

Minutes of Special Meeting of the Board of Directors Cove Pointe Owners Association, Inc.

Date: Thursday October 7, 2009
Time: 5:30 p.m.
Location: Cove Pointe Community Dock Area
Attendance: Officers/Directors: Christine Reiss, Treasurer/Director; Tom Neubauer, Secretary/Director; Roger Spencer, Director
Other Members: Paul Dick (lot 12); Margaret Neubauer (Lot 34);

Due to the absence of the Board President and Vice President, Secretary Tom Neubauer called the meeting to order at 5:35 p.m., and moved that Chris be appointed chairman of the meeting. The motion was seconded by Roger Spencer and approved unanimously.

Calling of the Roll was completed and a quorum was confirmed.

- (1) **Proof of Notice of Meeting:** For the record, Director Christine Reiss previously provided to the secretary for approval, proof of compliance that the meeting had been properly noticed by posting of written notice in the subdivision as required by the bylaws and by personal delivery of the notice to all board members.
- (2) **Minutes of the previous meeting,** held on August 13th, were reviewed. Tom Neubauer moved they be approved, Roger Spencer seconded the motion, all approved.
- (3) **Letter of Resignation:** At Mr. Nichols' request, Mrs. Reiss provided copies of a letter from Mr. Nichols to the other Board members wherein Mr. Nichols resigned "as President of the Landscape Committee", effective October 5, 2009. Upon motion made by Chris Reiss and seconded by Roger Spencer, the Board voted to accept Mr. Nichols' resignation from the landscape committee.
- (4) **Resolution For Consideration:** Mrs. Reiss presented the following resolution for board consideration: "*Resolved, upon motion made by Chris Reiss, and seconded by Roger Spencer, that pursuant to Article 29 of the Bylaws, Mr. Chuck Nichols is removed as President of the Association, effective immediately.*" Ms. Reiss explained her reasons for making this motion and following is a summary of her comments, along with the associated history related to those comments. Her concerns can be categorized as stemming from actions relative to two matters: (i) attempts to execute a contract representing a majority of the Association's budget without proper board approval; and (ii) possible modification of the stormwater drainage at the dock parking area.

Major Contract Issue. Ms. Reiss pointed out that the cost for landscape maintenance of the subdivision currently represents over 75% of the Association's annual budget, and as such it is the largest financial issue for which the Board is responsible. At its meeting on February 18 2009, the Board created the landscape committee, which Mr. Nichols agreed to chair, and that committee was tasked with developing a RFP (Request For Proposal) which would define an appropriate level of service for landscaping services, and then letting that RFP for bid by various landscape maintenance contractors. It was explained to Mr. Nichols on several occasions that after receiving and evaluating the bids, the process would be for the landscape committee to submit its recommendation to the Board. Notwithstanding this, on September 28, 2009, Ms. Reiss received a copy of an email sent by Mr. Nichols to the Association's current landscape contractor, Lawnsapes, wherein Mr. Nichols purported to terminate the existing landscape contractor's services at Cove Pointe as of close of business October 30, 2009. Prior to responding to Mr. Nichols' emails on the landscape contract issue, Ms. Reiss received a call from Paul Dick, a member of the landscape committee, who expressed his concerns to Ms. Reiss that Mr. Nichols was attempting to move forward to bind the Association to a new landscape contract without properly checking that contractor's references and without the consensus of the landscape committee or authorization from the Board. In connection

with that concern, Mr. Dick forwarded to Ms. Reiss an email in which Mr. Nichols was attempting to coordinate the signing of a new landscape contract by Mr. Nichols and Mr. Dye (as representative of the Association) and by Adam Pate, as representative of Gorilla Lawncare. After receiving the telephone call and email from Mr. Dick, Ms. Reiss emailed Mr. Nichols and after thanking him for his committee's hard work, reminded him that no committee or individual officer had been authorized to contractually bind the Association. Ms. Reiss again explained to Mr. Nichols the process of obtaining board approval of any recommendation from the landscape committee and offered to set up a special board meeting to consider a contract with Gorilla Lawncare. Ms. Reiss copied Gorilla Lawncare on this email in an attempt to avoid any misunderstanding with Gorilla which might stem from the legal concept of "apparent authority" (discussed below). Within two hours, Mr. Nichols responded by email and advised Ms. Reiss that "As for (sic) as the Landscape contract is concerned, it is pretty much a done deal.....The low bidders have been notified and Buddy and I have sign (sic) the contract as Contracting Officer and his Designated Representative as of today, as Buddy is off on a cruise tomorrow..... Copies of the signed contract will be E-mailed and mailed to you....."

