

CORONADO SHORES LANDSCAPE & RECREATION COMMITTEE

GENERAL SESSION MEETING

April 16, 2020, 2:30pm, La Princesa/Conference Call/Video

MINUTES

1. CALL TO ORDER/ROLL CALL: Jerry McDonald called the meeting to order at 2:30pm.

<u>ASSOCIATION</u>	<u>REPRESENTATIVE</u>
#1 Cabrillo	Jan Yanda (via Phone)
#2 La Sierra	Oliver McGonigle (via Video)
#3 Las Palmas	Robert Clinton (via Video)
#4 Las Flores	Scott Nicoll (via Phone)
#5 El Camino	Carlos Bonacich
#6 La Playa	Don Smith (via Video)
#7 La Perla	Beth Mulcahy-Elardo (via Video)
#8 El Encanto	Jan Zobrist, Chair
#9 El Mirador	Wayne Miletta (via Video)
#10 La Princesa	Kevin McAuliffe

ALSO ATTENDING:

L&R General Manager	Jerry McDonald
Controller	Katherine Wolf (via Video)
L&R Staff	Missy Smith
#10 Managers	Bill Lawrence, Richard Millican

2. OPEN FORUM: 1)Trisha Trowbridge, #5 – Rules & Regulations revisions, amendment of articles of operation, 2)Dora Wetherington, #5 – Agree with Trisha’s report, 3)Lesley McClelland, #1 – Agree with Trisha’s report. 4)Karen Perry, #4 – Amendment of articles of operation.

3. APPROVE MINUTES:

- A. General Session of February 20, 2020 –

Motion: To Approve the General Session Minutes of February 20, 2020 made by Wayne Miletta and seconded by Carlos Bonacich. **(Vote 9/0, #8 absent)** Motion Passed.

4. REPORTS:

A. General Manager – Jerry gave an update on projects completed and pending. The glass panels at the El Camino pool have been installed and look great, the installation of the glass panels at the Roeder pool should be completed next Friday (4/24), the installation of the glass panels at the Cabrillo pool are scheduled for October/November timeframe and the Beach Club pool glass panel installation is scheduled for January/February 2021. The glass exceeds code and the bottom posts and top rails are stainless steel and should last in excess of 20 years. The renovation of the Cabrillo pool is scheduled to begin in October/November this year to include the plastering, tiling, the coping stones, repairing the deck as needed and the glass panel install. The gate arms have been installed at all the entrances and the exit gate

arms are scheduled to be installed next week and should be completed by Friday (4/24). Signs have been installed at each entrance/exit displaying "Gate arm operates one vehicle at a time and we are not responsible for any damage". For bicycle riders, specific gate arms will be shortened to allow riders to enter/exit safely. Tree trimming is scheduled for the month of May to trim all trees that need to be trimmed. The lagoon monitoring well was completed and Ninyo and Moore was out today to take readings to give to the City. The final lights for the lagoon will be installed next week and the lagoon project is complete. The (183) light poles have been numbered and if you see a light out you can report the number to security or maintenance to repair/replace bulb. The Beach Club chairs have been re-upholstered with new seat and back cushions. The 8 easy chairs have been sent out for new seat and back cushions. Lastly, quick and easy landscape improvements for the South and North campus are underway that are relatively inexpensive to add color.

This morning we had a manager's meeting, occurring bi-weekly, to share information. These are very helpful and builds comradery.

The amenities will be opened when the L&R Committee decides when to open everything up again. The health and safety of the residents and employees is top priority right now and hopefully everyone understands and we will get through this.

