

Board of Directors Meeting 1-13-2010
9:00 a.m.

Board Members Present:

Gerold Dehm
James Simantel
John Rosser
Chris Erickson
Eve Heffernan
Margee Meyer
Charlie Deason

Also Present:

James Walker, Assoc. Manager
Eric Veenstra via phone
Residents: 29

Item #1 - Meeting called to order by President Dehm at 9:01 a.m.

Item #2 - Roll Call

All members present

Item #3 - Proof of Notice – affidavit on file

Item #4 - Approval of Minutes for:

November 10, 2009. John Rosser moved to accept; seconded by Margee Meyer.
Unanimously accepted.

Nov. 17, 2009. John Rosser moved to accept; seconded by Chris Erickson
Unanimously accepted.

Nov. 20, 2009. John Rosser moved to accept; seconded by Jim Simantel.
Unanimously accepted.

Dec. 16, 2009. John Rosser moved to accept; seconded by Chris Erickson
Unanimously accepted with one correction, the spelling of Director Meyer's
Name.

Jan. 5th, 2010. John Rosser moved to accept; seconded by Jim Simantel
Unanimously accepted

Director Erickson requested that the Board move to item 6 since attorney Eric was Veenstra was already on the phone line. Board agreed.

Item #6A

Request from Mr. Giffith for refund of overcharged interest for delinquent payment.

Item #6B – Decision on Deficiency Judgment and if to proceed with collection.

Jim explained why this matter is brought before board & attorney. Interest payment issue here. There was an amendment to bylaws. Griffith paid 18% on delinquencies when he was only to pay 9%. This was an accounting error. The Board had received too much money from an individual. The Board had agreed to refund a long time ago but received no reply from Griffith. Now, after 2 years, he's asking for a refund. The units have been sold and the law says anytime there's a refund or debit, the new homeowner either receives or pays that debit/credit. Griffith owes the Association considerable money. The Board desires to apply the overage to what he owes.

Director Deason asked attorney Veenstra a series of questions regarding the legality of obtaining a judgment against Gary Griffith and his wife.

Attorney Veenstra:

"I see you point and I think it's an arguable position whether it's a winning position I can't say. Here's the issue...the contingency judgment (we've asked the Board whether it's worth going after him) is for the amount that he's delinquent on unit 2-205. And he wants this money, the \$1760 plus. The Board has no legal right to retain those monies...to credit those monies. The lawyer from Becker & Poliakoff was asking the Griffiths what they would like to do with that money...the Board has this money, yes, but it shouldn't. It has no legal right to have it. The deficiency judgment is for a unit that, you know, was foreclosed and is now owned by the bank. If the Board is just gonna say, hey look, we just lucked into this money - you overpaid and now we're just going to take it and apply it against the money you owe us - he can argue, you know, as well, that, look, the Board has no right, no right to apply credit. All they did was send a bill, they charged me too much. They said I had to pay this when I didn't. I did...and now I've found out that they overcharged me. I want my money back. That's the essence of it...the essence of his argument. I mean, boiled down to just plain language, you know, look, they overcharged me - they have no right to this money. If they try to keep this money, you know, they don't have a right to. Yes, you have a judgment, but with regard to the \$700-800, whether the Board can just say we're crediting it against the deficiency judgment we have, not against, you know, against other assessments because it's now a deficiency judgment. He has no, you know, they're not...the liability that arose from non-payment of those assessments but, those assessments, you know, are wiped out by foreclosure action. I can understand your argument, but I just don't believe that, you know, that it may be a winning one. Like I said in my email, the Board is free to say it's a credit because...you know, you owe us all this money....and see where it goes."

Director Deason - "Please just answer this legal question for me. There's no legal reason why, because he owes us on the unit that the bank took over, he owes us \$50,000, there's no legal reason why we can't simply take that asset of his....o.k. that \$2,000 that he claims in interest, and credit it towards the money he owes us. There's no legal reason why we can't do that, is there?"

Attorney Veenstra: "The legal reason why you can't is that you have no legal right to those monies."

Director Deason presented information regarding past correspondence regarding this issue, a letter from Attorney Veenstra stating that monies should be applied to Griffith's account but not stating that the Board was holding it illegally. He laid out information regarding the transfer of

Griffith properties to Old Trail Partners and then to a private individual. "Please tell me when the credit on the attached letter arose – we're trying to determine if it's payable to Gary Griffith personally or to Old Trail Partners." After mentioning a series of communications, he asked why Attorney Veenstra had not followed through and resolved the issue within the last two years.

