

Board Meeting Minutes

Nine Mile Ranch Homeowners Association Special Board of Directors Meeting October 30, 2020

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

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 7:17 pm.

Read into minutes email motion made between meetings:

Motion made by Brian Rabe: "In the best interests of the HOA to accomplishing necessary road work and management, I move to remove the existing HOA mileage reimbursement cap of \$200 per year for mileage reimbursement for the road manager and any other road committee member for miles driven in the course of their volunteer service." Seconded by Susan Stewart. Motion failed: 7 yes, Pam Lewis no. (Motions made outside a meeting need unanimous vote to pass)

Motion made by Brian Rabe: "In the best interests of the HOA to accomplishing necessary road work and management, I Move to remove the existing HOA mileage reimbursement cap of \$200 per year for mileage reimbursement for the road manager and any other road committee member for miles driven in the course of their volunteer service." Seconded by Rick Lewis. No discussion was brought forward by any Board members. Motion passed: 7 yes, Pam Lewis no.

Motion made by Kirk Johnson to post Board's email chain regarding reimbursement cap on the website so there will be transparency regarding this issue. No discussion was brought forward by any Board members. Seconded by Susan Stewart. Motion pass unanimously.

Summary of Meeting with Legal Counsel

Discussing regarding attorney meeting on October 27, 2020. Meeting was with Andy Chase of the firm Miller & Chase. Andy has extensive experience working for HOAs as well as municipalities.

Meeting with attorney was to address the petitions presented to the Board by the anonymous group fix-9mr, as well as ballots sent out and meeting called by fix-9mr. Items on the petitions were addressed as well.

Regarding the financial audit Mr. Chase explained that although our Bylaws give the Treasurer the *duty* to cause this audit, neither the Bylaws (Article VII, Section 1) nor the CCRs give the Board the *power* to take this action, ie. spend funds on this audit. In other words, it would be illegal for the Board to take this action. This is an example of how the structure of our governing documents need to be reviewed and amended.

Regarding the “compliance audit” Mr. Chase explained that nowhere in our governing documents, state law or case law does it allow the HOA to spend funds on this audit nor does it give the membership the right to require the audit. Any HOA member can conduct their own audits at their own expense.

Regarding proposed CCR & Bylaw changes by fix-9mr: The first words legal counsel shared after a quick review of the changes fix-9mr is proposing was verily, “this is not how you change your governing documents”. Legal counsel found the suggested changes to be needlessly complicated and some of it potentially in violation of RCW 64.38 (HOA state law). The basic structure of each document (CCRs & Bylaws), and how they relate to each other, needs to be addressed, and discrepancies need to be resolved.

Regarding removal of 6 directors Mr. Chase explained that legal due process would need to be followed to accomplish this. He also stated in reflection of how courts have actually ruled on this subject was verily, “An *election* is a popularity contest, but a *removal* is subject to valid reason.” And further, “Courts view HOA Boards just like public municipalities; not only can you not remove council members without *proof* of breach of fiduciary duty, but it could also cause harm.” Removing a director(s) is serious business. As in this case, if the 6 directors were voted off the HOA would be left with a non functioning Board of 1 or 2 members. Legal counsel warned of the liability of this; of the Board’s duty to not jeopardize the function of the HOA, especially when there has been no breach of fiduciary duty.

Regarding a special meeting requested by the membership: A special meeting has been properly requested by the membership. Covid will not allow this. A Zoom meeting could be had, but may be dysfunctional and cost the HOA additional funds. Miller & Chase has the ability to facilitate a Zoom meeting. Before Covid, proper steps would be for the Board to send out notice of meeting. At the meeting members can then make a motion to have a ballot sent to the membership for a particular voting issue. This would need to be seconded, then discussed, then voted on. If this motion passed, then a second meeting would be required to count the ballots.

