

River Glen Homeowners Association

Board of Directors Meeting Minutes

Meeting Date: 19 September 2013

Approved at the BOD meeting held on 17 October 2013

Board Members in attendance: Julie Rogers, Gary Klug, Julie Stapp, Mark McGee

Board Members absent: Tye Riley, Helen Stone

Homeowners in attendance: Maureen Dower (has volunteered to serve on board next FY), Bob Towry, Mike Dower

Reports:

Treasurer's Report: attached

Irrigation Committee Report:

- Irrigation terminated for the rest of the season per Daryl Musser. Ish diversion at mouth of Little Thompson River at the canyon mouth was significantly damaged by flood. Ish irrigation shut down by the ditch company.

Architectural Control Committee Report: No report – issues from last meeting noted and voted on.

Waste Water Treatment Operations Committee Report

- Discussion of recent flood, sewer plant status and Riverside Farms lift station status
- Mike Dower has been working with RGHOA plant operator Bob Airhart to advise Riverside Farms
- Connection pipe from Riverside Farms damaged by flood and is inoperative
- Backflow valves on pipe located on RGHOA system are preventing discharge from ponds
- Riverside Farms has shut off at the Riverside Farms lift station and is working to get a storage truck to temporarily store and transport sewage until repair can be performed

New Sanitation System Committee Report

- Discussion of impact of flood on plans

Old Business:

1. Review and approve minutes of prior meeting. Minutes of 15 August 2013 approved.
2. Ad Hoc Covenant Revision Committee – need to reschedule 1st meeting
3. HOA Informational Meeting about CCIOA and Covenant Survey – need to schedule

4. ACC/Covenant issues:

- Plastic structure at 1405 River Glen Way (roofing on barn at same location)
- Metal shed roof at 1220 Wagon Wheel
- 6 Horses at 1220 Wagon Wheel
- 5 horses at 2028 River Glen Dr

Board unanimously voted to send enforcement letters and follow up with action as recommended by attorney if owners do not comply.

5. Review draft of collection policy, refine/revise. Collection policy draft was approved and to be posted on the HOA website. Vote by the board at next board meeting.

6. Electronic copies of: insurance policies (hazard insurance for sewer plant and liability insurance for HOA with State Farm), JVA report and site application for new sewer project. Status – still working on this.

7. Discussed responses from HOA attorney regarding questions from the BOD. Summary of questions and answers attached to minutes to be posted on website.

8. Covenant Survey results discussed.

9. Status of new draft agreement with RF: in progress, Julie Stapp to follow up

New Business:

1. Discussed bridge outage and desire to coordinate construction of sewer line with the repair of the bridge. Julie Stapp to contact the county.

2. Outline Hearing process for BOD, discussed in view of HOA attorney input.

3. Need to outline enforcement process for covenants. To be drafted and reviewed at the next board meeting.

4. Begin forming budget for next fiscal year

5. Need to re-grade the road to the sewer plant. Mark McGee volunteered to do this when it dries out. Also will purchase grass seed, drag/disc and reseed to the north of the sewer plant.

Open Discussion: none

Correspondence:

Email from Mike Dower regarding Riverside Farms Lift Station damage and plan (to be included in minutes)

Email from Daryl Musser regarding Ish Ditch and end of irrigation (to be included in minutes)

Email from Melissa Garcia regarding questions posed by the BOD (to be included in minutes)

Everyone else: none

Treasurer's Report:

1. We have 3 lots which still owe for the quarter for a total of \$848.36
2. Response from [one homeowner] will pay in full end of Sept.
3. We have a new neighbor in RSF Bobby and Vickie Boroughf 1442 Sweetwater Ln, lot #10
4. We have 3107.21 in the irrigation acct and no bills pending
5. We have 15475.10 in the main acct and no bills pending.
 - a. The JVA bill from last month \$1597.08 was cancelled b JVA

The following is a draft of the collection policy to be voted on by the RGHOA BOD at the 17 October 2013 board meeting. A written collection policy is required of HOAs by Colorado statute and must be in place by January 1st, 2014.

DRAFT 19 September 2013

River Glen Homeowners Association (HOA)

Procedure for HOA Fee Assessments and Payment Collection

Purpose:

The purpose of this procedure is to document the process for Assessing HOA fees, billing such fees, what records will be kept and actions the HOA will take for delinquent accounts. This procedure supports the "River Glen Declaration of Covenants, Conditions and Restrictions."

