

Board Meeting Minutes

Nine Mile Ranch Homeowners Association Board of Directors Meeting January 14, 2021

Due to Coronavirus this Board meeting was held by Zoom. Board members present; Brian Rabe, Richard Lewis, Stacey Johnson, Don Charnholm, Pam Lewis, Kirk Johnson, and Susan Stewart by phone. Also present Todd Besaw, ACC Chair. Note that this meeting was a test in using Zoom. Next Board meeting will be set up with Zoom for members to be present if they wish. Notification will be sent out to all members prior to meeting)

Meeting called to order at 6:14 pm.

Read into minutes

Motions made outside of meeting:

Motion made by Kirk Johnson that the Board immediately approve an expenditure of \$199.90 (plus any fees and taxes that might apply) for Zoom video conferencing service for Board administration and control for (1) year period of time, such service which would allow open attendance of Board and Membership meetings. The service would include allowing up to (300) attendees. Seconded by Pam Lewis. Motion passed unanimously. Note that after more research is was discovered the \$199.90 Zoom package cost far more that advertised. The Board signed up for a \$15.00 a month service for now, which will allow up to 100 meeting attendees.

December 20, 2020 Special Board meeting minutes approved via email and by those Board members present at this meeting.

The following meeting minutes were approved by Board via email but approval had not been officially stated in prior meeting minutes:

December 1, 2020 Special Board meeting	May 23, 2020 Special Board meeting
October 30, 2020 Special Board meeting	March 14, 2020 Board meeting
October 10, 2020 Board meeting	January 18, 2020 Board meeting
September 24, 2020 Special Board meeting	October 12, 2019 Board meeting
August 29, 2020 Special Board meeting	July 13, 2019 Board meeting
July 11, 2020 Board meeting	March 16, 2019 Board meeting

Motion made by Brett Coffman, in December through email, that “all actions and attorney communications taken against the HOA by any source be automatically turned over to the presiding HOA attorney for responses and proper defense.” Discussion was that the Board should address each issue before anything is sent to an attorney. Motion is tabled untill next meeting.

New Business

Motion made by Kirk Johnson to amend December 20, 2020 Board meeting minutes to include item #7 to be added to the third sentence under Road Report, first Motion. Seconded by Brian Rabe. Motion passed unanimously.

Discussion regarding subject of whether interest on fines charged is allowable by law: Board members research show that in many states interest on fines if not allowable, but no information for Washington state has been found. Is this a worthy topic to ask legal counsel. Charging interest is in our Fines Policy. Policy was reviewed by prior HOA attorney before the Board adopted it.

Motion made by Susan Stewart to remove charging of interest on fines from the Fines Policy. Seconded by Don Charnholm. Motion passed unanimously.

Discussion brought forward regarding HOA liability for winter roads conditions: Pam Lewis had stated in email to the Board that the “Association could receive a fine if an ambulance or fire truck are required and could not get in, and that the HOA would be responsible if an emergency vehicle were to have an accident due to our road conditions.” Anyone can sue the HOA. As long as the HOA is showing due diligence to respond to weather hazards the HOA is okay. The HOA works to create as much safety as possible given weather hazards and budget. The HOA roads are posted with signs that state “use roads at your own risk”. Communication to members about the hazards of winter driving is important and has been done in recent years.

Suggestion to have Road Committee review and do a cost analysis as to whether the HOA should plow more often instead of sanding: Weather temperatures are a factor here. Not sure how to calculate given the large variety of variable factors and lack of clear and prior data. A test area would need to be created. Having less snow on the roads would lessen the thickness of ice. This has been a unique year for ice. Bill Burham has been doing a great job this year as Snowplow Coordinator.

Motion made by Kirk Johnson: WHEREAS the purpose for a preamble to a motion like this is to explain to readers the underlying reasons for the proposed action, to inform members why a decision is being made to spend funds or take actions, and

- WHEREAS the Board absolutely respects the private rights of all Lot Owners and wishes to in no way at all disparage anyone by the fact that it has to occasionally openly address violations of CCRs by a Lot Owner, and

- WHEREAS the Board has been informed through the Bylaws and legal counsel that the Board is required to enforce the CCRs – in other words, it is a legal duty to act to enforce – under specific conditions, those requirements and conditions as follows:

- Bylaws, Article VII, Section 2(e) “Duties... It shall be the duty of the Board of Directors to... in their discretion... enforce covenants as provided in the Declaration [CCRs] when deemed necessary by a vote of the majority of directors...”