B. March 2020 Financials – Katherine Wolf reported the financial information and answered questions.

INCOME:	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Administration	\$ 375.00	\$ 530.00	\$ 155.00
Assessments	\$ 638,917.02	\$ 638,917.02	\$ -
Recreation	\$ 29,350.00	\$ 28,569.50	\$ (780.50)
Beach Club	\$ 48,900.00	\$ 48,503.26	\$ (396.74)
TOTAL:	\$ 717,542.02	\$ 716,519.78	\$ (1,022.24)
CGS:	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Beach Club:	\$ 22,477.74	\$ 23,682.74	\$ 1,205.00
GROSS PROFIT:	\$ 695,064.28	\$ 692,837.04	\$ (2,227.24)
EXPENSES:	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Administration	\$ 146,747.91	\$ 132,940.62	\$ (13,807.29)
Landscaping	\$ 73,149.99	\$ 73,289.21	\$ 139.22
Maintenance	\$ 139,125.27	\$ 145,228.75	\$ 6,103.48
Recreation-BC	\$ 42,379.40	\$ 47,322.11	\$ 4,942.71
Recreation-HC, RP, etc.	\$ 30,249.78	\$ 30,958.68	\$ 708.90
Recreation-Utilities	\$ 114,350.01	\$ 75,330.42	\$ (39,019.59)
Security	\$ 113,225.00	\$ 97,865.25	\$ (15,359.75)
TOTAL:	\$ 659,227.36	\$ 602,935.04	\$ (56,292.32)
NET INCOME:	\$ 35,836.92	\$ 89,902.00	\$ 54,065.08

Due to the pools being closed, the heat has been shut off and we should be saving money. The lagoon project is completed and the money remaining will be sent back to the buildings by the end of April.

Motion: To Accept the March financials as presented made by Robert Clinton and seconded by Beth Mulcahy-Elardo. **(Vote 10/0) Motion Passed.**

5. ADVISORY REPORTS: (No Reporting)

- A. Beach Club Sub-Committee
- B. Landscape
- C. Recreation
- D. Facilities

6. UNFINISHED BUSINESS:

- A. Lagoon Maintenance Project, Update – See 4. A. – General Manager Report.
- B. Las Palmas Drainage Issues, Update – Jerry gave an update and stated that because we re-directed the drains at Las Palmas away from the L&R office and that seems to have worked and we have not had any water issues. We will be sealing the door and waterproofing. We will also be working with the Enforcement committee on the storm drains
- C. Purchase Beach Club Chairs, Update – Jerry reported that because the chairs have all been re-furnished, we solved that issue.
- D. Rules and Regulations, Proposed Revisions, Update – Jerry thanked Robert Clinton and Trisha Trowbridge for their work on this project and reviewed the process for approval change. **Motion:** To Accept the revision document and send to the buildings for review and vote made by Jan Yanda and seconded by Beth Mulcahy-Elardo. (Vote 10/0) **Motion Passed.**
- E. Revisions to L&R Articles of Operation, Action – Jerry briefed everyone on the email from the L&R attorney and asked for a motion to approve. **Motion:** 1)To Approve the amendment to the Articles of Operation, Add Article VIII, Section 1 to read: Section 1. These Articles of Operation may be amended from time to time by vote of a majority of a quorum of Committee members made by Oliver McGonigle and seconded by Kevin McAuliffe.

Jerry stated that rules and regulations are different. In our world these are called junior documents and can be amended or revised at any time by a majority vote of the board, in this case the committee, and allow the 28-day comment period. In this case, this is an article of operation and is considered a senior document. This is a document that tells the organization how they are to operate. A junior document tells the members how they are to operate. Governing documents, by-laws and CC&Rs and in our case, Articles of Operation, those are handled differently. Those do not need to go out per a vote of the membership. The individual CC&Rs only talk about who represents the L&R. This recommendation comes from our attorney. Robert Clinton stated that the Las Palmas board is very opposed to this and they feel that it's an illegal action. **(Vote - #1-no, #2-yes, #3-no, #4-no, #5-no, #6-yes, #7-yes, #8-yes, #9-yes, #10-yes – 6/4) Motion Passed.**

Motion: 2)To Approve the amendment to the Articles of Operation, Add Article II, Section 3 to read: The Committee may remove a Committee member for cause by vote of a majority of a quorum of the Committee. If a Committee Member is removed under this provision, the

Association in question shall appoint a new, qualified representative Committee Member to fill the vacancy within thirty (30) days of the removal. For purposes of this provision, "cause" is defined by way of example as including, but not limited to, gross negligence or willful misconduct by a Committee Member in the performance of his or her duties as a member of the Committee, which shall include, but not be limited to, theft/fraud of Committee funds, harassment of other Committee members, agents, principals, employees, independent contractors, and attorneys, and any willful (and not legally protected) act that is likely to or which does in fact cause substantial loss, damage or injury to the Committee made by Kevin McAuliffe and seconded by Beth Mulcahy-Elardo.

