, if the renter starts mouthing off to the guard, then he cites the owner right there and that will go in their report.



Colleen: I found out about the one problem I've had in all my years two weeks after the fact, the person was long gone, and the property management company had an insufficient deposit to take care of that. I don't want to know two weeks later, I want to know the moment it is happening, that would be my expectation, so that I can deal with it at that time.

Tom: That's the policy, the way it's been for 20 years here – before me, even, with Andy here.

Colleen: So now it's time to make adjustments.

Tom: If you guys want to do something else, that's fine.

Unidentified female: If anybody feels like they are in danger, regardless of whether it's a renter or a homeowner, you're going to call the police. I am going to call the police if I feel like I am in danger

(Bill: call 911)... If somebody is wielding a knife or there is somebody pounding on my door, I am calling the cops.

Bill: Tom thank you very much for your clarification and comments. I think that needed to be said and I appreciate it

Unidentified male: I would just like to say that I think Tom has done a great job. Anytime there has been an issue with our rental property, the guard contacts us immediately and we respond back.

Bill: And you've been very responsible and responsive too, so thank you.

Tom: The goal is not to cite the renters, the goal is to make sure the renters do what they are supposed to do and have a good time so they can give you all good Yelp ratings or whatever ratings and that's the way we do things and we're going to continue that way until you give me that \$60 an hour labor and the gunslingers come on the property.

## **WATER COMPANY BUSINESS**

### **Water Conservation reports for May and June 2019**

Addressed in Managers Report.

## **ADJOURNMENT**

The meeting was adjourned at 11:55 a.m. The next meeting is scheduled for September 21, 2019 at 10:00 a.m. The annual homeowners meeting will be on October 19 at 10:00 a.m. followed by a BBQ at noon.

### **Respectfully Submitted**

//s//

Thomas J. Bugary CMCA, CCAM  
General Manager and Secretary

## **EXECUTIVE SESSION**

The board met in executive session to discuss litigation

## Treasurer's Report May and June 2019

This report covers our fiscal year budget status through June 30, 2019. Account Balances as of May 31, 2019 and June 30, 2019 are:

	<u>May</u>	<u>June</u>	
Total MDCA Reserve Funds	\$3,146,388.27	\$3,376,259.76	+
<i>Comm Assoc Banc (CAB) Reserve</i> \$	---	---	
+ <i>ICS Reserve (Bank Acct)-.4%</i>	\$ 519,325.70	\$ 748,525.92	
+ <i>CDARS-1.8% ( Due 3/26/20)</i>	\$ 323,367.23	\$ 323,845.98	
+ <i>CDARS-.75% ( Due 3/25/21)</i>	\$ 312,221.00	\$ 312,413.53	
+ <i>Wealth Mgmt Trust Acct-1.5%</i>	\$ 21,474.34	\$ 21,474.34	
+ <i>WM CD-1.45% (Due 7/7/21)</i>	\$ 150,000.00	\$ 150,000.00	
+ <i>WM CD-1.45% (Due 7/8/21)</i>	\$ 150,000.00	\$ 150,000.00	
+ <i>WM CD-2.2% (Due 10/7/19)</i>	\$ 235,000.00	\$ 235,000.00	
+ <i>WM CD-2.6% (Due 4/3/20)</i>	\$ 235,000.00	\$ 235,000.00	
+ <i>WM CD-2.8% (Due 2/28/22)</i>	\$ 240,000.00	\$ 240,000.00	
+ <i>WM CD-2.6% (Due 3/1/21)</i>	\$ 240,000.00	\$ 240,000.00	
+ <i>WM CD-2.5% (Due 3/30/20)</i>	\$ 240,000.00	\$ 240,000.00	
+ <i>WM CD-2.3% (Due 10/15/19 )</i>	\$ 240,000.00	\$ 240,000.00	
+ <i>WM CD-2.4% (Due 11/2/20)</i>	\$ 240,000.00	\$ 240,000.00	
CAB Operating	\$ 18,161.47	\$ 75,085.37	
RABOBANK Petty Cash	\$ 883.07	\$ 790.46	
CAB Water Operating	\$ 31,198.22	\$ 34,687.94	Total Water
Reserve Funds                     \$	171,379.45	\$ 147,678.39	
+ <i>CAB Water Reserve</i>	\$ ---	\$ ---	
+ <i>ICS Water Reserve (Bank Acct)</i>	\$ 171,379.45	\$ 147,678.39	

Payments to the Capital Replacement Fund (\$16,320.00 per month) are current.  
Payments to the Mutual Water Association (\$3,750.00 per month) are current.

Respectfully Submitted,

*Rick Crowley*

Rick Crowley