- HOA attorney Bergh, per his 12/1/18 language to the Board: “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 [duty to enforce]. 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 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.”

- Given the above two bullet points, the Board interprets that enforcement of CCRs is an inherent fiduciary duty of the Board that can only be declined upon reasonable determination, such as: 1) the violation is not substantively impactful on the rights and land values of Lot Owners, 2) the choice to knowingly abandon enforcement would not erode the legal enforceability of the CCRs either in part or in whole, 3) the cost to enforce would be unreasonable, or 4) enforcement would likely be unsuccessful, and

- WHEREAS the Board interprets they are required to consider enforcement of CCR violations by Lot Owner Wayne Naysnerski because he has cost the HOA approximately \$4000.00 in legal fees so far regarding his ongoing multiple violations of CCRs and encroachments upon other Lot Owners' rights under the CCRs, including prohibited business operation, possession of a number of dogs far in excess of the CCR limitation of (2) per lot, and illegal encroachment and obstruction of 'public' easements which result in violating Lot Owners' rights to use those encroached easement areas and also inhibiting the HOA's ability to properly provide winter road snow plowing maintenance in the encroached areas, and
- WHEREAS Mr. Naysnerski's said violations constitute a direct negative impact on the rights of all Lot Owners under the CCRs and also potentially threaten the resale ability and value of other Lots, especially those within closer proximity to his Lot, and
- WHEREAS the violations of Mr. Naysnerski are of such a now widely known and varying nature that the Board believes that to not attempt to take reasonable steps to enforce on them would threaten to erode or reduce the legal enforceability of at least portions of the CCRs, and
- WHEREAS in order to encourage Mr. Naysnerski to comply with CCRs, on September 24, 2019 the Board instituted a fines process against Mr. Naysnerski, pursuant to RCW 64.38.020(11), for many of his violations, such fines which he has not paid and which continue to accrue to many thousands of dollars, and
- WHEREAS Mr. Naysnerski waived his statutory right to be heard regarding the violations before fines were imposed on him by the Board, per RCW 64.38.020(11), and
- WHEREAS Mr. Naysnerski did not respond to the Board several months ago when the Board offered to remove all fines if he came into compliance with the CCRs he is violating, and
- WHEREAS the proper management and protection of HOA funds and business includes considering taking prudent measures to secure financial interests of the HOA, which might include liening Lot Owners for fines that were accrued for violating CCRs, and
- WHEREAS any action of the Board with respect to fining and liening needs to be completely compliant with all applicable laws so as to not violate any person's rights or cause undue legal liability for the HOA, and that this knowledge be on record for the benefit of all future boards and all HOA members,
- THEREFORE BE IT RESOLVED to spend approximately \$250.00 for atty counsel on the subject of whether it is advisable to lien violating Lot Owner Wayne Naysnerski for his unpaid fines and to also make sure the overall fines procedure with respect to Mr. Naysnerski is advisable and legal. As part of this Motion the Legal Committee may seek to receive the final attorney counsel in the form of a report/summary that counsel will review and approve.

Seconded by Susan Stewart. Motion passed: 5 yes, Don Charnholm & Stacey Johnson voting no.

Motion by Kirk Johnson that if legal counsel recommends in favor of liening Mr. Naysnerski, as addressed in the Motion above, the Treasurer will do so immediately thereafter. Such cost to the HOA for filing this lien would be \$105.00. Seconded by Brian Rabe. Motion passed: 4 yes, Stacey Johnson, Don Charnholm & Pam Lewis voting no.

Treasurer Report

Accounts Receivable Update Report was addressed. Funds are still being collected albeit slowing.

Interest and late fees on past due accounts are still restricted, per Governor's proclamation, through January 18, 2021, most likely to be extended.

Motion by Stacey Johnson that the HOA extend suspension of interest and late fees on past due accounts until Governor's proclamation is revised, with notice to the Board from the Treasurer prior to Treasurer charging members again. Seconded by Rick Lewis. Motion passed unanimously.