Modification of Stormwater Drainage Issues. On September 28, 2009, Ms. Reiss received a separate email from Mr. Nichols requesting that she issue an Association check in the amount of \$1,485 to Mr. Sean Chiodo, Precision Concrete. In his email, Mr. Nichols represented to Ms. Reiss that "Paul, Roger and Buddy have agreed" that the Association should spend the \$1,485 to "sure up and improve the parking lot drainage/spillover" area, including making modifications to the concrete and pipes in the dock parking area, inlet and something Mr. Nichols referred to as the "drainage/spillover," all in accordance with a drawing referred to (but not included) in Mr. Nichols' email. Mr. Nichols advised Ms. Reiss that "I [Mr. Nichols] expect them to do the work this weekend, if I receive your prompt approval and weather permits." Subsequent to receiving Mr. Nichols' email regarding this proposed work, and in the same conversation initiated by Mr. Dick in which he expressed his concerns regarding Mr. Nichols' actions relative to a possible landscape contract, Mr. Dick additionally expressed his concern to Ms. Reiss that Mr. Nichols appeared to be attempting to make changes to the dock parking area drainage without such changes being professionally designed and properly permitted. Mr. Dick relayed to Ms. Reiss that when Mr. Dick expressed to Mr. Nichols that an engineer was needed to design and permit any work, that Mr. Nichols made a comment about getting the work done quickly and covered up with hay before anyone knew that it had happened. After the phone call from Mr. Dick, Ms. Reiss sent the following to Mr. Nichols: "Chuck, No work can be authorized until the Cove Pointe Owners Association, Inc. board of directors considers and approves the work. As a board member, I am not familiar with the work proposed, and I am concerned that if work needs to be done, that it should be approved by an engineer. The previous modification to the drainage system was designed by an engineer, and permitted and approved by the City (including review by Neil Fravel, who is the engineer who is the head of the City Public Works department). I would be concerned with making modifications that have not been properly designed, permitted or approved. I appreciate your hard work on this, and I look forward to considering this as a board. It sounds like we need to notice and hold a special board meeting to consider this and the landscape contract issue. Until the board approval, however, no work or payment can be authorized." Ms. Reiss reported that Ms. Nichols response to that email contained so many misstatements and errors that she told him she could not even begin to respond to them all in an email and that a board meeting was needed. She strongly cautioned Mr. Nichols about proceeding with any unauthorized action to alter any drainage within the Association property. Ms. Reiss reported to the Board that she did not believe that Mr. Nichols would proceed with any work at this time, but she remained concerned given the history of difficulty she and Mr. Nichols seem to have communicating with one another.

Apparent Authority. Ms. Reiss explained that her reasons for proposing the immediate removal of Mr. Nichols as President of the Association (while specifically related to both the landscape contract issue and the stormwater drainage modification issue) are immediately prompted by concerns she has regarding the possible application of the doctrine of "apparent authority" It is Ms. Reiss' understanding that even though someone purporting to represent a corporation might not have actual authority to bind that corporation, an officer of a corporation (particularly the President) may be found, vis-à-vis a third party, to have "apparent authority" which could result in the corporation becoming

bound to a contract or liable for actions which the corporation did not actually authorize. For this reason, under the circumstances, Ms. Reiss felt the Board should act at once to remove Mr. Nichols from his position as President of the Association.

The resolution passed by unanimous vote. Since Mr. Nichols was not present at this meeting, the Board requested that Secretary Tom Neubauer immediately advise Mr. Nichols of the Board's action.

After discussing the need for the board to appoint a new President of the Association, it was agreed that the group preferred to wait until more directors are present and can have input on that decision. Accordingly, the following resolution was passed by unanimous vote: *Resolved, that the election of a new President of the Association be tabled until a meeting could be held with all directors present.*

- (5) **Resolution for the Record:** Upon motion duly made by Chris Reiss, and seconded by Roger Spencer, the following resolution passed unanimously: *(1) Mr. Nichols shall be officially directed by the Board to refrain from any attempts to bind the Association to any work or contract or to hold himself out in any way as an authorized representative of the Association (Noting that: Mr. Nichols is only one voting member of the Association's five member Board of Directors); (2) Mr. Nichols shall be reminded that he is not now, nor has he ever been, an authorized "Contracting Officer" for the Association and that no such position within the Association currently exists or has been properly authorized by the Board; and (3) Mr. Nichols shall be reminded that he has not been authorized by the Board to cause any modifications to be made to the storm water drainage system within Cove Pointe.* As Mr. Nichols is not present at this meeting, the Board requested that Secretary Tom Neubauer immediately advise Mr. Nichols of the Board's action.

