

Marina Sol Condominium Regime
Semi Annual Homeowners Meeting

April 26, 2008

Present:

Board of Directors

President: Joseph, Paul Edward
Vice President: Penney, Henry Dale
Secretary: Seace, Lisa
Treasurer: Luiza, Lorie
Director: Cuomo, Bartholomew Anthony
Director: Fawthrop, William Rodney

Absent:

Director: Carol, Susan

Present:

Vigilance Committee

President: Waldie, James Melvin
Member: Suveges, Clint

Absent:

Member: Falkner, Thomas

The meeting was called to order at 9:27 am, by President Paul Joseph.

The question was raised as to whether the assembly wanted to have an interpreter so that the meeting could be bilingual in Spanish and English. Lorenzo Wolters moved to have the meeting in English only, seconded by Jim Anderson. The motion passed.

Long time Marina Sol interpreter and friend Romina Ruiz informed the Assembly that she will no longer be able to act for us as her family obligations are demanding more of her time. The Assembly thanked her for all the years of service and wished her well.

A Quorum was established. President Joseph appointed Henry Penney as Parliamentarian for the meeting.

Motion 1: To waive the reading of the Notice of the Meeting. Moved by Adrienne Kenlan, seconded by Gwen Lentz. Passed Unanimously.

Motion 2: To approve the Notice of the Meeting. Moved by Henry Penney, seconded by Dorine Anderson. Passed Unanimously.

Introduction of the Board.
Introduction of the Manager, Aurelio Cruz Chona.

President Joseph thanked our Manager for all of his hard work on behalf of the Board in resolving the FM3 problems caused by the incorrect filing of our Minutes in the past.

Introduction of the Owners. 35 Owners plus the Board and Vigilance Committee were present.

Motion 3: To Waive the reading of the Minutes of the December 5, 2007 Special Assembly Meeting. Moved by Jim Anderson, seconded by Dorine Anderson. The motion passed.

Motion 4: To approve the Minutes of the December 5, 2007 Special Assembly Meeting. Moved by Henry Penney, seconded by Lisa Seace.

Discussion

Doreen Anderson wanted to make a motion regarding the change of the old restaurant space which is currently commercial, to residential usage. That motion will be brought up under new business.

Chalyne Salgado suggested the meeting of December was illegal, and so the minutes could not be approved

Adrienne Kenlan informed the Assembly that she did not use the words, "This budget is a farce" to describe the budget. She moved to amend the Minutes to read, "This budget is a sham." Motion was seconded by Dorine Anderson. Lisa Seace Abstained from the vote. The Motion passed.

Adrienne Kenlan made a motion to change the rates charged to commercial entities, and to discuss terms for the Vigilance Committee. Seconded by Lee Cole. This Motion was withdrawn and the subjects will be addressed under New Business.

Kim Jones asked why there has been so much trouble with the FM3s. President Joseph explained that due to the errors made in the previous Minutes, which were corrected by Motions 5 and 6 of the November 2007 meeting, and the length of time needed to get them translated and filed, new Board members were not able to prove their position to the Immigration Authority, and had to wait to complete the process of getting their FM3.

The vote to approve the amended minutes was passed, with two (2) dissenting votes.

Gwen Lentz made a motion to remove Susan Carol from the Board of Directors. The Motion was withdrawn and will be revisited under New Business.

Director Bart Cuomo informed the Assembly that Director Carol is not being allowed to Operate as a Board member until her FM3 is in Compliance. It is currently in the hands of Manager Aurelio Chona and will be completed as quickly as possible.

Jim Anderson informed the Board that the FM3s should be checked at every meeting.

Henry Penney informed the Assembly that due to the same problem which was repaired with Motions 5 and 6 of the November 2007 meeting, the first time anyone elected in November of 2007 could possibly have had the correct documentation was in February 2008.

The President assured the Assembly that in the future, all FM3s would be checked by the appropriate person or persons.

President's Report

The President told the Assembly that the Board is working toward the common goals of all Marina Sol Owners. Those goals are maintaining and improving Marina Sol, and reducing fees. He said that it is complicated, and that due diligence is being followed to be sure that our actions comply with Mexican Law, and do not inadvertently expose the HOA to any additional liability.

Treasurer's Report

Lorie Luiza told the Assembly and the Board that she had only received most of these figures in the last couple of days, some just the previous night. She said she have found a couple of places where things did not balance, and was able to discover some of the problems. At this point, she is accepting with figures we have but still wants to follow up on certain items. Find a copy of the Report appended.

