

Marina Sol Condominium Regime  
General Assembly  
November 8, 2008

The meeting was called to order at 9:14 am by presiding officer Henry Penney.

Present:

Board of Directors

Penney, Henry Dale	Vice President
Seace, Lisa	Secretary
Luiza, Lorie	Treasurer
Carol, Susan	Director
Cuomo, Bartholomew Anthony	Director
Fawthrop, William	Director

Absent:

Joseph, Paul	President
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Present:

Vigilance Committee

Falkner, Thomas	Member
Suveges, Clint	Member

Absent:

Waldie, James	President
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Chona, Aurelio Cruz	Manager
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Qujano, Omar	Attorney
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Teresno, Philpe	Translator
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Motion 1: To waive

Moved by Bruce Smith, Seconded by Brian Bingham      Passed  
Unanimously

Motion 2: To .....

Moved by Bruce Smith, Seconded by Kim Jones.      Passed Unanimously

Motion 3: To Waive the reading the Minutes of the April, 2008 General Assembly meeting.

Moved by Dinah Briggs, Seconded by Wayne Peterson.

Discussion:

Mike Shah wondered if everyone had time to read the minutes. Dan Jones suggested a few minutes to read for any who did not have time before the meeting. Time was granted.

The Motion passed unanimously.

Discussion:

John Pinkerman asked if all the FM3s had been validated. Yes the President of the Vigilance Committee checked all of them at the Board of Directors Meeting on November 6, 2008.

John Pinkerman asked if the HOA pays fines for Board members. Manager Chona explained that the HOA does pay for the yearly fees of Board Members, but not any penalties or additional fees that might occur.

Lisa Seace explained that the fine which was paid last February 2007 was due to the fact the Association/Regime problem (Motions 5 and 6) was not yet resolved the HOA did not have the correct documentation to provide to the Immigration.

Motion 4: To approve the Minutes of the April, 2008 General Assembly

Moved by Bruce Smith, Seconded by Dan Jones. Passed Unanimously

President's Report (appended)

Motion to approve the President's Report: Moved by Anthony Peluso, Seconded by Claire Griffith. Passed Unanimously.

Treasurer's Report (appended)

Discussion:

There is no more cash in the office. All checks have back up. Bill Pay is now in play for recurring expenses. Bank accounts are now reconciled by the office and the CPA. Employees are paid via direct deposit, every two weeks. We have an on site computerized system. We are saving \$350.00 USD per month in accounting fees due to our new systems. We are working on a peso/dollar system, in house.

Vice President Penney thanked Lorie for the fine work and updating she has done so far. We have much better controls than we used to.

Bill Gardner asked if we have a reserve for bad debts list. Some is not collectable, how much? Also, do we know for the rest of the year how much money is scheduled to be spent, and how much more to be received? And will we be over or under our budget?

We expect to be \$18,000.00 USD under budget if there are no surprises. There is also \$14,000.00USD in the Mexican Court system which will be coming to the HOA. It may arrive before the end of this year, but probably not until 2009.

Bruce Smith asked for a “source and Application” document, (cash flow) and a reserve account statement. And, Bruce asked also how often homeowners can get financial information.

Lorie Luiza answered that information is available in the office anytime.

President Penney informed the Assembly, that in the interest of transparency, the financial information would be posted to the website as soon as it was up and running.

Dinah Briggs: asked why we were under budget, is it because of the exchange rate?

Lorie Luiza explained that it was a combination of cost saving measures including accounting, employees, and conservation.

Motion to approve the treasurer’s report made by John Pinkerman, Seconded by Wayne Peterson, Passed Unanimously.

Manager’s Report (appended)

Aurelio Cruz Chona, the manager, gave a copy of his report to everyone at the meeting. There was a motion by Bruce Smith to approve the Manager’ Report. It was seconded by Tom Falkner. The Motion passed unanimously.

## Vigilance Committee Report

President Jim Waldie was absent, both members gave reports

Member Tom Falkner reported that the Parking in front of Marina Sol continues to be a problem. After two years of trying different things, the problems are not resolved. When questioned by Dan Jones, Tom said that the problems revolve around people without sticker parking in the lot for two or three days. The Security guards have taken license numbers, but there has been nothing to do with them. Tom said some jobs were not getting done, and that perhaps Chona had too much work to do. He suggested that the Manager was not receiving much help from the Board.

Member Clint Suveges noted that the communication between the Manager and the Board has seemed to improve. He acknowledged Treasurer Lorie Luiza for her work on upgrading Marina Sol's systems and getting a new program in place. He said that the biggest challenge at Marina Sol is to upgrade the property. If we improve, owners will be happier, they will get better rents, or have more to enjoy if they are here full time.

Motion to accept the Vigilance Report was made by Anthony Peluso and Seconded by Sandy The Motion passed unanimously.

Discussion of matters brought up by the Vigilance Report

Sydney Smith: Why the parking time in the Marina Sol Front lot was four hours. It only takes 30 minutes to make a delivery. And if they are really there for 4 hours we should tow them.

Mike Shah: 30 minutes is too short to get your hair done.