Discussion: Robert stated that this is contradictory to the CC&Rs of his building. This is taking power away from his board and giving it to potentially the majority of a quorum. A quorum is six (6) and a majority of that would be four (4) people. In my opinion, it's a power grab by L&R and illegal and the Las Palmas board is very upset about this. Carlos Bonacich asked if our attorney approved this and Jerry stated that this language came from our attorney. Scott Nicoll stated that his board is against this too and due to the current conditions of the Coronavirus, we should be doing this meeting face to face. Jan Yanda informed the committee that since amending the Articles of Operation to allow this action to take place contrary to every buildings' recorded CC&Rs, thereby making it illegal, Cabrillo's lawyer will file suit against L&R if the motion passes, when the San Diego Superior Court reopens. The lawsuit has already been prepared. It has already been delivered to the L&R attorney and our attorney, John McDowell, suggested that the L&R distribute it to L&R Members. Multiple people talking. Jerry stated for the record, that he has not received anything here at the office regarding that and we have not received anything electronically through email as Jan Yanda indicated. Wayne Miletta suggested that there should be some kind of an amendment within the amendment that indicates that no less than six (6) L&R people, a majority of the board, to vote on something like this to add or delete someone from the L&R Committee. Jerry called for the vote. (Vote - #1-no, #2-yes, #3-no, #4-no, #6-yes, #7-yes, #8-yes, #9-abstained, #10-yes, 5/4, #9 abstained) **Motion Failed.**

Beth Mulcahy-Elardo requested to make an amendment to the motion to change the language from "The Committee may remove a Committee Member for cause by vote of a Majority of a quorum" to "The Committee may remove a Committee Member for cause by vote of six (6) members of the L&R Committee" and was seconded by Oliver McGonigle.

Discussion: Robert Clinton requested that we take this amended motion back to the boards. Jerry called for a vote. Jan Yanda stated that the amendment is inappropriate and the vote has been made and it is out of order and cannot be amended after the vote has been made. Beth Mulcahy-Elardo made a new motion. **Motion:** To Amend Article II, Section 3, only the first sentence should be read as follows and everything else remains the same, "The Committee may remove a Committee Member for cause by a vote of six (6) L&R Members." and seconded by Oliver McGonigle. Beth stated that she has the right to make a motion to clarify the language to ease anyone that may feel the language is unclear. Multiple people talking at once. Jan Zobrist stated that the attorney for Cabrillo asked to attend this meeting by telephone. Our attorney could not attend this meeting so he notified Mr. McDowell that he could not call in and that she heard Mr. McDowell's voice, which is against our rules and they

are out of order. Jerry asked Jan Yanda if the attorney is sitting with her. Jan Yanda said that her attorney was not allowed to be on this call. (Vote - #1-not voting, #2-yes, #3-not voting, #4-no, #5-no, #6-yes, #7-yes, #8-yes, #9-abstain, #10-yes, 5/2, #1, #3 no vote, #9 abstain) **Motion Failed.**

Wayne stated that there is too much contentiousness and we really need more discussion; he is for #2 but the animosity is not healthy.

