

Loma Linda Subdivision Homeowners Association
Board of Directors Meeting
Monday, April 10, 2017
Minutes

Directors Present: Bill Trimarco (President); Sue Wells (Vice President/Treasurer)

Members Present: David Parker, Linda Parker, Wen Saunders, Don Haywood, Al Myatt, Jo Myatt, Rick Sautel, Carolyn Schwulst, (Nancy) Lea Young, Peggy Beach, Eric Smith, Mark Douglass, Lisa Jensen.

Guests Present: Todd Starr, HOA Attorney

Bill Trimarco called the meeting to order at 7:02 p.m.

Public Comment on Non-Agenda Items

1. Sue Wells added the Financial Report, which was inadvertently not included on the agenda. In March, the HOA collected \$1,280 in dues. Expenses included meeting room rental, postage, bookkeeping and attorney fees. As of March 31, 2017 there is \$35,639 in the Operating Account and \$22,579 in the Reserve Fund. The full financial report will be posted on the website (<http://lomalindapagosa.com>).

Bill Trimarco moved; Sue Wells seconded a motion to approve the Financial Report. Motion carried.

Linda Parker asked how much had been spent on an attorney, and said the BOD had not authorized spending on legal fees as this authorization was not in the January 2017 minutes. Bill Trimarco stated that the budget includes a line item for attorney fees and that the BOD did approve this expenditure. Todd Starr noted that the Bylaws do not require approval of expenditures at every meeting, and that the BOD could ratify payment. He also stated that his first work generating a bill was February 3, 2017. As noted above, the full financial report will be posted on the Association website; Sue Wells said the BOD will post monthly financial reports to the website and email.

Bill Trimarco moved; Sue Wells seconded a motion to ratify payment of the attorney's bill. Motion carried.

2. Sue Wells said Ellie Douglass had called her to request the BOD remind residents to not let their dogs run loose; someone's dog has been defecating on her lawn. The BOD will send a reminder to owners.

3. Sue Wells reported that Rich Lange, who used to live in Loma Linda subdivision with his wife Barb, passed away suddenly on Saturday, April 8. Those present observed a moment of silence for Rich. The BOD will send a card to Barb.

Review and Approval of March 6, 2017 Minutes

Bill Trimarco moved; Sue Wells seconded a motion to approve the minutes with minor typographical correction. Motion carried.

Committee Reports

ACC

Lea Young reported:

- At their March 31 meeting, the ACC started to review the CC&R and determined they need another meeting to continue this work. The ACC is identifying articles that need clarification.
- Eric Smith requested permission to build a geodesic dome greenhouse. The ACC had to decline his request as this is a fourth structure on his property. Young was glad to see Mr. Smith present at the meeting and said this is one issue in the CC&R that needs to be clarified.
- The ACC discussed propane tank screening and whether or not shrubbery is an effective screen. When previous ACCs addressed this issue a few years ago, some residents were told shrubbery was acceptable, however this does not always screen the tank in winter. The ACC would like to further clarify this issue. David E. Parker III stated that he was a former ACC Chair and is an “expert” on this issue; he offered to share information with the current ACC.

Bill Trimarco noted that Pagosa Fire Protection District uses the requirement that propane tanks be located at least 30 feet from any structure and 10 feet from any combustibles. Trimarco also requested that the ACC include all discussion items in the minutes; the propane screening issue was on the agenda but not recorded in the minutes. Young assured the BOD that this was an oversight and in future, all discussion will be reflected in the minutes.

- The next ACC meeting is April 27, 2017.

FireWise

- Peggy Beach distributed copies of the April 2017 FireWise Bulletin, which will be posted on the website.. She noted that fire season will be here soon, and announced several community events happening in early May.
- May 6 is National Community Preparedness Wildfire Day: once again, the Pagosa Fire Protection District, Loma Linda FireWise Ambassadors Peggy Beach, Al and Jo Myatt and other members of the Loma Linda FireWise Committee will be working a Wildland/Urban Interface checkpoint at the subdivision mailboxes to distribute information about protecting your home and community from wildfires.
- Peggy noted that grants are available to help with fire mitigation projects. She recommended that people take lots of before and after photos of their property, which helps in the grant process.
- Please read the complete FireWise Bulletin for more details.