Leticia Tolosa: 30 minutes is okay for deliveries.

Kim Jones: We should just do it. (Tow the cars)

Bruce Smith: Suggestion that we have parking permits supplied by business to put on the dash board.

Henry Penney: The Board has discussed boots. First having the security guards stripe the tires with making chalk. It was also suggested that we could have two security guards in the parking lot at peak times.

Steve Dutra: In agreement with Bruce Smith, 4 hour plaques for dashboards.

Dinah Briggs.: Security Guards to direct traffic at least at school drop off and pick up times.

Leticia Tolosa: It is slow now, so need for extra security, but will be needed during high season.

Bruce Smith made a Motion to change to order of the agenda to put the election of Directors after new business and after Motion 6, Seconded by Claire Griffith. The Motion passed unanimously.

Tom Falkner announced that he will no longer be serving on the Vigilance Committee.

#### OLD BUSINESS

Director Bart Cuomo gave a report and short history of the Pallapa Bar Lease. The Board of Directors and the tenant have reached an agreement in principle. Currently the tenant is operation under her 2389 rights pursuant to Mexican Law. Our new lease, written by attorney Omar Qujano, removes previous loop holes and complies fully with Mexican Law. There are a few details to work out, but we are close.

Steve Dutra: What are the details?

Bart Cuomo: The tenant proposed \$650.00 USD per month due to the state of the economy. The Board kept the base rent at \$1200.00 USD, but allowed a 50% discount for 18 months. It also includes receipt of the \$14,400 for the last year, and we put all the past legal issues behind us.

Steve Dutra: Last year we had a chance to get more, now we will get less.

Bart Cuomo: Last year we were advised that the tenant had legal rights, and we couldn't sign a new lease that at that time.

Steve Dutra: Doesn't 2389 end December 31, 2008?

Bart Cuomo: Yes.

Henry Penney: According to the advice of Attorney Omar Qujano.

John Pinkerman: That's \$20.00 USD per day. The Board of Directors should put the lease out for bid.

Bruce Smith: The lease expired. Leticia was given notice. The result was a six page letter, threatening the Homeowners. The next result was, I'm not going to abide by the agreement. I am going to exercise my squatters rights. There was a proposal call. The results of the proposal call were not honored. The tenant has not honored the previous lease, why should be give her a new one. We, the General Assembly directed the Board of Directors to negotiate with John Brown. Why was that not honored.

Henry Penney: The tenant did comply with the lease. After that the tenant invoked her 2389 rights, for a 12 month extension. The old lease was too weak, with the new lease, the HOA will be far better protected, with no 2389 clause.

Henry Penney: The Board was advised that the old document did not conform to Mexican Law. The new agreement will protect the HOA.

Bruce Smith: "What authority do you have to negotiate this agreement?"

Henry Penney: "The Motion that you are talking about, at the November 07 meeting was merely to deliver termination notice."

Bruce Smith: "Ah huh."

Henry Penney: "That's all the Motion said."

Bruce Smith: "How about the Motion to negotiate with John Brown?"

Henry Penney: "There was no Motion to negotiate with ,...no there was not."

Bruce Smith: "It was motion 10 on the agenda."

Henry Penney: "No."

Bruce Smith: "I'm certain sir. It was Motion 10 on the agenda."

Henry Penney: " And actually, we have a transcript. Lisa has actually transcribed the tape. And I apologize, I forgot to print it. We have a transcription. And the only motion that was approved by the General Assembly, at that meeting, was to deliver termination notice. That's it."

Bart Cuomo: “Excuse me. The thing is at that meeting, that was when the discussion got involved with the legal matter, and, of honoring the lease, and basically it was determined that we did not have the legal right to negotiate a lease at that point. Therefore that motion could not be entertained at that point. ....We got in that legal discussion, and at that point we couldn’t entertain a motion that was contrary to the existing law. So that motion was abandoned.”

Steve Dutra: “Was the termination notice delivered as required by the resolution?”

Henry Penney: “Yes it was.”

Steve Dutra: “Was it delivered in a timely fashion?”

Henry Penney: “Yes, it was.”

Steve Dutra: “How long after the resolution, was it delivered?”

Henry Penney: “I want to say 13<sup>th</sup> of December.”

Bart Cuomo: We are acting on advice of counsel in negotiation with the tenant. He has told us that it is very difficult to remove a tenant in Mexico, if they want to stay. We hired him on the advice of Mike Houston, US Counsel, and former Marina Sol owner. If there are people here who want to know about him, I think we should give him the floor.

Henry Penney: “We have obtained ... one of the owners here at Marina Sol (Luis ) is also the owner of Ole Ole, and Arts and Sushi. And he’s given us a letter of opinion that the rent for this particular facility should be somewhere between five and seven hundred dollars a month. This is a Mexican citizen, who lives here and has been an owner at Marina Sol for over twenty years. He is in the business, he is a restaurant operator. We have also gotten a fee, it is not an appraisal, but a fee opinion, that puts \$1,200.00 USD, as a reasonable rent level for this particular facility. This is not something we are doing on a whim. This is all based on market value in the Cabo market. That said, we are going to go to Mr. Qujano.”