Discussion of the Year end statement for 2007

Mike Shaw. Did we end the year in the hole? Yes.

Adrienne Kenlan. Why is the provision for \$500,000.00 USD for bad debt? And where is the deposit receipt for the \$10,000.00 USD that "Oasis" paid to the HOA?

The \$500,000.00 figure contains actual late fees, as well as interest and penalties.

Bart Cuomo suggested that in the future the financial statements have one entry for actual late fees and another entry for interest and penalties.

The Treasurer will work the staff to find verification of the deposit provided by the "Oasis".

Lorenzo Wolters wanted to know what the entry for “Other” in the amount to \$1003.00 USD represented. Lorie told him that last night she had found that \$909.00 USD was for an employee xmas party. The other \$94.00 USD is still not identified.

Chalyne Salgado wanted to know why the Board was being reimbursed for travel and what the item “meeting expenses” represents. She told the Assembly that it was not fair, and that she was very disappointed that there was no HOA Dinner. Her remarks were duly noted.

Gwen Lentz suggested that the financial statements are needed sooner. Treasurer Luiza agreed with her, and informed her that certain programs are in process to deal with this problem and save the HOA money on its accounting bills. Gwen also asked for an exact audit number. It will be reported as soon as we can get it.

Henry Penney stated that the lack of financial information is ludicrous.

President Paul told the Assembly that the new, partially automated system that Lorie is putting in place, will save the HOA time and money. He commended her work, and she was given a round of applause by the Homeowners.

A Motion was made by Henry Penney to approve the Treasurer’s Report. It was seconded by Rick Greenhead. It passed unanimously.

Manager’s Report

Aurelio Cruz Chona handed out a written report to all the Homeowners, (See Attached). President Joseph gave the Assembly a couple of minutes to read the report, and then invited them to ask questions based on the report.

Adrienne Kenlan. We have changed from paying weekly to paying bi monthly. Does this affect the employee’s payments in anyway? Manager Chona. No.

Lorenzo Wolters said that now that the HOA is paying by check, there is a paper trail, and some employees are concerned that they might have to pay more taxes. Manager Chona said it was too soon to know. (President Joseph told the Assembly that the Board will gather the necessary information, and be sure the employees are not adversely affected.)

Doreen Anderson made a Motion to approve the Manager’s Report. It was seconded by Rick Greenhead. Motion passed unanimously.

Vigilance Committee Report

President of the Vigilance Committee, James Waldie, told the Assembly that the Board of Directors is doing a good job. His biggest concerns are with the maintenance problems at

Marina Sol. Our new pool heater is on the way and will be installed in 6 to 8 weeks. Director Bill Fawthrop will be in residence more regularly this summer and will oversee some of the repair and replacement projects.

The office is working much more efficiently now, especially with the new policy of set hours for homeowners to deal with the staff. This allows the Manager and the Secretary, Lucia, to focus on their tasks in a much more efficient manner. The Vigilance committee commended Treasurer Lorie Luiza for doing a great job.

The Vigilance Committee handed out a 'past due' list.

Kim Jones asked why Terry Cohen was still on the late list. We were told in February that she was selling and the late fees would be paid out of the escrow. Clint Suveges, Vigilance member, informed the Assembly that Terry Cohen's escrow had not closed yet due to a title defect, but would be closing shortly, at which time the debt would be paid.

Director Cuomo told the Assembly that he had met with our new attorney, Omar Quijano in March. He shared that he had not made up his mind as yet, but thought perhaps he might not be the right person to collect our debts. Senor Quijano also told Director Cuomo that it may be possible to evict the tenant in B102.

Lorenzo Wolters told the Assembly that he had employed Omar Quijano in the past and been very happy with his services.

Adrienne Kenlan told the Assembly that we should not consider biting the bullet on our old debts. She suggested that we put liens in place on Monday morning.

Kim Jones asked if we could put claims in place in the Courts of the United States of America. This may be possible and the Board will pursue it.

Past President Jim Anderson told the Assembly that B102 was finally able to be served in Mexico, but that the owners were able to wiggle out of paying. He suggested finding out how long someone must live in a property to be granted squatters rights.

Chalyne Salgado said that we have had several lawyers, and none of them have done anything.

Jim Anderson made a Motion to approve the Vigilance Report. It was seconded by Rick Greenhead. The Motion passed unanimously.