- (6) **Consideration of Landscape Contract with Gorilla Lawncare:** Paul Dick as a member of the landscape committee, brought forth several concerns with the bidding and contracting process. Specifically, the references provided by Gorilla Lawncare appear to be residential rather than commercial, and there is a discrepancy between the services included and the proposed schedule relative to pesticide application. Ms. Reiss pointed out the question had also been raised as to whether GLC is a licensed pesticide applicator or would be subbing that part of the contract out. Ms. Reiss noted that there were three bids received as follows: Gorilla Lawncare (GLC), \$16,800, Coastal Elite, \$27,000, and Lawnscares (LS), \$27,300, all for forty visits. Due to the dramatic difference in bids and questions relative to services and references, the directors felt they did not have sufficient information to vote on a provider at this time. Specifically, the landscape committee did not prepare a Request for Proposal, but rather Mr. Nichols prepared a contract with unusual authority designated to himself. Mr. Dick and Ms. Reiss noted there are both good and poor clauses in the contract, and while it should have been prepared as an RFP for the maintenance companies, consideration should be given to including pertinent information in the new contract. Ms. Reiss reported that Lawnscares, the Association's current landscape contractor, when contacted to ensure they continued the current maintenance program until officially notified by CPOA of the service termination, offered a proposal for 36 visits, repairing the dock area previously damaged by heavy rains and twice yearly bush-hogging of all vacant lots for \$21,900. . Mrs. Reiss asked that the minutes reflect she has no outside commitment or business relationship with Lawnscares, and she did notify Joe Littleton, owner, that another bid is being considered for landscaping services. Mr. Littleton offered several additional items as part of his bid proposal, which will be considered in the bid review. On a motion made by Chris Reiss and seconded by Tom Neubauer, Mr. Dick and Mr. Spencer as landscape committee members, with Buddy Dye, will follow up with GLC and LS to review all information, obtain commercial references from GLC, and to present the bids once clarified to the board for approval. The motion was approved unanimously.

- (7) **Stormwater drainage at dock parking area:** Ms. Reiss pointed out that shortly after the initial completion of the development, a problem in this area was identified and addressed at an October 2006 Special Meeting of the Board of Directors. It was determined that the problem was both a construction and design failure: (i) the construction failure was that the original plan design called for the parking area to initially slope up from the street edge of payment so that water flowing down the street would be directed into the right of way inlet immediately south of the parking area on the street (a sort of valley type gutter), but the original construction by GAC Contractors did not properly

construct this upward slope (instead, the entire parking area sloped downward from the edge of pavement, directing all stormwater into the inlet at the southwest corner of the parking area, when instead, it should have flowed past to the right-of-way inlet to the south of the parking area); and (ii) the design failure was that the inlet at the southwest corner of the parking area was lower in elevation than the drainage pond, thus when the pond was full, water from the drainage pond flowed back through this inlet and overflowed over the curbing at the parking area. In October 2006, the Association reached a settlement with both GAC Contractors and Baskerville Donovan Engineers. Pursuant to that settlement, GAC, at the contractor's sole cost and expense, corrected the construction flaw by reconstructing the parking area to include the upward slope as per the original design. As part of the settlement with Baskerville-Donovan, and in cooperation with the City of Panama City, the drainage at the southwest corner of the parking area was redesigned by Baskerville-Donovan, who also handled the associated permitting for the corrective work and reconstruction. The corrected redesign was constructed at the expense of Baskerville-Donovan, and included terminating the connection between the stormwater retention pond and the inlet at the southwest corner of the parking area. An alternative system was designed and constructed to address stormwater which flowed to this inlet, all at the sole cost and expense of Baskerville-Donovan. Mrs. Reiss pointed out that in February 2008, Bay County experienced what has been termed a 'hundred year rain event', and the parking lot in the dock area collapsed as the result of erosion. The city mistakenly thought they were responsible for the parking area, and upon investigation by the independent City engineers, their team advised the Association that the collapse was due to a clogged skimmer which resulted in overflow and erosion. At this time, the City advised the Association that (i) the drainage pond was correctly sized, and (ii) had the skimmer to the pond not been clogged, the stormwater system as designed and constructed would have effectively handled the intense rain event without incident or damage. Due to the unusual rain event, similar problems occurred throughout the county, particularly in areas of newer construction, where soils were not firmly established by long term plant growth. It was subsequently determined that responsibility for the parking area was retained by CPOA as the dock area is not part of the public areas dedicated to the City, and repairs were, therefore, made by the Association. Because of excess funds already available in the Association, there was no need for a special assessment and the repairs were accomplished with operating funds already on hand. Mr. Neubauer also pointed out the claims Mr. Nichols made in email correspondence relating to the stormwater drainage contained multiple errors and misstatements. It was agreed by all that maintenance and clearing of the skimmer/pond area should be addressed specifically in the landscape maintenance contract to ensure this does not reoccur. Other than including this item, the board members agreed there is no action that must be taken on the stormwater drainage at this time.

- (8) New business: The annual meeting should have been held in September per the by-laws. Ms. Reiss suggested it be scheduled in early November to allow time for the landscape committee to complete their work, the budget to be prepared and the required fourteen day notice be provided. Ms. Reiss will check available dates at the Yacht Club, and coordinate a date with the directors.

With no other business to be discussed, the meeting adjourned at 6:35 p.m.

These minutes approved December 11, 2009



Tom Neubauer, Secretary