

July 11, 2010

For Submission to HPHA Board

Introduction

At the June 2010 HPHA Board Meeting I was appointed to investigate, draw conclusions and make recommendations in regard to a set of questions sent by Sharon Hassell, Daleport, to the HPHA Board (see the appendix of this document).

On the Saturday after the June Board Meeting I met with Sharon Hassell, Tom Greene, Co-Circle Representative for Havenrock, Connie Rodgers, Mapleview, and Vas Vasanthkumar, Kingscrest. At this meeting we focused on understanding Sharon's information requests from the HPHA.

Subsequently I spent approximately 8 hours reading (and re-reading) the HPHA governance documents posted on the HPHA.org web site.

I met with Matt Bach to understand the background and intentions for the September 2009 amendments to the the By-Laws.

Finally, along with Mike Lattman, Regal Hill Circle Representative and former HPHA Secretary who had previously worked in depth with the HPHA governance documents, I met with the HPHA attorney, Cliff Weinstein. (see the appendix for Mr. Weinstein's comments on the discussion).

My intent is to create a readable document with enough references that the reader can check the logic for themselves. Also, my intent is to make simple, practical recommendations that will resolve the issues at hand for now and in the future.

David Santucci

Kingscrest Circle
HPHA Treasurer

Background

There are four levels of governance documents for the HPHA. In hierarchical order these are:

1. Declaration of Covenants and Restrictions
2. Articles of Incorporation
3. By-Laws

The Declaration of Covenants and Restrictions is the highest document. If there is a conflict between governance documents the higher document wins.

Also, when reading the documents it is important to know that the HPHA is organized on the “one lot, one vote” principle. There is one vote for each of the 120 lots of the HPHA. The owners of each lot control the vote.

In preparing this report I focused on two documents which are available on the Resale Certificate page of the HPHA.org web site. These documents capture the official HPHA governance documents in electronic form.

- HPHA Complete Docs.PDF
- By-LawsAmendments09Final

Questions

In the report I am going to report on the answers to the questions in the order of least complex to most complex.

Amendment to the Declaration of Covenants and Restrictions in 2003

Article VIII Section 1 of the original Declaration of Covenants and Restrictions allows for a majority of the homeowners to amend the declaration with a 3 year waiting period. The signatures for seventy-four homes were collected in May 2003. After the three year waiting period the amendments went into effect in May of 2006.

The excerpt from the Declaration is below:

“.. after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the the then Owners of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part provided, however, that no such agreement to change shall be effective unless made and recorded three (years) in advance of the effective date of such change.” [page 21-22 in the HPHA Complete Docs]

This interpretation of the Declaration was supported by the law firm of Godwin-Gruber in 2003. Clifford Weinstein affirmed this interpretation in his review of our governance documents in June 2010.

Conclusion: There is no reason to question the validity of the 2003 amendment to the Declaration.

Note: A few people have noted that there were 104 signatures for the 74 homes that supported the amendment. My understanding is that some of the homes were jointly owned, therefore both husband and wife signed the amendment. In other households the husband and wife both signed to show their joint support of the amendment. I noticed that in the the first amendment to the Declaration that most of the homes had signatures from both husband and wife.

Note: There is an alternate approach for amending the Declaration. Article VIII Section 3 provides a method for immediate amendment to the Declaration, no three year wait required. This requires a document signed by 75% of the Members.

Note: The 2003 amendments to the Declaration were in Article VI Architectural Control Committee and the associated Article VII Protective Covenants.

Information Requests

In my meeting with Sharon in early June she requested several documents in regard to the the Topographical Survey and Long Range Plan.

The requests are being answered as followed:

- All Board Meeting Minutes for 2008 and 2009 are now posted on the HPHA web site.
- The information packages and voting results for the 2008 Annual Meeting, 2009 Annual Meeting and September 2009 Special Meeting for By-Laws amendment will be posted on the HPHA (after the HPHA web master, Thuy Tran, returns on July 10th.)
- Scans of quotes and invoices for the Topographical Survey and the Long Range Plan will be posted in the Long Range Plan section of the HPHA.org web site.

Conclusion: There is a lot of information about the day-to-day running of the Association that could be easily shared through the HPHA.org web site. Providing this information would answer common questions from the members.

Recommendations:

The HPHA Board should provide more specific information on the day-to-day management of the Association on the HPHA.org web site.

- The Board should assign a committee to make recommendations on the information to provide in the Meeting Minutes and other documents:
 - Examples to include in the Monthly Meeting Minutes are:

- Written Reports from the Treasurer on our current cash status, unexpected expenses in the month, and large expenses.
- Written Report on our collection status
- A draft of the Monthly Meeting Minutes should be posted within 1-2 weeks of the meeting so that the Members can know what was discussed at the previous meeting in a timely fashion.
- Annual Meeting and Special Meeting Information Packages along with voting results from the meeting should be posted on the HPHA Web Site.
- The Board should assign a committee to define policies and procedures for retention and storage of HPHA documents. This is common practice in corporations.
- The Board should assign a committee to define policies and procedures for responding to requests to view the “books, records and papers of the Association” which “shall be available at all times, during reasonable business hours” as required by the section XIII of the By-Laws. Note: This section of the By-Laws went into effect in 1970 when the Board was made up of the developers of HPHA. The records of the association were housed at the business offices of the developers.

Expenditures for Topographic Survey and Long Range Plan

The Topographic Survey with an expected cost of \$3500 and the HPHA Master Plan “unfunded - to be undertaken only if funds become available” were both part of the HPHA 2009 budget passed by the Membership with an 83-1 approval vote (2/3 majority) at the November 2008 Annual Meeting. Subsequently, funding for the Master Plan became available when the HPHA received approximately \$21,000 from the estate of a deceased homeowner who had not paid dues in 20 years.

The actual cost of the Topographic Survey was \$4755. It is not uncommon for budget estimates to be different than the actual costs.

Note: The amendment to the By-Laws to include the Master Plan in the By-Laws as a guiding principle for future development of the park was supported by a 67-5 vote.

Conclusion: The Topographic Survey and Master Plan are controversial to some. However, the member support and funding were there for these projects.

Recommendations:

- The HPHA should move on. History cannot be changed. Take advantage of the fact that we now have these reports. The Board should help the HPHA move on by passing a motion that acknowledges the past controversy and that supports the use of the reports going forward.

- The HPHA Board should aim for cash reserves at the end of the year of \$10,000 or less. This will force the Board to come to the Members for a special assessment to fund any large project. Note: here are the end of year cash reserves for the last few years: 2009: \$16,500; 2008: \$14,200; 2007: \$16,500; 2006: \$14,200

To achieve this objective the Board should plan to draw down cash reserves by providing a “Dues Free” month in December 2010 and again in future Decembers until the cash reserves are below \$10,000. Note: Dues generate approximately \$6,000 per month in cash.

Note: The question as to whether the Topographic Site Survey and the Master Plan reports are Capital Improvements has also been raised.

Article VIII Section 3 of the By-Laws defines Capital Improvements using terms like “constructing,” “erecting” and “landscaping.” Capital Improvements are defined as not including “routine” and “maintaining and repairing” expenditures.

In searching on the web for various tax and accounting definitions of Capital Improvement led to words like “construction” and “fixed, long-term physical asset.”

Conclusion: It is unclear whether paper reports that can be used to guide future capital improvements and to guide routine maintenance fall under the category of capital improvement.

Recommendation: If the desire is to require majority approval for expensive reports that could be used for capital improvements then the By-Laws should be amended to include “reports” in the definition of Capital Improvements.

Resolving HPHA Document Complexity

In preparing this report I found the HPHA governance documents to be a thicket of complexity. The wording is complex. The reference go across documents and amendments that are difficult to follow.

Recommendation: Cliff Weinstein, the HPHA Attorney, made these statements and recommendations after reviewing the documents with Mike Lattman and me.

“The document of your HOA are confusing and “over-lawyered” and should be cleaned up now that you have seen some of the problems than can come about. I suggest two steps to cleaning up the documents.