Repair and Maintenance Review

President Joseph told the Assembly that the Board of Director is making a prioritized list of repairs and replacements. It will be implemented as soon as possible.

Insurance

Bart Cuomo was directed to oversee the process of getting new and more effective insurance for Marina Sol. He was aided by several people, including Lorie Luiza, Adrienne Kenlan, and John and Ronnie Pinkerman. The following is a brief history, and the results of the search.

The previous Insurance, through ING, covered the total property for Eight Million USD. This was split up into five policies. The A Building was covered for Five Million USD, Buildings B,C,D, and E were covered for \$750,000.00 USD each.

The total to rebuild Marina Sol if it crumbled to the ground is projected to be about Forty Million USD.

The biggest risk to Marina Sol is earthquake. While there are hurricanes in Cabo San Lucas almost every year, the damage is usually minimal. During Hurricane Julietta, Marina Sol sustained \$25,000.00 USD in damage. The deductible under the policy we had at that time was \$27,000.00 USD. In other words, the insurance paid nothing. Catastrophic damage by hurricanes is caused by tidal waves, and winds. Tidal waves are not a threat in Cabo San Lucas, and broken glass, trashed trees, and missing roof tiles can be paid for by a separate insurance fund.

The criteria for the new policy was to find insurance that would help whatever part of Marina Sol needed help as the result of an earthquake, to stay within the budget passed in December of 2007, and create a fund for small repairs.

There were several options. One policy, which did include hurricane coverage, was \$52,000.00 USD per year. The second choice was for earthquake coverage without hurricane coverage. It was \$19,000.00 per year and the deductible is 2%. It was the consensus of the Board of Directors, that the second policy, along with a \$15,000.00 USD in a separate 'Insurance Only' account would be the best solution. Accordingly, a check was delivered to ING, and the insurance was put in place.

Director Cuomo explained that adjustments were possible at the direction of the HOA, and opened the floor for discussion.

Jim Anderson. Would prefer Twenty-four Million USD in coverage at a cost of \$28,000.00 USD, and no insurance fund.

There was considerable discussion suggesting that we vote in the Twenty-four Million. There was a straw pole and the room was pretty evenly divided. Kim Jones suggested going to coverage in the amount of Twenty Million USD, with the 'Insurance Only' account in a lesser amount.

Jim Anderson moved that we upgrade to the Twenty Million USD coverage, with the 2% deductible, and no hurricane coverage, and that we create a separate “Insurance Only” fund in the amount of approximately \$10,000.00 USD. The Motion was seconded by Rick Greenhead. The Motion Passed with Seven (7) opposed.

Legal Issues

President Joseph told the Assembly that Members of the Board will be meeting with the attorney on Monday to get final clarification on our positions, and we will communicate that information as soon as possible.

Adrienne Kenlan asked what issues were being discussed. President Joseph told her that the discussion was concerning the Contract for the Oasis Bar, and the Collection of Bad Debts.

Check in Fees

President Joseph explained that the inclusion of item was to open the dialogue, and to give people time to think about the options, and that the Board would complete their research and present a Motion on the November 2008 Ballot.

Again there was a lengthy discussion. The gist of the dialogue was that some people see the check in fee as a profit center. Some feel that if it is a profit center, the HOA should make the profit. In order for the HOA to do that, they would have to take over the Concierge. Others feel that the service, and the value of having an outside person or persons responsible for the duty, and liable for employee fees, is preferable.

There were many numbers mentioned, but no really definitive data. There will need to be further research into the actual dollars involved, and what liability the HOA would accrue if it chooses to add the Concierge to the services it manages.

At this time, these are the options which are available:

1. Forget the whole thing, just don't have a Concierge, and let people come and go as they wish.
2. Continue the program in its present form.
3. The HOA can take over the Concierge desk and require the management companies to participate in some form.

Discussion:

Adrienne Kenlan moved that we charge a \$10.00 USD fee for EACH and every renter that checks into Marina Sol. Motion was seconded by Claire Griffith. After discussion, the Motion was withdrawn by the maker, and concurred with by the second.

Lorie Luiza. The check in fee is a double tax.

Jim Anderson. The HOA should get its fair share of the check in fee.

Claire Griffith. I have started a management company here, and I don't want to give my money to my competition.

Lonrenzo Wolters. Concierge should pay the HOA to have the job.