Process:

1. **Assessment:** The board of Directors will meet annually to define the yearly budget. Budget items include but are not limited to sewer plant expenses, irrigation system, pollution insurance, mailing, and legal fees. The budget costs are then divided by the number of homes to get assessment fees for each home. This information is presented to the homeowners for vote of approval at the annual meeting.
2. **Billing:** The Treasurer will prepare individual statements for each homeowner per quarterly billing date and mailed prior to the due date. Bills include quarterly assessment fees, current account information and any additional fees if applicable. Assessment due dates are January 1st, April 1st, July 1st, and October 1st. Payments are due on these dates and will be considered delinquent if full payment is not received within 30 days of the due date.
 - a. **Fees:** An interest rate of 8% per annum is charged on all delinquent accounts and will show on the HOA bill as a separate line item (Interest on Past due amount). Any fees which the HOA bank may be charged for a homeowners returned check will be passed along to the homeowner.
3. **Records:** The Treasurer will process payments and keep record of each homeowners account. Payments will be dated the date they were received. Any delinquent fees such as interest, postage, legal fees will be recorded for each account. Payments will apply to the interest and fees first then applied to assessment amounts. In compliance with the by-laws, the treasurer will provide to any homeowner a certificate that states their account status. Reference by-laws, article IV, 4g, and page 4.
4. **Delinquent Accounts:** Delinquent accounts will be divided into four different status, 1st late payment notice, 2nd notice, collections, and Temporary payment plan.

- a. **1st Late Payment Notice:** If full payment for the quarter has not been received within 30 days of due date the treasurer will send out a letter reminding the homeowner that HOA Fees are past due and their account is delinquent. Interest will accrue on the delinquent amount. The Homeowner is required to make payment or inform the board in writing if a temporary payment plan needs to be put in place. The Homeowner needs to respond within 15 days of the late notice date. The Treasurer will add the postage cost to the homeowners account.
- b. **2nd Late Payment Notice:** If full payment for the quarter has not been received within 60 days of the original assessment due date a 2nd Late Payment notice will be sent via certified mail. Interest will continue to accrue and be added to the amount owed by the homeowner. The 2nd notice will give the Homeowner 15 days to make payment or inform the board in writing if a temporary payment plan needs to be put into place. No response to this notice will be considered “unable to pay by the Homeowner” and the account will be sent to collections (below). The Treasurer will add the postage cost to the homeowners account.
- c. **Collections:** If full payment for the quarter has not been received within 90 days of the original due date a collections notice will be sent via certified mail. The collections notice will give the Homeowner an additional 15 days to make payment or inform the board in writing if a temporary payment plan needs to be put into place. No response to this notice will be considered “unable to pay by the Homeowner” and the account will go to collections.

In Addition:

- i. The homeowner will have voting privileges suspended until the account is paid in full.
 - ii. If the homeowner is a member of the Board of Directors they will be removed from the board.
 - iii. The HOAs attorney will be consulted and appropriate legal action undertaken to make collection of all amounts owed.
 - iv. All cost for legal expenses, recording, travel, and document fees will be added to the homeowners account.
 - v. For account in excess of \$1000.00 delinquent, foreclosure of Lien will be filed and Notice to credit reporting bureaus will be sent.
- d. **Temporary Payment Plan:** If a homeowner is having a temporary problem meeting financial obligations they should contact the HOA Board and work out a payment plan. The payment plan can be scheduled out over a 6 to 12 month period but the homeowner must stay current with all subsequent, regular occurring assessments.

Attachment to Minutes 19SEP13. These questions were posed to the HOA Attorney by the RGHOA Board of Directors

Q&A with the HOA attorney 18 August 2013, **HS response** denotes the attorney comment and response, "Notes from discussion" are those taken by Mark McGee, RGHOA Secretary during the call:

Q&A session with Melissa Garcia of HindmanSanchez

Today I spoke with our HOA attorney, Melissa Garcia, regarding the questions we [the board] posed. Here are my notes:

Question 1. Options for enforcing various types of covenants?