In regards to the ballot and meeting called by fix-9mr: Mr. Chase stated that there are civil illegalities and potential criminal acts being taken by the individual(s) who have acted as ‘fix-9MR’. They have no legal right to send out ballots or conduct a meeting posing as official. He compared this to if a few citizens of Oroville were to send out a ballot to remove the city counsel: this action is invalid and illegal. Proper legal steps need to happen to remove *elected* officials. The Board of Directors manages the business of the HOA. Doing this anonymously is illegal as well. Mr. Chase suggested that he write up a Cease & Desist letter to put fix-9mr on notice. Mr. Chase felt this is a step that is in the best interest of the HOA.

Board Discussion

The Board then had a lengthy discussion on how to handle the special meeting petition especially given the Covid situation. The following is a summary of that discussion:

- All suggested items on petition that “fix-9mr” wants a vote on at the meeting cannot be legally conducted by the HOA.
- Removal of the 6 directors cannot happen unless there is legal due process.
- The Board could “**choose**” to send out a ballot with just the removal of 6 directors anyway. The other items would not be on there given that the HOA cannot legally spend funds for the

requested voting items. An explanation of why the other items are not on the ballot would be sent with this ballot.

- Suggestion that the attorney write up the ballot so members would have confidence that how the Board is handling this situation is legal.
- Sending out a ballot would cost yet more HOA funds and would not allow for due process. This could jeopardize the HOA. What happens if the 6 directors were voted off? No legal plan to deal with this. Business would stop. There's a possibility that only a few get voted off. If a ballot was sent then the votes would tell the Board what the members want either way and potentially end this situation.
- The Board does not legally have to send out a ballot for removal of directors due to lack of due process.
- The information that fix-9mr has sent to the membership and written on their website that influenced members to sign petitions and/or to vote on the fix-9mr ballot is based on lies and misinformation. This is an important factor.
- The terms are over in June for the six Board members slated for removal. Why spend yet more additional funds for this when a new vote for Board members will be coming soon?
- Many members have told the Board that they signed the petition not because they agreed with the items being presented to vote on, but they felt that a meeting might serve in this situation. They wanted to hear both sides.
- Many Board members felt strong that no ballot should be sent: "we do nothing other than communicate/up date members about the status of this situation."
- Final decision/consent was to send only a letter out to the membership to update on legal findings from attorney counsel. Letter needs to be simple, with bullet points, to honor those members that just want to know the quick facts. To save HOA funds a newsletter will be sent with the letter.

Consent to ask the attorney to draft an explanatory paragraph as to why voting to remove directors needs to follow a legal due process. This paragraph could be used in the letter to the membership. Also, to ask attorney that since the signatures on the petitions were solicited based on misinformation could that invalidate the petitions?

Motion made by Kirk Johnson for attorney to write and send a Cease & Desist letter be sent to fix-9mr. Seconded by Brett Coffman.

Discussion:

- This letter would put fix-9mr on notice regarding that the ballots and meeting actions are illegal. They cannot represent themselves as "official".
- This anonymous group needs to be stopped. Their actions are affecting the HOA. Members have told the Board they want it to stop.
- Concern of spending yet more funds of the HOA was discussed.
- Will this be a waste of HOA funds?
- Several Board members have offered to donate funds into the general account to help defray legal costs.
- A Cease & Desist letter may not stop fix-9mr, but it would benefit the HOA if things moved into to court in that the HOA ask them to stop and they didn't.
- Fix-9mr ballot and meeting are invalid. It will not affect the HOA other than potential cause more problems and stress for the membership.

Motion passed 7 yes, Pam Lewis no.

Legal counsel advised that Board email addresses connected with website not be the directors personal email addresses. Brett suggested that emails on website be connected with positions of the Board. Stacey will contact webmaster to discover easiest way to make these changes and will bring this information back to the Board.

Stacey Johnson asked the Board to start thinking about setting up process to revise/up-date/amend the HOA CCRs & Bylaws. This process will incorporate a membership committee and legal counsel. Board will start to address this topic in the January 2021 Board meeting.

Kirk and Susan will start working on the Newsletter that will be sent with letter to the membership.

Motion made by Susan Stewart to reimburse Kirk Johnson for submitted request of costs and mileage for \$189.39. Seconded by Brett Coffman. Motion passed 7 yes, Pam Lewis voting no.

Meeting adjourned at 9:41 pm.