

SUNDANCE HOMEOWNER BOARD MEETING MINUTES

Date: February 2, 2010
Time: 4:00 P.M.

SHOA Board Attending: KJ McCorry, President, Kim Rider, Vice President/Treasurer; Carol Brooks, Secretary; Julie Rappaport, Director; Arcadia Real Estate, Olena Archer, Property Manager

Purpose: The purpose of the meeting was to seek legal counsel regarding neighborhood incidences that have occurred since 2006.

About Orten Cavanagh Richmond & Holmes

Jerry Orten represented the law firm of Orten Cavanagh Richmond & Holmes LLC (ORCH) and attending the SHOA board meeting. He has specialized in representation of home owners' associations since 1981. He is the state's premier attorney in this area. He was originally referred by the Boulder Police Department. Their firm currently represents over 800 HOA's within the Colorado area.

For more information about the law firm <http://www.ocrhlaw.com/home.html>

For bio information on Jerry Orten http://www.ocrhlaw.com/modules/site.cgi?section=the_attorneys&view=orten

Legal Options

- **Revise HOA covenant documents to improve availability of remedies.** Any substantial changes to the Sundance documents/declaration would require a vote of the entire membership. To gain full acceptance and to revise documents is considerable time and expense. It generally takes about one and a half years to enact new rules/regulations in a home owner's association and can be costly. It requires time for outreach to the members and for adequate dialog. Based on the homeowner incidences described, Mr. Orten did not feel revision of the HOA documents would resolve these issues.
- **Create formal rules and regulations.** This would be a separate and formal document in addition to rules covered under our By-Laws/Covenants and within the context of the board of directors meeting minutes. If formal rules and regulations then it is also possible to incorporate a fine for violation of these rules. Although this is an option, Jerry felt that this would not resolve the current homeowner issues or incidences. Rules and regulations outside the confines of the covenants are difficult to enforce especially with no significant repercussion for violators. He did encourage when there was a violation it was important to communicate to the entire community the infraction and remind of the shared values of the community. In addition, to remind homeowners of the enforcement outlined in the HOA covenants.
- **Seek and obtain an order or injunction to remove owner from property.** This is extremely difficult to prove and very rare a judge to authorize in Colorado.

Strategies within the Confines of Current Covenants and Board Responsibility

- **Utilize external county resources** (i.e. such as the Boulder Police) Jerry recommended the board encourage accountability when outside county agencies are engaged to deal with community issues. These resources should be engaged when the issue is outside the confines and responsibility of the SHOA board. Many issues that may arise are behavioral and therefore seeking a remedy through county agencies is advised versus through HOA covenants.
- **Invite county resources to Annual Meeting.** Currently the SHOA annual meetings are held at the local church. Jerry supported to continue this **practice of having membership meetings at a neutral location.** He also suggested inviting the Boulder Police and/or Animal Control to present at the meetings. Legal representation during community meetings is advised.
- **Engage alternative dispute resolution and/or mediation.** Jerry encouraged when initial homeowner incidences occur to offer mediation. The SHOA Board has offered mediation services in the past for homeowner issues and disputes. In the past, mediation was refused by one party.
- **Offer homeowners 'Protective Order' as an option.** Individuals can get "Personal Protective Orders" (i.e. restraining orders) against neighbors who are considered threatening to their person and/or property. The advantage is that court orders are relatively easy to obtain. Jerry encouraged the board to offer this as an option to homeowner complaints and encourage them to call their own attorney to process such an action. Jerry reiterated many times that it is not the responsibility of the SHOA board to manage personal behavior of the community.
- **Keep current log of homeowner incidences with detailed information.** When a cumulative body of evidence is gathered by way of a log of interactions/infractions it becomes persuasive before the court. Documentation would build a case for "what is a nuisance?" in the neighborhood which can be difficult to

prove. Documentation needs to include as much supportive detail as possible for each entry, including written account of incidences and/or witnesses. He advised the property manager to keep this log updated and current as a record of all homeowner issues and incidences.

- **Board Responsibility and Policy Development.** The purpose of the SHOA board is about maintaining property values through assessments collected and services provided. The purpose of an HOA board is to never regulate personal behavior. Policies should be developed with the concern of fairness for all members and not reactive to individuals. He also cautioned not to establish an artificial standard. Advised the board to continue their reasonable and kinder, gentler approach versus the command and control approach.
- **Homeowner Communications.** Jerry encouraged the board when issues arise within the community, to communicate to the membership the shared values of what is important to the community.

Board Agreements

- It was agreed based on Jerry's recommendation, that revising our covenants will not be pursued at this time.
- It was agreed that SHOA President will continue to build positive relationships with the Boulder Police.
- It was agreed to invite the Boulder Police to our next annual homeowners meeting in 2010.
- It was agreed that Olena will advise homeowners when altercations arise to report it to the police. If a physical violation occurred Olena will suggest the homeowner call their attorney to seek a "Personal Protective Order".
- It was agreed that the board will sign a formal engagement letter with Jerry Orten of OCRH and retain services on an 'as needed' basis. The board will review this engagement quarterly and may opt to put OCRH on a monthly retainer if needed.

Board Actions:

- KJ will sign letter of engagement retaining counsel for SHOA on a "as need" basis.
- KJ will contact the Boulder Police Department Detective bi-monthly.
- Olena will revise log of homeowner issues and incidences in chronological summary from 2005 to date.

Submitted by Carol Brooks, Secretary 2/8/10

Reviewed by Olena Archer 2/12/10

Reviewed by KJ McCorry. President 2/13/10

Sent to Board for vote 2/15/10

Approved by board via email 2/16/10