Notes from discussion: First, we as a board have the authority to draft and pass an enforcement policy that includes thing like fines. It does not require a covenant change to do this. The power to do so is implied, and backed up by law, despite the absence of specific language in our covenants. We should follow a course that permits HOA input on the matter, such as: posting a draft, putting it on our agenda and scheduling a board vote. HOA membership sign off is not required.

HS Response: That is correct. The authority to adopt an enforcement policy is both authorized (even in the absence of language in the covenants or bylaws) and required per CO law, under 38-33.3-209.5. Homeowner approval is not required in this action or in any other action not specifically reserved to the Owners for vote in the governing documents. Article IV, Section 4, entitled Powers and Duties provides the following:

[from Colorado Law:]

The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association, and shall exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by statute, other provisions of these By-laws, the Articles of Incorporation of the Declaration.

Based on the above, the Board has authority to take any action not specifically reserved to the Members in the governing documents or statute. I checked your other governing documents and found no right or obligation of the Members to vote on approving an enforcement and fine policy. And, CO law does not reserve this right to the Members either. Therefore, the Board should vote on the policy; however, it may allow the Members an opportunity for feedback and comment.

Notes from discussion: Next, we are recommended against using the "enter and fix" course of action except in a case where a property might be abandoned. In all other cases you would need a court order and it makes more sense to just get a court order to compel compliance. If the homeowner ignores that, they have to deal with the court.

HS Response: Correct. And, even if the property might be abandoned, contact us first if you are wanting to exercise any rights of self-help.

Notes from discussion: The usual options in progression are: letter, fines and court action. We can also suspend voting rights, but I don't see that as much of a motivator to compliance.

HS Response: The right to suspend voting rights must be stated in your governing documents. I have not reviewed this, but often I see the right to suspend voting rights for nonpayment of assessments, but not for other types of violations such as failure to maintain.

Notes from discussion: We will need a hearing panel and a documented process for imposing any fines or progressing to court action.

HS Response: If the Board is an impartial decision-maker, then the Board can act as the hearing panel. An Impartial Decision Maker is defined under Colorado law as "a person or group of persons who have the authority to make a decision regarding the enforcement of the association's covenants, conditions, and restrictions, including architectural requirements, and other rules and regulations of the association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the association."

Notes from discussion: In any event, we don't need, and should not, run to the HOA membership every time we are required to enforce a covenant restriction. It is the duty of the board to do this.

HS Response: Correct.

Question 2. Are there ways to put essential service costs (like the future sewer fees) into a category or organization that makes collection easier?

Notes from discussion: No. Because we are using the HOA to collect, we are limited to the law that relates to HOAs. I asked if we could be considered as a "utility" because of the nature of why we are collecting fees and it apparently does not make a difference. We do have the actions available in our covenants (like filing a "notice of lien") but we may also hand it off to our attorney for collection and go to court for a judgment. We would front the attorney fees and expect they would be collected per the CCIOA. And of course we need a collection policy that is documented and voted on by the board.

HS Response: Correct – not under your current documents. However, depending on what sort of remedy you would like on the collection end, you may be able to amend your covenants to include this remedy. So you wouldn't be categorizing yourself as a utility, but you would be

categorizing the assessment, itself, as a category with different remedies. Was there a particular course of action you were hoping to take?

Question 3. Liability question: Does the HOA (or an individual homeowner) incur liability when a irrigation water user permits excess water onto a neighbor's lot? (The HOA owns the water collectively and provides to homeowners.) Some homeowners order a surplus of water such that it flows into neighbors properties and the collection ditches along the roads in the neighborhood.

Notes from discussion: A bit of a tricky question. The first answer is that a homeowner is aware of the slope of the land when they buy it and should presume water will flow downhill (i.e. if it rains heavily, water will run onto your property from a higher property). A natural flow of water should be anticipated by the homeowner.

Notes from discussion: My follow-up question asked about the nature of this when someone puts an excess of irrigation water on their property (20 inches on our system =1 acre foot). The idea being that a person would not expect 6 to 12 inches of rain on the neighboring uphill property every 3 weeks, thus both the amount and frequency of such a high volume of water is not natural. Melissa said this may be an issue and will do a brief amount of further research and get back to us. I did not want to obligate any additional attorney cost without getting it on the budget. This is a fairly important long term question for us as an HOA, we may want to consider budgeting for research in the future.

HS Response: Yes, we would have to conduct research on this to provide you an opinion. Let me know if you want us to move forward in the future.