Step 1: a committee of 4-5 park members to review the documents to answer and clarify a list of important operational questions. Example questions are: 1) What is the quorum for a Monthly Board Meeting? and 2) What are the procedures necessary to approve a capital expenditure? Once approved by the Board, this question and answer document would be posted on HPHA web site as a reference for the Board and HPHA members.

Step 2: Based on the results of Step 1, the Board would determine whether it is worth the time and expense necessary to revise and approve updated HPHA governing documents.”

Recommendation: Mr. Weinstein made a second recommendation for resolution for the beginning of every meeting:

"I suggest that the first action of every Board meeting should be to reaffirm past decisions of the Board. I would suggest wording to use in you meeting minutes would be as follows:

"RESOLVED, that all proceedings of the Board of Directors and all actions taken by members of the Board of Directors and officers of this Corporation in prior meetings are approved and ratified as being actions taken by this Corporation, on behalf of this Corporation, and for the benefit of this Corporation and are unanimously approved. "

By-Laws Amendments and Make-up of the HPHA Board of Directors

Article Seven of the Amended Articles of Incorporation states the following:

"The Business and affairs of the Corporation shall be initially managed by a Board of five (5) Directors, which number can be changed by amendment of the By-Laws of the Corporation, but shall in no event be less than three (3) nor more than nine (9)." [Page 105 of the HPHA Complete Docs]

The Articles of Incorporation give a lot of latitude in the By-Laws to the structure of the Board of Directors. The original Board was made up of the investors in the Holiday Park development. The By-Laws were amended in 1972 to define a Board of eight Circle Representatives. [Section 1 Article V page 128 of the HPHA Complete Docs]

Other Board structures would be allowable under the Articles of Incorporation. For example, a Board of Eight Circle Representatives and a President would be allowable under Article seven.

Section 1 Article XI of the By-Laws states that the President and Vice-President "shall at all times be members of the Board of Directors."

Historically, because of the By-Laws definition of the Board of Directors as the eight Circle Representatives, the requirement for the President and Vice-President to be members of the Board has meant that the President and Vice-President must also be Circle Representatives.

In September of 2009 the By-Laws were amended. One of the clauses of this amendment addressed the definition of the Board of Directors. The amendment deleted the specific reference to "eight" Board Members, one from each circle. The clause also increased the number of possible Board Members to 15.

The specific wording of the September 2009 Amendment is below.

**Holiday Park Homeowners Association
Amendments to the By-Laws**

DEFINITIONS

The following words when used in these by-laws, unless a different meaning or intent clearly appears from the context, shall have the following meanings:

- (j) "Written" or "mail" shall include electronic forms of communication.
- (k) "Director(s)" shall include the Directors and Officers of the association.

ARTICLE V

BOARD OF DIRECTORS: SELECTION:

TERM OF OFFICE:

Section 1. Number. The affairs of this Association shall be managed by a Board of ~~eight~~ ~~(8) Directors and Officers, who need not be Members of the Association.~~ These Directors are selected as described in Section 2 of this Article. The number of Directors may be increased to ~~fifteen~~ ~~(15) directors~~ by Amendment of the by-laws by the Members pursuant to Section 1 of Article XV. Each circle may have no more than two votes, to be composed of the circle's representative and one officer, (if applicable). In the event the circle representative is absent a second officer from that circle, (if applicable), may vote.

There are two problems with this part of the amendment:

- Fifteen Board members clearly conflicts with Article Seven of the Articles of Incorporation
- Deleting the number eight, makes it unclear how many Board members there are.

Conclusion: The conflict with the Articles of Incorporation and lack of clarity make this clause of the amendment unusable. The By-Laws for Article V Section 1 should revert back to the previous version of eight board members, each representing a Circle.

Implication: Currently, the President, Matt Bach, and the Vice-President, Melissa Santucci are not Circle Representatives. Therefore, by reverting to the Board definition of 1972 these two people can no longer hold their positions.

