

Special Board Meeting Minutes

Nine Mile Ranch Homeowners Association Special Board Meeting August 29, 2020

Due to the Coronavirus this Board meeting was held telephonically. Board members present; Kirk Johnson, Brian Rabe, Rick Lewis, Brett Coffman, Susan Stewart, Don Charnholm, Pam Lewis and Stacey Johnson. (all Board members present)

Meeting is being recorded by secretary only.

All Board members stated they had no audience members present for the teleconference.

Meeting was called to order at 10:06 am.

Discussion regarding August 28, 2020 Cash Flow Report emailed to Board prior to meeting. Changes in wording suggested and noted.

Discussion regarding upcoming road work this fall and next spring. Decisions for spending funds is based on said Cash Flow Report.

- There was a recent touch up spray performed. Invoice has not been received. Estimated at \$500.
- Estimated cost of spring 2021 pre-emergent sterilant is \$4000. A pre-emergent spray has not been done for many years. Doing this will most likely reduce the amount of spray done in June 2021.
- More funds are still coming in through collections.
- Considerations for road expenditures are outlined in the 7/12/2020 Road Report. Following list is in priorities:
 - maintaining watershed and erosion control characteristics such as culvert and ditch clearing and raking or grading for road crowing.
 - Other structural repairs, like repairing dust spots and other erosion-prone areas.
 - Placement of yearly replenishment gravel.
 - Raking of roads to eliminate washboard and potholes.
- Consideration of how much money we should not spend now - hold out for unforeseen costs.
- Although budgeted amount for snowplowing and sanding is incorporated in Cash Flow Report, we should consider having extra in case of severe winter.

Motion made by Kirk Johnson that \$9,000.00 be made available to the Road Committee to spend on roads at their discretion with priorities given to the following items: 1) considerations outlined in the 7/12/2020 road report, 2) maintaining watershed and erosion control characteristics such as culvert and ditch clearing and raking or grading for road crowing, 3) other structural repairs, like repairing dust spots and other erosion-prone areas, 4) placement of yearly replenishment gravel and 5) raking of roads to eliminate washboard and potholes. Seconded by Richard Lewis. Stacey moves to amended motion to state the funds used are to come from annual assessment collections, not from the special assessment collections. Kirk Johnson seconds amendment. Motion passed unanimously.

Consent agreed upon to post August 28, 2020 Cash Flow Report to website.

Discussion regarding HOA/BOD right to spend funds to enforce CCRs and to seek special assessment if necessary. Also, the right and duty to enforce/uphold CCRs. Majority (all but one) directors believe that the Board has the responsibility and duty to enforce/uphold the CCRs. Enforcement/unholding CCRs includes inquiry, imposing fines and filing legal suit if necessary. Looking at CCRs Article IV Section 4 and 6 clarity was brought forward as to the right to ask the membership for a special assessment for legal funds, if necessary. Spending Association funds on legal fees is always a concern.

Director Pam Lewis has stated that the Board has the power to enforce CCRs but not the duty to do so. Prior legal counsel states that “Thus, the Board has the power to enforce the covenants, but the duty to enforce them only to the extent authorized by a vote of the Board. As a general matter, the Board has a fiduciary duty to the members of the Association. This fiduciary duty is tempered by the business judgment rule, which requires the Board to act on behalf of the Association in a reasonably prudent manner. If the Board reasonably determines, after a reasonable inquiry, that an attempt to enforce a covenant would be unsuccessful, or would unreasonably consume the resources of the Association, it may decline to pursue enforcement.”

CCRs give the Board all the tools to manifest funds for enforcement, if necessary.

Discussion about clarification whether current HOA/BOD member accepts unconditional compliance with CCRs: The following is directed at Pam Lewis, who is at this meeting as a Board member. “There seems to be some confusion over this subject so for clarification, regarding you having 2 more dogs than are allowed by the CCRs at Article IX, Section 7, the BOD and ACC communicated to you some months ago in writing that you must comply with the covenant and has offered you the option to comply through attrition; in other words, allow your number of dogs to reduce to 2 over time by way of the natural death of the excess number of dogs. This offer of attrition is not a member’s right to have by way of the CCRs but is rather the sole right of the Board of Directors to offer to violating member if the Board considers this to be in the best interest of the Association. This offer of compliance through attrition of your current dog overages offered to you is not conditioned as “for the time being” as you have said, nor for any other time period or circumstance; it is either accepted by you in full or it is rejected by you if you communicate any form of condition on your acceptance. So for the record, please state clearly whether you accept this offer of unconditional attrition regarding your current 2 dog overage.” Director Pam Lewis response, “as I’ve stated before I will accept that for now. Things can change and I will not accept that if things change”. Director was then asked “as long as the current CCRs exist without amendment for the limitation of 2 dogs you do accept the offer of attrition”. Director Pam Lewis agreed. (Note: Prior Boards did not consistently enforce the 2 dog limit. In the best interest of the HOA, the current Board has offered attrition to those members not in compliance prior to 2018. From here forward the 2 dog limit will be enforced with attrition no longer being offered.)

Board assembled in closed session to discuss matter involving violations of the governing documents of the Association, and matters involving the possible liability of an owner to the Association namely the existing unapproved dog breeding business of the owner of Division 1, Lot 47, the recent installation of a permanent fence within the HOA easement and encroaching the HOA road, by the same owner with the violating dog breeding business.

Board reconvened to ratify the following motions made in closed session:

Motion made by Kirk Johnson that the current draft letter be immediately sent to the owner of Division 1 Lot 47 regarding a final offer of settlement before legal action ensues. The final offer includes all of

the same prior-communicated requirements to the Lot Owner that they remedy their violation of CCRs dog and commercial breeding clauses and also easement encroachment clauses. The offer also includes forgiving the amount owed of fines. Response and compliance is required within 30 days. Member's current balance statement of account will be included. Motion passed 7 yes, 1 no = Pam Lewis.

Motion made by Stacey Johnson to send said letter certified to member. Seconded by Susan Stewart. Motion passed 7 yes, 1 no = Kirk Johnson.

Motion made by Kirk Johnson;

WHEREAS it is the duty of each HOA member to comply with the terms of the 9MR CCRs, and

- WHEREAS it is the duty of the Board of Directors to uphold the CCRs unless such proposed actions to cause compliance with the CCRS are not in the best interests of the HOA or if such proposed actions are unduly burdensome on the HOA's ability to obtain enough income to support the proposed actions, and
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- WHEREAS the particular violations of the owner of Division 1 / lot 47 are extensive and long-standing such that the violations threaten nearby property values, and other rights to HOA members, and violate the purposes and terms as clearly expressed in the CCRs,
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- THEREFORE be it resolved that an amount of up to \$3000.00 be spent to have HOA general legal counsel 1) draft a legal agenda/itinerary and supportive explanations for the Board to follow for the subsequent legal pursuit of enforcing upon the lot owner for his CCR violations, and 2) draft a one-page summary and explanation of the case and recommended legal process for the general HOA membership to receive. This expenditure will not be taken until and if the violating lot owner does not timely respond to the current out-of-court settlement offer from the Board regarding the violations. The funds used for this motion will be used from the current legal expenditure budget, and if more funds are needed than what that budget can provide then the additional funds will be taken from the HOA reserve fund. Such funds taken from the reserve fund will be replaced from next fiscal year's regular annual assessment income.

Seconded by Richard Lewis. Motion passes 6 yes, 2 no's = Pam Lewis and Don Charnholm.

Meeting adjourned at 11:37 am.