Question 4. Experience with HOAs that have permitted livestock such as chickens, goats etc?

Notes from discussion: HOAs are starting to follow the lead of cities and allow things like chickens.

HS Response: Actually, I think on this one you may have misheard, or I may have miscommunicated. HOAs are going the other direction and amending their covenants to clearly prohibit chickens, goats, etc. given the wake of many governmental entities allowing them. Your covenants can be stricter than local ordinance.

Notes from discussion: A key difference is that they are within the city limits and can simply call for city code enforcement officers to resolve issues. Larimer county probably will not help us here.

New horse regulation is in the Land Use Code section 4.3.1

Follow up question about construction of metal shed roof:

Next is a question about unauthorized construction. We have a homeowner that built a shed roof extension with unapproved roofing material. A plan for construction was never sent to the board, nor was there a county permit issued. The construction is located on the back side of a barn, where you cannot see it except from a neighboring property or the HOA common area behind the house. We don't

know when it was built. Can we take this to court even though it has been several months since this surreptitious construction was completed? Our covenants have a clause about taking action within 21 days.

HS Response: As long as the ACC did not approve the construction, and was not sent a plan to be approved but then failed to respond within 30 days, then you can still enforce it UNLESS it's been up for more than a year. There is a 1-year statute of limitations per CO law that requires you to take action (i.e. file a lawsuit) within one year from the date you knew or should have known of the violation.

Email from Mike Dower (9/15/13) to Riverside Farms regarding the damage to the Riverside Farms pipe from the Riverside Farms Lift Station across the Little Thompson River:

Here is a summary of the advice that Mark and I got from Bob yesterday regarding the discharge line connecting RFHOA lift station and RGHOA lagoons

Short-Term:

1. Assume that the 4-inch pvc line going under the river is compromised
2. Contact a septic-hauling company to begin evacuating your wet well once every 2-3 days (or whatever frequency is required to prevent overflow from top of wet well). Once you have them on contract to begin this work, turn off your pump(s).
3. Bob suggests Sullivan septic, he has used them many times and they have competitive rates. He predicted somewhere around \$200 per truckload for Sullivan
4. Instruct all homeowners there to minimize water use, reduce frequency of toilet flushing, shower elsewhere if possible, use paper plates, etc
5. Continue this until you have some sort of official permission from some firm with a PE stamp behind it, stating that line is intact and suitable for use
6. Begin taking steps to investigate FEMA or other possible grant sources to help with the cost of this evacuation. Ed Schemm may have some guidance here, not sure.
7. Feel free to contact Bob directly, his cell number is (970) 324-9472 for more guidance or discussion. Also, we suggest again that it would be wise for RFHOA to get Bob onto your payroll as a system operator for RFHOA, even if it's just a monthly visit to do PM type work.
8. Bob may be able to arrange for dumping from the Sullivan truck to the facility in Berthoud to save you some \$\$ on long-distance hauling charges

Long-Term:

1. Contact an engineering firm (JVA or other) to get onto their customer list for evaluation of the 4-inch line under the river
2. Ask that engineering firm to partner with you quickly evaluate the condition of the line, and recommend a course of action (repair, replace, other)

3. You could also contact Ed Schemm to ask for his guidance moving forward, and if Ed suggests anything different than what we have outlined here from Bob, then Ed's advice is almost certainly going to be better than ours
4. Bob mentioned that standard practice for the past several years has been to utilize casement when burying sewer pipe under obstacles like a river. Chances are, that regulation was not in place when Dan Grove completed this project (maybe 2001?)

Again, hope this helps a little bit and remember Riverglen is glad to help you guys out wherever we can

Michael Dower

Email from Ish Ditch forward by Daryl Musser 9/18/13

Subject: Flooding - Boulder & Larimer Ditch Co. Shareholders Update

Dear Boulder & Larimer Shareholders,

Due to the flooding of the Little Thompson River, the headgate and inlet ditch for Ish Reservoir has incurred extensive damage. The Board Members of the Boulder & Larimer Ditch Company and the New Ish Reservoir Company are in the very beginning stages of evaluating the damage.

As a result of this event we will not be running water out of Ish Reservoir for the rest of the irrigation season.

We will be able to share more with you as information is gathered.

Sincerely,

Cindy Befus

For the Boulder & Larimer

Ditch Co. Board Members