Recommendation:

Minimize disruption in managing the affairs of the HPHA from now through the end of the year by maintaining continuity of leadership. Allow a new Board to be voted in following the normal process of voting at the Annual Meeting in November.

The approach should be for the Members of Covewood Circle to petition the Board to make Matt Bach a Co-Representative with Ivy Gold for Covewood Circle. By approving

this petition Matt Bach would again be a Circle Representative and would be able to hold the position of President.

The approach follows two recent Board precedents:

- Tom Greene and Valerie Vogues are Co-Representatives for Havenrock Circle.
- The Board approved Laura Peitzer as the Circle Representative for Terrace Lawn when the Members of Terrace Lawn presented a petition asking to replace James Martin with Laura Peitzer.

Note: I have not conferred with Ivy Gold or Matt Bach to ask if they would be interested in pursuing this recommendation.

Some HPHA members have raised concerns about the legitimacy of the actions by the Board because of the Board make-up issues.

I reviewed the Monthly Meeting Minutes for 2010. I found only two substantive decisions by the Board during that time.

- The approval of the elected Board members at the January meeting was unanimous.
- The decision to hire a property manager for a 6-month trial would have been 4-3 instead of the 7-3 that was recorded in the May meeting minutes. **However, this decision was rescinded by the Board at the June meeting in favor of a HPHA-wide vote of the members which is scheduled for July 13th.**

Appendix

LAW OFFICES OF
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July 5, 2010

Mr. Dave Santucci
HOLIDAY PARK HOMEOWNERS ASSOCIATION
PO Box 5725
Richardson, TX 75083

Dear Dave:

Thanks for meeting with Mike Lattman and me on the 30th to discuss the HPHA By-laws, Amendments and all HOA organizational documents and amendments. We discussed the fact that the hierarchy of the HPHA is the Declaration of Covenants and Restrictions, Articles of Incorporation, By-Laws and Rules and Regulations.

We had discussions in connection with Article VIII Section 1 of the Declaration of Covenants and Restrictions. In our discussion we all came to the conclusion that the amendment is valid. I am in agreement that Fifteen Board members clearly conflicts with Article Seven of the Articles and should revert back to 8 board members.

I suggest that the first action of every Board meeting should be to reaffirm past decisions of the Board. I would suggest wording to use in you meeting minutes would be as follows:

"RESOLVED, that all proceedings of the Board of Directors and all actions taken by members of the Board of Directors and officers of this Corporation in prior meeting are approved and ratified as being actions taken by this Corporation, on behalf of this Corporation, and for the benefit of this Corporation and are unanimously approved.

The document of your HOA are confusing and "over-lawyered" and should be cleaned up now that you have seen some of the problems than can come about. I suggest two steps to cleaning up the documents.

Step 1: a committee of 4-5 park members to review the documents to answer and clarify a list of important operational questions. Example questions are: 1) What is the quorum for a Monthly Board Meeting? and 2) What are the procedures necessary to approve a capital

expenditure? Once approved by the Board, this question and answer document would be posted on HPHA web site as a reference for the Board and HPHA members.

Step 2: Based on the results of Step 1, the Board would determine whether it is worth the time and expense necessary to revise and approve updated HPHA governing documents. My recommendation will be to do Step 1. My thought is that Step 2 is too time-consuming and expensive to be worthwhile.

Please let me know if I can help answer any other question or can be of help in any other way.

Sincerely,

Clifford I. Weinstein

CIW:px

From: Sharon Hassell

Sent: May 24, 2010 3:24 PM

To: Tish Greene , Nancy & David Bamberger , Mike Lattman , Jim Martin , Ivy Gold , Ivy Gold , Grant Gassiott , Donna Buschardt , Cathie Sells , Cathie Sells

Cc: Vas Vasanthkumar , Valerie Voges , Tony Bennett , Sharon Crowder , Sandy Savage , Marcy Luper Gmail , Marcy Luper , Marcos Silva , "Lynch, Rachel" , Linda Purvis-Ellis , Linda Becken , Leann Andrews , Laura Peitzer , Ken Savage , Jenny Womack , Gary Popkorn , Emmanuel Sambuis , Edna Rose , Danielle Ivey , Cornelius Rodgers , Chjackman@aol.com, Carol Drake , Buddy Pond , Brad Lisman , Angela Reina Greca , Amy Fleming , joanna maslanka