Attorney Veenstra

"We had tried to do it. It was kicked to Cramer-Triad to try to do it. And then, it just fell off to the side. You know, not trying to say you've committed civil theft or anything Charlie, I'm just saying that under your proposed scenario, I don't think it's a winning argument."

There was continued back and forth between the two regarding the Board having a legal right to credit the money.

Eric – "You can make that argument, but he can equally say the Board has no right to that money to use as a credit or otherwise."

Director Meyer – "I have no legal knowledge but I was just wondering if a way to avoid some of the legal fees as far as him taking us to court and everything, could we possibly offer to pay him the money when he's finished paying us what he owes us.....we have it, we have it in a little pot here, waiting for him, but the Board doesn't ok payment of that until he owes us. Can we possible do something like that?"

Eric – "That's a great idea, but the issue is that if the Board doesn't have the right to the money now....they don't have the right to hold it indefinitely. They can't hold it hostage. The issue is does the Board have the right to keep the money today, or not."

Director Rosser – "Eric, we're holding this money illegally? Is that your statement?"

Attorney Veenstra " Well, the Board needs to decide what they're going to do with it. The Board can say, we're holding this, period. The Board needs to decide if they're going to credit the money, you know, using whatever Charlie is going to "move" for the Board to do, and to say that we're just going to credit it against it, or the Board needs to refund the money. But a Board can't say 'we're keeping this money, it's our money, no credit, no refund period. The Board doesn't have a legal right to have that money."

Director Deason made a motion to the Board:

"That the Board take this \$1740 and change, and take the money that's owed on the foreclosed Bldg 4, unit 205, and credit them the entire amount of that money, in addition, I want the people over at our accounting firm, to calculate the interest on that money, so that we pay him that money plus any of the interest and credit that full amount so he has absolutely has no basis for any claims against this association."

As an aside, Director Deason stated: "If he wants to go to small claims court, I would love to go down there and represent the association. I'll go as representative of the Association. Not as an attorney because I'm not licensed in FL, but I can go down there and make this argument...and make a counterclaim against them" Director Heffernan seconded the motion. Roll Call Vote: 6 yeas / Pres. Dehm - nay

#5 Managers Report

Jim Walker informed the Board that he had a pre-construction meeting with Bill Camp, Project Engineer, as well as the roofing company and air conditioning company regarding work to be performed on Building III. The purpose of the meeting was twofold (1) to determine a start date based on availability of monies to comply with the contractual obligation of a deposit of \$30,000 and (2) to negotiate with and finalize the cost of replacement air conditioners based upon their tonnage. A review of all top floor ceilings and all air conditioners will begin just prior to construction. The air conditioning contractor will do a unit by unit survey to determine the condition of the existing air conditioning units. This survey will include the determination of the gas structs,?? electrical voltage and components of malfunction. The purpose of this is to determine the condition of each, and if there's a need for replacement.. The savings on the replacement of some of the units are substantial because of their age and it would be an appropriate time to consider replacement. It's an option the unit owner will have. The Contractor has said that once the units have been removed from their present mountings and placed on the new elevated railings, they may not become functional. The Contractor is only obligated to do the following: (1) remove and relocate the unit (2) extend the copper tubing, rewire the electrical connections. The recharge the system with freon. If the system does not function then the repairs are at the cost of the homeowner. The reason behind the reviews are so that the owners can appraise the conditions of their air conditioner. Sufficient collection of assessments to authorize construction start up on January 25th has been recognized. The Board agreed to commence.

The Maintenance Department will be installing two outdoor overhead lights to illuminate the shuffleboard court, as well as a light in the dog walking area for the safety of dog owners.

Security Cameras – a second vendor has prepared a proposal showing considerable cost savings over the first. He has submitted a copy of his proposal in bid form without prices, proprietary product or programming and Jim recommends to the Board that this scope of work be given to the first vendor as well as the current vendor for formal bid. It is understood that neither bidder has customers in the Fort Myers area and it was suggested that this be reflected in their bid and use Punta Rassa as a marketing example. The Board agreed and the matter will be revisited.

The anticipated paving of the stone parking area in front of Bldg. 1 is not going to materialize. Jim would like to approach the hotel for permission to remove the stone and replace it with fill-dirt and Behia sod that is drought tolerant and vehicular traffic resistant. Discussion would e necessary regarding the maintenance of same, however, they have indicated they will have no financial participation.

Fertilization of all shrubbery and palms has been completed. We will be replacing the existing cover, under warranty.

We will begin building storage cabinetry in the trash room of Bldg. 1. Thereafter, we will commence with shelving only for the other buildings since those areas are secured with locked doors.