Bart Cuomo. The Management companies are being portrayed as "bad" guys. Really they are an asset, providing control and adding to security.

Dorine Anderson suggested that the Board write a set of scenarios which the HOA can vote on.

Gwen Lentz. Check in fees could be graduated, so much for a one bedroom unit and so much for a two bedroom unit.

Bob C101 and C102. It is not okay to charge a check in fee for guests who are not paying to stay at Marina Sol. The management company should pay.

Gwen Lentz. In other transactions, outside of Marina Sol, involving condos, when a condo sell,s there is an HOA transfer fee. This could be a revenue stream.

Break 12:04 pm

Return 12: 11 pm

New Business

Dorine Anderson moved that if a new owner want to change the old restaurant into residential units, s/he comply with the following conditions. 1. The units must be similar in size and style to the existing Marina Sol units and architecture. 2. Any and all fees for changing the usage of the space will be at the sole expense of the new owner. The Motion was seconded by Jim Waldie. It passed unanimously.

Dorine Anderson asked Director Cuomo, who is heading up the By Laws committee to explain what is happening. Bart said there will be a review, probably sent by email. The results will be tabulated and a revised version will be sent out to all owners. Those in agreement will sign before witnesses. If there is 75% agreement, the new By Laws will be registered with the Notario. The cost will be disclosed to the HOA before that action is taken.

Gwen Lentz explained the very difficult time she had had dealing with the road behind the D building. Gwen said that Susan Carol caused her additional difficulties in this process. It is Gwen's experience that Susan Carol is not acting in the best interest of the HOA. Accordingly, Gwen would like to remove her from the Board.

Parliamentarian Henry Penney informed the Assembly that they have the right to remove a Board member with a 75% vote.

Jim Anderson told the Assembly that the new Baja California law says one vote, one unit.

Bart Cuomo said that at this time, our By Laws supersede the new Mexican Law. When the new By Laws are approved, they will have to conform to the new Mexican Laws.

Mike Turner suggested to the Assembly that the Director Carol was not there to defend herself. We should not remove her, but do something else to let her know we are not happy with her performance.

Gwen Lentz told the Assembly that Susan Carol's behavior was not acceptable.

Rick Greenhead moved that we have a vote of No Confidence and ask her to resign. The Motion was seconded by Kim Jones.

Discussion

Jim Waldie said that the majority of the homeowners had voted for the Board and that perhaps the Assembly did not know everything.

Lornezo Wolters spoke in support of Rick Greenhead's motion.

The Motion passed, with one (1) dissenting vote.

Adrienne Kenlan wants to create a financial committee to help the Treasurer. President Joseph directed the Treasurer to decide if and how much help she wants, and ask the volunteers when appropriate.

Adrienne Kenlan suggested that her research shows that the HOA can place individual water meters in each condo, (one per hot water tank according to a letter from Mike Hubbard), at a cost of somewhere between \$200.00 USD and \$400.00 USD each. She also suggested that commercial businesses pay a higher per square meter fee than the homeowners pay.

Paul Joseph informed her that her concerns had been duly noted.

Gwen Lentz suggested that proxies be kept on sight, in the Marina Sol HOA office for a set time (one week) after an election.

Gwen Lentz asked about the status of the November Assembly direction to format a letter of termination for the Operator of the Oasis, serve it and file it in the Mexican Court. President Paul explained that the HOA still did not have legal standing, at that time, to operate, due to the problems resolved in Motions 5 and 6 of the November meeting.

Since that time, a termination letter was delivered on December 13, 2007. There have been ongoing discussions, but no new developments and the Board is working to make the best, most fiscally responsible decision it can.

Gwen Lentz would like the HOA to research whether or not she can use her garage for any other purpose than parking a car.

Jim Anderson, referring to the February 2007 meeting, quotes Jim Waldie as saying that an owner can only have his own ballot plus two (2) proxies. The Board will verify this information.

Director Cuomo explained that attorney Omar Quijano had told him there is no limit as to how many proxies an Owner can hold. Again, the Board will verify.

Kim Jones asked if we are a condominium or a hotel. He told the Assembly that if we are a condominium, we cannot have nightly rentals.

Claire Griffith said that the people running ads with nightly rates should be contacted and made to stop.

Lorenzo Wolters wanted to know what the \$11,000.00 USD was for in the 2007 landscaping budget. The sprinkler system.

Meeting Adjourned at 1:03pm