Subject: Holiday Park Homeowners Association - Member Complaint

Tom Greene, Nancy Bamberger, Mike Lattman, Jim Martin, Ivy Gold , Grant Gassiott , Donna Buschardt , and Cathie Sells , Holiday Park Homeowners Association Board of Directors,

I have not received a response to my initial request and, with this email, I am now filing a formal complaint with the Board of Directors.

In accordance with the governing rules, you, the Board of Directors, are charged with managing the affairs of the HPHA Association and supervising all officers, agents and employees of this Association, and to see that their duties are properly performed.

The governing rules do not allow for, nor do they recognize, personal feelings for, or against, any Member, Officer, or Director.

They do require strict adherence to, and enforcement of, all rules.

I consider this e-mail formal notification to each member of the Board of Directors of suspected violations and request a reply no later than 5:00 pm, Thursday, May 27, 2010.

A list of the suspected violations, discovered to date, is provided below.

Thank you for your service and attention to this complaint.

Respectfully,

Sharon Hassell

1. Eligibility of the current, and past, President(s) and Vice President(s) to serve in these positions as defined by the governing rules.

By-Laws:

Article XI, Officers and their Duties, Section 1, Enumeration of Offices

The officers of this Association shall be a president and a vice president, who shall at all times be members of the board of directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Article XI, Officers and their Duties, Section 2, Election of Officers

The election of officers shall take place at the first meeting of the board of directors following each annual meeting of the Members.

2. Legitimacy of the Amendment to the By-Laws dated 9/7/2009 increasing number of Directors from nine (9) to fifteen (15).

Articles of Incorporation, Article Seven

The business and affairs of the Corporation shall be initially managed by a Board of five (5) Directors, which number can be changed by amendment of the By-Laws of the Corporation, but shall in no event be less than three (3) nor more than nine (9).

By-Laws:

Article XV, Board of Directors, Section 1, Number

The affairs of this Association shall be managed by a Board of eight (8) directors, ...

Article XV, Section 2

In the case of any conflict between the Articles and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

[3. Request for access to all books, records and papers of the Association.](#)

By-Laws, Article XIII, Books and Records

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

[4. Expenditure of monies for the purpose of Capital Improvements \(Topographic site survey - \\$4,755, Master Plan \\$13,478\).](#)

By-Laws, Article VII, Section 3 Limitation upon the powers

The Board of Directors shall not incur, obligate or pay any expenses with assets of the Association, for the purpose of making capital improvements to Common Properties, unless the Board has obtained prior approval thereof by a majority of the members entitled to vote at any annual meeting or at any special meeting validly called for the purpose of acting thereon.

[5. Legitimacy of the Second Amendment to the Declaration of Covenants and Restrictions.](#)

Declaration of Covenants and Restrictions, Article III – Membership and voting rights in the Association, Section 2 (a), Class A.

... but in no event shall more than one vote be cast with respect to any, such Lot .

Declaration of Covenants and Restrictions, Article III – Membership and voting rights in the Association, Section 3.

... any actions ... shall require the assent of two-thirds (2/3) of each class of Members
... written notice ... not less than thirty (30) days nor more than sixty (60) days in
advance and shall set forth the purpose of such meeting.

**Declaration of Covenants and Restrictions, Article VIII – General Provisions,
Section 1.**

... no such agreement to change shall be effective unless made and recorded three (3)
years in advance of the effective date of such change.

Following is a review of the votes counted:

Second Amendment to Declaration of Covenants and Restrictions

Dated: May 20, 2003

Effective Date: none noted

Eligible Member Votes	120
Member signatures presented	104
Notarized member signatures	104
Duplicate address signatures/Invalid line(s)	27
Legitimate vote count	77
Vote count required	80