

MINUTES OF SPECIAL BOARD OF DIRECTORS MEETING HELD SUNDAY, NOV. 2, 2008, TIM CAREY'S HOUSE AT 7:00PM.

THOSE PRESENT: Tone Fenech, Sheryl Jaedicke, Tim Carey, Bill Fairbanks and Roland Ewert

Meeting started at 7:00PM

SELECTION OF INSURANCE PROVIDER

Bill Fairbanks briefly recapped correspondence with the two bidders, United Agencies and Robco. The final bids for each agency were:

Robco	\$8,034.18
United Agencies	\$8,730.00

The bidding process was discussed. The differences in coverages and price between the two agencies and insurance companies were discussed.

Roland Ewert made a motion that the Robco quote be accepted at \$8,034.18. Sheryl Jaedicke seconded the motion. The voting was 4 in favor of the motion and one against.

FENCE BETWEEN LOT 67 AND FIRE EXIT ROAD

The owners of Lot 67 had requested on Oct. 8, 2008, that the Association pay half of the cost to replace the fence that borders their Northern property line and that of lot D, Fire Exit Road, Common Area.

The Board reviewed the emails between Bill Fairbanks and David Cane on the subject, the Board having been copied on all of them. The most important points made by Attorney Cane were discussed:

Email from David Cane to Bill Fairbanks, 10-13-08, with all Board Members copied: "The lot immediately to the left (north) of Lot 67 is Lot D. Lot D is Common Area. It is important to note that when the Association's CC&Rs refer to the word "Lot" with a capital "L," the word only includes the homeowner owned lots and not the common area lots. See Section 1.1.10 on Page 3 of the CC&Rs.

For that reason, the party wall provisions of Article 16 of the CC&Rs do not apply to the fence separating Lot 67 and Lot D because the party wall provisions expressly apply to fences separating Lots, not fences separating Lots and Common Area. Moreover, a party wall traditionally constitutes a common element in neighboring structures, not a fence separating neighboring properties.

To my knowledge, there are no side yard easements in the area in question. Therefore, 8.2.17 and 8.2.18 of the CC&Rs have no application here either.

Therefore, if the fence is located wholly or primarily on Lot D, then the Association is responsible for its maintenance, repair and replacement, pursuant to Section 4.1.1 of the CC&Rs.

If the fence is located wholly or primarily on Lot 67, then the owner of Lot 67 is responsible for its maintenance, repair and replacement, pursuant to Section 7.4

of the CC&Rs.

Section 7.4 also refers to fences or walls straddling boundary lines of adjoining Lots being the joint responsibility of the two Lot owners, pursuant to Civil Code Section 841. A fence or wall straddling a boundary line is commonly called a "division" fence. Although Section 7.4 only refers to fences separating "Lots" (that is, not fences separating a Lot from Common Area), by operation of law Section 841 of the Civil Code would make the Association jointly responsible for the fence if it is located on the boundary between Lot "D" and Lot 67.

No, I would not conclude that the Association's agreement to pay for painting the north side of the fence necessarily obligates the Association to pay towards replacing it too. If the developer originally installed the fence, it would not have any bearing on who should replace it, but if an owner of Lot 67 originally installed it, it was probably installed on Lot 67, which means the owner is generally responsible for it. If the Association has been reserving for 1/2 of the replacement cost for the fence, the Association should pay for 1/2 of the replacement cost, but if the fence is located on Lot 67, a letter should be written to the owner advising that after the fence is replaced on this occasion, the Association will no longer be contributing towards its maintenance, repair or replacement."

Since the present, actual location of the fence was found to be of great importance, the Board agreed to measure the boundary line between Lot 67 and Lot D. The entire Board participated in the measuring process. After measuring the boundary line and the location of the fence relative to the boundary line, Bill Fairbanks wrote the conclusions of the Board in an email to the Board and asked all Board Members to give their approval as written. The summary conclusion of the email is included below:

"The conclusion of the 5 Board members participating in the measuring was that the fence for the first 8' or so from the gate is totally on Association property by less than 1/4" and from there West it straddles the property line ending at the West end almost exactly centered on the property line. The total length of that portion of the existing fence that runs parallel to the property line is about 88' long. The most Easterly 8' portion of the fence is on Association property and the remaining 80' of the portion of the fence that runs parallel to the property line is very nearly perfectly centered on the property line. The conclusion is that the fence straddles the property line between Lot 67 and Association Common Area known as the Fire Exit Road. The portion of the Lot 67 fence that runs North and South from the West end of the 88' long East-West portion to the house, including a gate, is of course totally on Lot 67 property."

All five Board Members sent an email to Bill confirming their agreement and approval of the above "conclusion paragraph".

It was discussed that since we now know the location of the fence and given David Cane's statement that if the fence fell on the property line, the

responsibility for maintenance or replacement would fall equally to the owner of Lot 67 and the Association. Discussions continued about where the replacement fence should be built and the advantages of each. Three locations were identified, i.e. on the Lot D property, on Lot 67 property or on the boundary line.

Roland Ewert made a motion as follows: Given the analysis of Association CC&Rs above by our Association Attorney, David Cane, his understanding of the application of Section 841 of the Civil Code and the fact that all Board Members participated in the measuring of Lot 67 property line and location of the existing fence, finding the fence to be straddling the Northern property line of Lot 67, the Board approves the Association paying for 50% of a replacement fence; the fence material, exact price and vendor selection to be jointly agreed upon by the owner of Lot 67 and the Board. The Board hereby approves the Association's 50% share at approximately \$15/lin. Ft. The East-West portion of the fence length being about 88 ft, the Association cost would be between \$1300 and \$1500. Vinyl fencing is recommended. The North-South portion of the fence that connects Lot 67 residence to the East-West portion of the fence is solely the responsibility of Lot 67. The replacement fence would be built exactly straddling the East-West property line of Lot 67. Tim Carey seconded the motion.

After discussion of the proposed replacement fence location and the fact that the Association's cost would be lower in the long run if the fence were located wholly on Lot 67's property and that the primary benefit of the fence falls to Lot 67, Bill Fairbanks suggested that two options should be added to the motion and presented to the owner of Lot 67 as follows:

Primary Option: The replacement fence would be located wholly on Lot 67, so that all future maintenance, replacement costs and total control of the fence would be borne solely by owners of Lot 67. This is the preferred Association option, since the primary benefit of the fence and fence requirements falls to Lot 67.

Secondary Option: The replacement fence would be located exactly on the property line between Lot D and Lot 67, so that all future maintenance, replacement costs and control over the fence would be shared equally by the Association and Lot 67.

The vote for the original motion as amended with the two options was 4 in favor and 1 against.

The proposal above and Lot 67's agreement must be in writing. Bill Fairbanks will first obtain the Board's approval of these minutes, and then transmit to Attorney David Cane for review before the proposal is written and transmitted to Lot 67.

Meeting adjourned at 8:20PM.