Maintenance hours have been changed so that there is 7-day coverage during normal working daylight hours.

The Board was shown a "New Resident" packet and a Brochure that has been designed by Sandra Christ for Punta Rassa. Members expressed pleasure and approval over the marketing possibilities and voted unanimously to go forward with the packet and brochure. Jim Walker suggested that the brochure be offered to Realtors to offset the cost of printing. Jim asked Board authorization for proceeding with printing of the brochures and preparation of packets. John Rosser so moved, Jim Simantel seconded. Approval granted.

The egret nest located in the corner of the tennis court has been taken over by an owl and has forced the "previous tenants" to relocate to the antennas on Building 3. You may have noticed large branches on the ground and one has pierced the canopy. We are convincing the unwelcome tenants to relocate without incurring any legal fees!

Five requests from the Association Manager to adopt or amend policies were presented. All were unanimously supported by the Board except for number 5 which will be further investigated and reported upon at a later date.

Item # 7 Adopt a proposed policy on conduct of Association Meetings. Maintaining order, adhering to the procedure of all business being discussed and conducted among Board members only was punctuated, with clarity given as to the appropriate time to address the audience for questions or statements. Residents should stand, give their name, building and unit number and speak for 2-3 minutes only to give everyone an opportunity. Jim Simantel moved to accept this policy. John Rosser seconded. Motion carried.

Item #8 Adopt as policy a revised Collection Procedure. This policy was adopted in the past, I've added a couple things I think are important: (1) 10 days after the due date, Spires and Associates will notify, by email, that the unit account is past due, and if not paid in full by the end of the month, the matter will be referred to the association attorney for collection. The account will incur additional costs which will include legal fees and interest. This was never part of our collection policy. (2) our statutory requirement of the attorney that they send out a 30 day demand letter telling them that if it's not paid up in full that they are incurring legal fees and interest. After that, the attorney must come to the Board and ask for permission to lien and/or foreclose at a later date. John Rosser moved to accept as policy; Margee Meyer seconded. Motion carried.

Item #9 Adoption of a Uniform Lease Form with an Amendment and enforcement of same. This lease was prepared by our attorney and will be available on our website. Anyone choosing to rent their unit must use this uniform Lease.

Item #10 Adoption of a revised Code of Conduct for Board of Directors. This was an addition to the current Code of Conduct and states that no Board member may contact the association attorney or incur cost without the approval of the Board. This was extended to include consultants as well. Chris Erickson moved to accept revised Code, with amendment. John Rosser seconded. Motion

carried. Jim Walker will amend the policy and reissue to Board members.

Since the meeting was extending past the allotted 90 minutes, Pres. Dehm called for Board approval to extend it. Jim Simantel so moved, Chris Erickson seconded. Motion carried.

Item #11 Adoption of a Sign Policy for Realtors. Director Meyer proposed providing signs in front of each building whenever there was to be an open house in that building. No consensus was reached about how that might be done effectively with security in mind. The Board is in favor of providing some kind of signage and real estate material for prospective buyers, however, how and where is the issue. The matter was tabled for further investigation and report.

Cleaning of the red dock was mentioned. There was an agreement by the Marina to maintain it, but what that means is not clear. There are, as well, issues regarding the roadway alongside Punta Rassa property. A three-member committee consisting of John Rosser, Gerry Dehm and Jim Simantel was appointed to contact and meet with the Marina Board of Directors to discuss solutions while they were discussing the paving project as well. Jim will send a letter advising the Marina Board that a committee has been formed to discuss these issues with them.

Item #12

Attorney Eric Veenstra was approved as the Association attorney. Comments were made as to less than perfect record keeping and unavailability of information in the past from that office. However, Board Members were pleased with the counsel and work done by Mr. Veenstra. Jim Walker stated that our prerequisites would be made clear to him.

Item #13 – Comments from Audience

There was conversation regarding fishing from the octagonal dock. Jim Walker informed people that from ages 16-64 you must have a license, however, Punta Rassa has obtained a license which covers everyone as long as you fish from the octagonal dock. If you fish anywhere else on the property, you must have an individual license.

A resident complained about cars racing through Punta Rassa property on their way to the Marina. The committee formed to talk with the Marina Board about issues mentioned above will also discuss possible solutions to this problem

Item #14 – Adjournment

A motion to adjourn was made at 11:00 a.m. by John Rosser, seconded by Chris Erickson. Motion carried. Adjournment

Respectfully Submitted,
Eve Heffernan, Secretary