Cash Flow Report was given to the Board. Some figures included are a guess and variable as the next months unfold, particularly for legal expenses, snowplowing/sanding and spring road work.

First draft of a proposed 2021-2022 budget was given to the Board. Draft is the start of working with and pondering for budget to be approved at the March 2021 Board meeting. Budget shows a loss when full amount of estimated costs of Road Maintenance expense is included. For years, the Road Maintenance expense in the budgets was calculated by using what was left after subtracting all other costs from estimated income. This draft budget shows full estimate of Road Maintenance, thus showing an overall loss. Treasurer asked the Board to decide how they want to present this budget to the members; either budget showing a loss, or presenting like years passed adding a supplementary explanation of Road Maintenance expense being unrealistically low.

Motion by Rick Lewis to raise the annual assessment 10% for year 2021-2022. Seconded by Susan Stewart. Raise will give the HOA \$5,662 more income, an increase of \$19.40 per year per Lot. Don Charnholm motioned to table until March Board meeting. Unanimous consent to table motion.

Mailing coming up to mail the Solicitation for Candidates Letter & Form plus a newsletter: First draft of letter was given to the Board. Final draft will be sent out to the Board for final approval.

Motion by Stacey Johnson to spend \$200 for the February 15, 2021 mailing. Seconded by Don Charnholm. Motion passed unanimously.

Motion by Stacey Johnson for approval of final Letter and Newsletter via email by the majority of the Board. Seconded by Rick Lewis. Motion approved unanimously.

We will start on the annual mailing soon as well.

Existing Committees affirmed to continue with current members.

Email address changes for Board members connected HOA website: Anne will change all addresses at once.

A thank you to Brian and Felicity Rabe for funding and producing our new member welcome packet. At some point the Board may need to budget for costs of packets.

It was discussed in a prior meeting to address CCR & Bylaw amendments in this meeting. Unanimous agreement by the Board to table this for now due to current work load.

ACC Report

ACC approvals of application for plan approval submitted to the ACC since September 2020;

Single family residence (0)

Outbuilding (2)

Driveway/build site preparation (4) of that (2) required a culvert by Road Committee recommendation.

New Fence (1)

Comment was made about the status of private driveway culverts being the maintenance responsibility/liability of the Lot Owner or the Association is not clear, and this was an issue last Spring of 2020 when a blocked culvert caused damage to an association road.

One Rental Form request letter was sent out to a lot owner in October and again November of 2020, the ACC has not received a response from that Lot Owner. A social media post was made by the lot/residence occupant regarding the snow plowing of Tamarack Trail in division 3 being plowed by the Nine Mile Ranch HOA. The ACC chair responded with acknowledgment of Tamarack Trail being a 30' ingress, egress, and utility easement and that it is not plowed by Nine Mile Ranch as it is as a private driveway for the two Lots it serves.

(Note: All other known renting Lot Owners who were sent a letter for a Rental Form request responded)

Motion made by Brian Rabe for reimbursement to Kirk Johnson for expense report presented to the Board. Seconded by Susan Stewart. Motion passed 5 yes, Stacey Johnson & Kirk Johnson abstained.

Motion by Kirk Johnson for 2021 mileage reimbursement rate to be the 2021 federal rate of \$.56 a mile. Seconded by Brian Rabe. Motion passed unanimously.

Discussion regarding suggested changes to the Election, Ballot and Recount Policy. A 'chain of custody' addition is being suggested. Board will review further before approved.

THANK YOU to Mrs. Roe and Mr. Greene for donation of \$700 for road gravel that was placed on Longhorn in lower Division 8.

Executive Session

Board moved into executive session to discuss legal suit filed against the HOA by HOA member Mr. Mathis.

Motion made by Stacey Johnson that in the best interest of the HOA, pursuant to legal advice of Miller & Chase, that Board members and the legal committee are not allowed to discuss litigation, regarding legal suit filed against the HOA by Mr. Mathis, outside of the Board to protect attorney/client privilege. Seconded by Rick Lewis. Motion passed unanimously.

Meeting adjourned at 7:40 pm.