

Minutes: Board Meeting, Tuesday, January 5, 2010

Board Members Present:

Gerold Dehm, President
Chris Erickson, Vice President
Jack Rosser, Treasurer
Eve Heffernan, Secretary
Jim Simantel
Charlie Deason
Margee Meyer

Absent: James Walker, Association Manager

Also Present: 20 Residents

The meeting was called to order at 9:32 a.m. by President Dehm who asked for roll call of Directors. All present

Motion by Mr. Dehm, supported by Mr. Rosser that relative to the short sale of unit 505, building 4, PRCA waive the collection of all attorney, interest and cost fees, and limit our collection to all owed quarterly maintenance and special assessment fees as of the transfer settlement date of said property subject to the following:

1. The attorney reviewing the HUD statement for valid signatures and verifying the figures compared to the preliminary HUD statement.
2. Verification of bank approval of the short sale.

The following discussion ensued on the motion as presented.

Director Charlie Deason asked to present his concerns regarding acceptance of this motion stating that the board has a fiduciary duty to represent Punta Rassa and he took exception to the fact that no negotiations are undertaken to benefit the association. This opened considerable discussion and attorney Eric Veenstra was asked to offer an opinion regarding waiving assessments.

Eric Veenstra: "Generally you can waive assessment under the statute, but if you do, every single member that paid that assessment gets an equal credit. So if there's a thousand dollar assessment and you reduce it to \$900 for a person on a short sale, everyone else would get a \$100 reduction as well. You can waive anything else without issue."

Charlie indicated that in an email, Gary Griffith has taken the position that past owners, when they sell, are entitled to get any assessment that is going to be paid back. Because he was the owner of a unit recently sold, he takes the position that Punta Rassa should write him a check for the assessment. Charlie suggested that a waiver form be used to

say "you waive any right to make any claim on any unit in return for whatever we agree to sell for." No further discussion on that suggestion.

Eric Veenstra: “This was an informal email to DDBR, which would not be a formal opinion. I don’t think this email demands the board’s attention at this point.”

In response to the question regarding who determines how the money for fees is handled and by whom, Eric replied: “If they (first mortgage holder) filed the foreclosure, they run the show. The second question of this whole short sale is what involvement the bank has. I haven’t received any information to the effect that the bank has been notified. You can talk to them preliminarily to see if they’ll agree to a short sale, get a verbal “yes, that’s something we would entertain”, and then you present a preliminary HUD and they give their final OK. What I think is critical here is that they’re pretty much asking the Board to agree to this reduction and we don’t know if the bank is going to require it. They may be willing to have a HUD agreement with the full amount written in it. It’s my understanding that the HUD has not been presented to the bank. So the Board being asked to agree, up front, to this reduction when we don’t know what the bank’s position on it is – very well they could present the HUD with the full amount on it and the bank could say, “o.k. that’s fine.” They may not, and come back and say, “no, you need to reduce your fees.” But that hasn’t been done. The seller is asking the board, “what’s your lowest number before I submit this to the bank.”

Gerold Dehm stated that his motion was conditional upon verification of bank approval for short sale.

Atty. Veenstra: “We’ll definitely get that before closing but whether the bank would accept more – we won’t know if we’re submitting the HUD with the lowest number. We haven’t seen any documentation. I’ve asked for it back in December but never got anything...something in writing from the bank to say, “we require the association to take less”. But it’s my understanding that the bank’s never really been provided a HUD showing the full amount.”

Gerry Dehm stated that his motion was conditional upon the attorney, that’s you, reviewing the HUD statement for verifying the figures compared to the preliminary HUD statement. The other condition was verification of bank approval for short sale.

Betsy Belpedio had the agent handling this short sale on the phone and she (Jane Lumley) has stated that the bank has seen the preliminary HUD. When asked if the bank had approve it, the agent answered, “they are waiting for the association.” Betsy had a copy of the check for earnest money from the buyer (\$5,000 deposit). She has till January 30th to close, but is trying to close by January 15th. The buyer is a surgeon from the east coast of Florida. This was new information, not yet received by Punta Rassa’s attorney’s office.

Atty. Veenstra: There’s something to be said...the issue here is that there’s two factors being weighed. The board could insist and say that “we want the full figure of the assessment with all the attorney fees, interest, costs....set up on this preliminary HUD and sent to the bank, you know, the full \$36,000 figure. The bank could say no, but they could say yes. You know, what’s being asked here is to forego the negotiation part. That could lead to a speedier closing. If you agree to that now, there’s no chance that that’s going to be presented to the bank. We don’t know that the bank will accept a higher figure. If this preliminary HUD gets sent with the \$36,000, maybe the bank comes back and says ”will they (association) take less?” It

can draw out the sale, but there's a chance that the board can get more. But that's how you enter a negotiation – you put the full

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amount there and wait for the bank to comment on it. The drawback is that it delays the closing.

Betsy stated that these issues are problematic to buyers – she has moved buyers to the purchase of other units because of it. The buyers become frustrated and want to walk away.

Director Meyer stated that she doesn't like setting a precedent by accepting this motion as is, however she wants the board's interest and money protected as much as possible and suggested that real estate agents be asked to try and protect the board in the future, at least regarding waiving of attorney's fees.

Numerous residents in attendance offered opinions, concerns and suggestions. Linda Deason asked Attorney Veenstra about Mrs. Meyer's concern regarding the extra money going to the bank rather than to the association.

Atty. Veenstra: "If you put on the HUD that you want the full \$36,000 that's money that goes to the association as the closing proceeds. That means the bank gets less. That's why the bank wouldn't want to have it."

Doug Redding, Accountant, called in via conference call. He was asked how many condominiums he represents and what kind of deals the boards were getting when they negotiated short sales. Doug stated that only two were negotiated. Both were short sales and were older (2 yrs). They waived 6 months worth of attorney fees, late fees and that was it. The sellers originally came wanting only to pay the assessments. The Boards refused that and countered and they closed the deals. On all other short sales they had, they got the full amount. He stated that, "They'll contact us and ask us for an estoppels and we put down the total fees. Most of these are done through an attorney or a place like a collection agency and they put down the full amount, period. And we've been able to collect them. We've been able to collect several in the \$14,000 to \$17,000 range. We've had probably, I'll give you a range, 15 to 25 short sales come through in the past 4-5 months. Most of the people we've dealt with are willing to pay the past due amounts because they're getting the unit at such a reduced price.

Director Rosser suggested that the Board take what they've learned and develop a hard and fast policy and procedure to handle these matters and stick to it.

President Dehm called for the board to vote on the motion.

Motion by Mr. Dehm, supported by Mr. Rosser to approve the motion as presented. Roll Call Vote: Yea 6 Nay 1. Motion Carried

Mr. Simantel and Mrs. Meyer stated that they voted "yes" with reservations.

In a written statement given to the Board, Charlie Deason states: “He opposes the vote because the board failed to negotiate at all; didn’t follow its own policy adopted in a board meeting on March 18, 2009 because the business practices used by the board violated standard business practice per our lawyer, Eric Veenstra, and that our Accountant, Doug Redding, testified that in 15 short sale negotiations that he knows of, board received all their money in the process, and in two negotiations, they rejected the offer of the sale and negotiated a better deal for their association.”

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Meeting adjourned at 10:30 a.m.
Next meeting will be January 13th

Respectfully submitted,

Eve Heffernan, Secretary