Mr. Qujano: The law is different in Mexico. Different than the USA and different than Canada. In Mexico the law is all in a book. In the end, the law prevails. Just writing an eviction notice does not work in Mexico. Lawsuits in Mexico take a very long time, years. The document under which Leticia Tolosa operated was not a contract in Mexican Law. It was part operation agreement, part concession agreement, but did not deal with real life situations in accordance with Mexican Law.

Dick Kelter asked how we could negotiate in good faith with the legal hammer over our heads.

Bart Cuomo explained that the lease currently being negotiated by the Board with the tenant, puts the legal issues behind us. It has the effect of being a settlement agreement. But it is not finalized.

Mike Shah said that he felt that some people did not think the Board is not acting in good faith, that they are trying to pull something over. He thinks this Board is definitely looking after the best interest of the HOA. He believes that we should move on.

Dan Jones asked what is this “hammer” that is being held over the HOA?

Henry Penney: “As Mr. Qujano noted in his letter, the possibility of a lawsuit, that could extend for five, six, seven years, the legal fees, and the tenant would retain possession of the property during that lawsuit. The rents would be paid into the court system during that time. The possibility of losing that suit. The business case decision was to move forward, and to negotiate so that we could, as Mike put it, get this behind us.”

Bruce Smith: Questions of whether the Board of Directors has a conflict of interest since several members use the management company run by the Pallapa Bar tenant.

Omar Qujano: No, not really. It is a matter of degrees. Everyone is in the same boat, everyone here has an interest in all of Marina Sol. Some are renters, some not, but all in the Homeowners Association together.

Kim Jones: Wants the General Assembly to be part of the negotiations. There is money to be made. And we want to get it resolved.

Henry Penney said that is why it is on the agenda, so everyone can ask their questions, and have their say.

Bart Cuomo: The Board of Directors is elected by the General Assembly to do the Business of the HOA. The Board will do the deal.

Adrienne Kenlan: “ First of all, in the last General meeting, John Brown’s proposal was accepted by the General Assembly, so I don’t know, for the secretary, um, you’re saying it was not in the notes or anything. I remember distinctly, having a vote in here for us to accept John Brown’s thing. And I think there are other people who remember it as well. So I don’t know what is happening to the notes. And to the... And it’s very important point, because, first of all, to accept a bid of \$600.00 USD on one of our most valuable assets is absurd. It’s not even bad business, it’s absurd. And it’s done in bad faith. You are negotiating... This Board is not protecting the interests of, of um, the General Assembly. And it is not following the the requests of the General Assembly. We had open bids. We had a bid that was far more, more uh, uh, profitable for the a, for the Homeowners. And it was not... It was just glossed over. It was just tossed out as if it wasn’t even worth while. And if this lawyer does not want to protect us 100% by saying that we have to take this tenant, who has been squatting for a year. We gave her a termination notice, then we can.... I’m sorry, you know, you’re, I’m sure you’re a very fine lawyer, but I want a lawyer who is going to, um, say to us that we have representation, we have rights. We cannot be held hostage by a tenant who is squatting here. And then demanding \$600.00 USD a month for a year and a half. The business will go up. We all know that high season starts this month.”

Jim Stefani: It seems the Board of Directors never intended to use John Brown. We should throw her (Leticia Tolosa) out and get a new guy.

Steve Dutra: (to the Board of Directors) “You are in violation of article 43.” “Why did you not bring a done deal, are you scared?”

Steve Dutra made a motion to remove the Board of Directors under Article 43 and to eliminate the Boards votes and bar any Board held proxies under Article 60.

## Discussion

Bruce Smith said that he was asked to witness the delivery of the termination notice of December 13, 2007. When he read it, he did not agree with the wording, and working with President Paul Joseph, the wording was changed. He also said that because Board and Vigilance member use the services of the management company run by the tenant of the Pallapa Bar, there was an appearance of collusion.

Henry Penney: The notice was prepared at the direction of counsel to conform with Mexican law.

Attorney Omar Qujano told us that under Article 60 a Board member could not vote on his removal, nor could he vote any proxies he held. There were several questions regarding personal interest. The answer was that in assets and/or amenities, all owners have an interest. It really has to be decided on a case by case basis.

Several members reiterated the concerns that they had about secrecy, appearance of malfeasance, special treatment, and the fact that the lease had not been negotiated with Mr. Brown.

Kristi Guidici asked if Mr. Brown was still interested in this business climate.

Bart Cuomo reminded everyone that Motion 10 from the November 2007 agenda, was an invalid motion, due to Mexican law.

Henry Penney: "I'm really sorry and hurt that some of you think that we're not acting in the best interests of the Association, because I've never, ever been accused of anything like that. And my business relationships and the way I do things are completely above board. If we were trying to hide something we wouldn't have put this on the agenda. We wouldn't have brought this forward. We would have had this negotiated, signed, sealed, and delivered before we ever got here. The simple fact is we brought it up for discussion, and we told you what the negotiations are, and we've told you where things are. And we are not trying to hide anything. And I think that, in and of itself, is evidence that we are acting in the best interest of the Association."