Election Progress

Bill Trimarco reported that the initial election ballots were mailed out without sufficient tracking mechanisms. Of 197 ballots mailed, 8 were received that could not be identified. As a result, the BOD decided at the March 6, 2017 meeting to re-do the election, ensuring proper tracking. Before that

meeting, candidates Don Haywood, Mark Douglass and a group totaling 16 people hired an attorney, Duke Eggleston, to bring up their concerns. These issues were addressed at the March 6 meeting, where candidates and all present were given ample opportunity to ask questions directly of HOA attorney Todd Starr, and suggest procedures for the second election. At the March 6 BOD meeting, both candidates agreed to the process, which would have had ballots printed and mailed out in March, to be returned by the end of April, and election results announced in early May. The BOD sent the new ballots to the printer, however then learned that on March 7, the same group of 16 people again contacted their attorney, Eggleston, who then contacted HOA attorney Starr, saying his clients were not happy with the process they had agreed to on March 6. As a result, the 2017 election still has not been completed.

Trimarco reported a second new development: three-year BOD candidate Carolyn Schwulst has withdrawn her candidacy.

Trimarco suggested three possible proposals for what to do now:

1. Re-do the election, following the procedures agreed to at the March 6, 2017 BOD meeting;
2. Seek a declaratory judgement, which means having a judge rule on the legal way to conduct an election. Since two of the candidates have already changed their mind on what they agreed to March 6, the BOD is concerned and needs to ensure they are following proper procedures.
3. Mail ballots with just the two unopposed candidates' names and with the annual meeting change proposal.

Sue Wells clarified some background information: the letter from attorney Eggleston insists that voting be by proxy. At the March 6 meeting, all agreed that ballots would be mailed to all owners. The BOD has been trying to determine how to allow proxy voting while ensuring a secret ballot, and allow ballots to be returned by mail so that all owners are able to vote.

Wells stressed that the BOD is trying to meet everyone's concerns, saying, "I'm willing to do anything to make everyone happy as long as it does not make me unhappy.

However, she said "we cannot disenfranchise 80 percent of the membership, which voting by proxy only would do. Wells said this "makes (her) unhappy" and is not acceptable. She also said elections have been held by mail "all these years."

Trimarco stated that the procedure initially followed by the current BOD followed the same procedures the HOA has done in the past. The Bylaws allow members to vote at meetings by proxy or in person, however the Bylaws also state that election to the Board of Directors shall be by secret written ballot, and that a ballot shall be mailed to each eligible member.

Trimarco noted that the BOD needs to send out ballots with the proposed Annual Meeting date change anyway, so could include a ballot for the BOD election.

Starr clarified that the Bylaws provide for nominations to be made at the Annual Meeting, which Mr. Eggleston interpreted to mean the election would happen at the same Annual Meeting; however since nominations are also accepted from the floor at the Annual Meeting and ballots (for contested elections) must be mailed to all members, it is impossible to conduct the election at the same Annual Meeting where candidates are nominated.

Trimarco suggested that ballots be mailed with the proposed Bylaw amendment to change the Annual Meeting date. The return envelope would include the lot number and a signature line with a statement that by signing, the member grants his/her proxy to the Nominating Committee to receive and vote the ballot. The ballot mailing would include notice of a Special Members Meeting; at that meeting, members can vote in person, by proxy, or can mail in their ballot.

Don Haywood stated that at the March 6, 2017 BOD meeting, he and Mark Douglass both agreed to the process to re-do the election, and said there had been “no further action” from their group with their attorney. He said Eggleston told them that the HOA attorney had called Eggleston. Sue Wells read the beginning of the letter from Eggleston, dated March 7, the day after the BOD meeting where candidates Haywood and Douglass agreed to the procedures. The letter from Eggleston contradicted Haywood's statement that his group had not contacted their attorney and stated that they had initiated the action against the agreed procedures.

Trimarco noted that the BOD held an Executive Session on March 27 because they received a second letter from Duke Eggleston informing the HOA that his clients were not happy with the process agreed to March 6. Sue Wells noted the BOD has been unable to inform the candidates or whole membership of what has happened because tonight's meeting is the first BOD meeting since March 6, and the BOD cannot make any decisions outside of public meetings.

Todd Starr suggested setting dates now for the BOD election and Special Members Meeting. Allowing six weeks to print and mail ballots, and time to return by mail, a suggested date is Monday, May 22, 2017.

Don Haywood suggested that, while he “wasn't going to contradict himself,” that the candidates could be elected by acclamation. He said, as an unopposed candidate, he only requested his name be on the ballot because the ballot had to be mailed anyway.

Wen Saunders said the only reason the proposed Bylaw amendment changing the Annual Meeting date was to be mailed to all members was because the ballot had to be mailed anyway. Board members reminded her that the bylaw change was added to the ballot at the request of the general membership at the Annual Meeting.

Bill Trimarco said that people have really disrespected all the time the BOD has put into trying to conduct a proper election and address everyone's concerns. He pointed out that the first letter from Eggleston says the “first order of business” of the new BOD will be “to get rid of Bill” since he was elected by acclamation. He said that Haywood insisted many times that his name be on the ballot

Lisa Jensen said that Haywood's and Saunders' statements were not exactly true: Don Haywood insisted, including in his written candidacy statement, that his name be on the ballot even though he was unopposed, and the BOD agreed to do this because they had to mail a ballot for the two candidates who were running against each other. The BOD decided to mail a ballot with the proposed change to the Annual Meeting date because this is what those present at the December 2016 Annual Meeting requested.

The BOD explained that if a quorum of the membership is present at a Special Members Meeting, an unopposed candidate may be elected by acclamation. A quorum is 10 percent of the membership, or 20 lot owners (10 percent of 197). The Bylaws may be amended at a Special Members Meeting by a

majority vote (51 percent) of a quorum of the membership. Each lot owner has one vote regardless of how many people own the lot.

Todd Starr proposed a Special Members Meeting to elect the two unopposed candidates by acclamation; and a second Special Members Meeting to change the Bylaws. Trimarco stated that following a request from members present at the 2016 Annual Meeting, the BOD decided to mail out a ballot with the proposed Bylaw change to all members; the BOD will not change that decision now.

After further discussion and with approval of all present, the BOD passed the following motion:

Bill Trimarco moved; Sue Wells seconded a motion to convene a Special Meeting of the Membership on Monday, May 1, 2017 for election by acclamation of the two remaining candidates. The BOD will also mail a ballot with the proposed Bylaw amendment to change the Annual Meeting date to a summer month. The Bylaw ballot is to be mailed and the ballots counted at the earliest date possible after printing the ballots. The BOD authorized setting that date based on completion of the printing.

Discussion: Todd Starr clarified that there will have to be at least 20 members present at the May 1 meeting to elect the unopposed candidates by acclamation; voting is unnecessary as long as a quorum of the membership is present.

David Parker asked whether there is an active Nominating Committee. Sue read the Bylaws explaining that “the Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting.” In other words, the current Nominating Committee is still active.

Sue Wells asked candidates Don Haywood and Mark Douglass whether they concur with the proposed procedure and motion. Haywood stated he concurs. Douglass stated, under the premise that the election is closed, he concurs.

Sue Wells asked if their attorney was going to be calling again to change the agreement. She told the candidates that if their attorney was actually acting on his own, they need to get control of him as he was apparently a loose horse and needed to be haltered.

Motion carried.

The ballots with the proposed Bylaw amendment will be mailed out as soon as possible, to be counted at the second Special Members Meeting, which will be held in late May or early June. The Bylaw change may be voted by mailed-in ballot or by proxy. Todd Starr will review or help draft the proxy form.

Greenhouses: Structure or Exempt?

Bill Trimarco stated that a serious situation has developed. David Parker told Eric Smith that he did not need ACC permission to build a greenhouse since the structure did not have a foundation. On a separate occasion he told Trimarco that he was in violation of the Declarations because he built a greenhouse without ACC permission. It was later determined that Trimarco did have ACC permission in advance. Trimarco stated that over the years there have been many instances of the Declarations being enforced

and applied differently to different people. That inconsistent application means that any of the Declarations can be questioned in court. Attorney Starr verified that this was true. Eric Smith had applied for permission to build a greenhouse. The ACC denied his request because he already has three structures on his property (home, detached garage, barn), the maximum allowed per the CC&R. The greenhouse would be a fourth structure. It appears that David Parker, former ACC Chair, had told Mr. Smith that he did not require permission for the greenhouse because it did not have a foundation and therefore was not considered a structure. This interpretation of the definition of “structure” contradicts historical application of Loma Linda’s CC&R as well as Archuleta County’s Land use Regulations. Attorney Todd Starr noted that according to Archuleta County Land Use regulations, greenhouses are considered accessory structures. Lisa Jensen pointed out that Mr. Parker is on the County Planning Commission (as is she) and knows that the County considers greenhouses to be structures. Eric Smith clarified that he accepts full responsibility for understanding and following the CC&R, and that Mr. Parker may not have been representing the ACC during their discussions.

Smith said he wants to teach his kids how to garden, and asked about hoop houses. Lea Young said that because hoop houses could be taken down easily whereas greenhouses are not, a hoop house would not be a structure. As she had mentioned earlier, this is one of the areas the ACC wishes to clarify in the CC&R.

Young said the ACC has taken on the task of working on the CC&R to clarify them, and realize this process will take some time.

In further discussion, board members concurred they would like everyone to have a greenhouse and grow food. Board members, ACC Chair Lea Young and others offered suggestions to Eric Smith and indicated they would really like him to be able to fulfill his vision of teaching his children how to grow food.

Bill Trimarco moved; Sue Wells seconded a motion to adjourn the meeting at 8:38 p.m. Carried.

Respectfully Submitted,
Lisa Jensen