Jerry asked for a motion "To Approve the amendment to the Articles of Operation, Add to Article II, Section 1: Add underlined phrase to second to last sentence: Unless removed for cause, a Committee Member shall hold Committee membership for so long as the Association who named the Member has not provided a superseding Resolution naming another Director as the Member. Beth stated that this is mute if 2) didn't pass and recommends that it appears that people want to discuss this further, Wayne in particular, should we reopen the discussion? Wayne said that we have a very contentious issue here and would like to see more come together than create animosity within the Board. That is his concern. Beth said that we all need to recognize as L&R Members, there has to be some review of improper behavior by L&R Members and that it is not in the ten (10) individual CC&Rs for the ten individual buildings. It wouldn't be because each building has their own CC&Rs and there are a lot of similarities in the CC&Rs but the Committee is totally separate from the ten (10) buildings. It was set up that way. The Committee has to have some authority to have checks and balances if we see that an L&R Member is engaging in inappropriate and improper behavior. So, L&R's attorney for sent a letter to Cabrillo's attorney outlining all the improper behavior by Cabrillo's representative on L&R. We need to recognize that if we don't take action on this, as L&R Members, we are going to be sued by an independent contractor for the Cabrillo representative harassing our independent contractor. There is cause and we have liability if we don't do something on this. Our attorney has told us that we have the legal authority to amend this. We all need to be looking at what's in the best interest for the corporation. What do other L&R Members feel about this? Don Smith agrees with Beth. Kevin McAuliffe asked the question, what do you think the shelf life would be on an L&R employee treating a committee member with documented behavior in the way a committee member has treated a contractor? How long would they be around? Second comment - L&R employs 28 employees and isn't the state of California in 2020 requiring all employers with over five (5) employees to have a harassment policy in place. Do we have a harassment policy in place? Here we have a committee member threatening the L&R with litigation. Oliver McGonigle stated that this behavior has been horrible for the last three (3) Chairs of the L&R. Robert Clinton stated that we've already voted on the amendment and it didn't pass and we voted on the amendment to the amendment and it didn't pass so this should be closed and let's move on to the next one. Wayne asked, should we pass this, is the vendor willing to sign a release, a document stating that she isn't going to sue? Madam Chair said yes and thinks that can be arranged. Robert stated that this issue has been discussed and dealt with several times before, there has been conditions placed on the member by the L&R Committee and obviously weren't followed but in the letters that were provided in the packet there was a letter from Dr. Martin, the President of the Cabrillo Board, he makes an offer. His offer is that Jan Yanda would have no dealings with Katherine Wolf and any financial questions she would have would be directed to the L&R Chair. This is significantly different because the offer is made

by her board and can remove her if they feel that she is not living up to the conditions of her offer. We should accept his offer and there was no discussion today on whether to accept his offer and we should start there. We could have saved ourselves a lot of time and we have more important things to get on with.

Beth stated for the record, and any other buildings that want to join me, that building #7 is very concerned about the liability that the Cabrillo representative brings to Coronado Shores Landscape and Recreation Committee and that for the record in the event that there is litigation in the future that building #7 attempted to resolve this issue today and was unsuccessful. (In the record as a legal protection. Buildings #2, #7, #8 and #10 agree.

Jan Yanda stated that their lawyer reviewed carefully the 83-page document and found no evidence of harassment.

Jan Zobrist received a text from Wayne Miletta requesting to change his vote to yes on the 2) amendment. Beth restated the motion to Add Article II, Section 3 the following language, The Committee may remove the Committee Member for cause by a vote of six (6) Committee Members made by Beth Mulcahy-Elardo and seconded by Jan Zobrist. (Voice Vote - #1-not voting, #2-yes, #3-illegal motion, #4-no, #5-no, #6-yes, #7-yes, #8-yes, #9-yes, #10-yes, 6/2, #1, #3 no votes) **Motion Passed.**

Jerry asked again for a motion for item 3) - "To Approve the amendment to the Articles of Operation, Add to Article II, Section 1: Add underlined phrase to second to last sentence: Unless removed for cause, a Committee Member shall hold Committee membership for so long as the Association who named the Member has not provided a superseding Resolution naming another Director as the Member made by Beth Mulcahy-Elardo and seconded by Oliver McGonigle. Beth said that the L&R Committee can remove and once that has happened it is the obligation of the board to find a replacement. (Vote - #1-not voting on an illegal motion, #2-yes, #3-no, #4-no, #5-abstained, #6-yes, #7-yes, #8-yes, #9-yes, #10-yes, 6/2, #1-no vote, #5-abstained) **Motion Passed.**

7. NEW BUSINESS:
 - A. Approve Annual Financial Audit, Action – Tabled.
8. NEXT MEETING DATE: **Thursday, May 21, 2020 at 2:30pm, TBD**
9. ADJOURNMENT: **4:34pm** - Motion to adjourn by Jan Zobrist.

Submitted By:



Approved On:

