



Kono Tayee Home Owners

Board Meeting

Minutes

July 1st, 2023 10:00 am

Beach Area

1. Present at the meeting

Board Members

(Pres.) John McCloskey (Vice Pres.) Todd Marshburn (Sec.) Tom Atteberry
(Treas.) Debbie Pryor (Dir.) Larry Oreglia (Alt. Dir.) Jim Goudreau not present

Members

Tony Marchese, Doug & Mary Lou Milbourn, Tony & Sarah Glenn, Mike & Judy Braley, Celeste Feldman, Tom & JoAnne Senander, Debi Cormack, Ross Calvert, Sandra Vogel, Michael Kues, Dave Wieber, Earl & Diane Pierce, Jim & Becky Hiss, Shane Truan, Jim Valentine, Ken Gehrkins, Chris & Vieno LeGue, Ron Pryor, Terry & Colleen Hale, Pat Ridgel, Ernie & Ellen Lee, Joe & Brenda Reyes, Ryan German,

2. Call to Order

The meeting was called to order at 10:00 am. Pres. led the members in the Pledge of Allegiance. Pres. announced we had a Quorum.

3. Call for Inspector to count votes

Mike Braley (Election Committee Chairman) declared we have a quorum of ballots, 77 ballots returned.

4. Approval of minutes from May 3rd, 2023 Executive Board meeting

Sec. reads the minutes.

Present at the meeting: (Pres.) (Vice Pres.) (Tres.) (Sec.) (Dir.) (Alt. Dir)

The Board discussed the fine schedule for violations to our Rules and Regulations. We have to keep the initial fine schedule declared in the "Letter of Intent" that was sent out to the members on April 17th, 2023. We have the ability to expand and increase the fines at a later date. The Nature of Violation/Non-compliance verbiage will be modified and declared without an "e.g."

The Annual Policy Statement and the By-Laws need to be amended.

In "**Alternative Dispute Resolution:**"

A. Procedure:

8. General Process for Rules Violation:

Changed to,

8. Operating Rules of HOA

Including sections regarding:

Rules Enforcement

General Process for Rules Violations

Fine Schedule

John made a motion to adjourn the meeting. All were in favor. The meeting adjourned at 2:48 pm.

Pres. made a motion to approve the minutes. Sec. seconded and all were in favor.

5. Approval of minutes from May 20th, 2023 Virtual Board meeting

Pres. made a motion to approve the minutes. Sec. seconded and all were in favor.

6. Approval of minutes from June 11th, 2023 Executive Board meeting

Present at the meeting

(Pres.) John McCloskey, (V.P.) Todd Marshburn, (Sec.) Tom Atteberry,
(Treas.) Debbie Pryor, (Dir.) Larry Oreglia.

Pres. Declared we have a quorum. The meeting started at 2:04 pm.

1. Proposal of Contract

a. Mailbox area repairs. The Pres. received several bids to repair the handrails damaged by a vehicle. The lowest quote was \$1,000.00 and \$10.00 for a copy of the CHP report.

Pres. Made a motion to accept the quote of \$1,000.00 and to add a 10% handling fee making it \$1,100.00. Sec. seconded and all were in favor.

b. Aquatic Weed Control

V.P. has contacted several companies with only one response. Waterworks Industries gave a quote to treat the canal and the swim area for \$3,442.00.

Pres. made a motion to accept the quote of \$3,442.00. V.P. seconded and all were in favor.

Pres. made a motion to adjourn at 2:39 pm.

Pres. made a motion to approve the minutes. Sec. seconded and all were in favor.

7. Treasure Report

Treas. read the report, everyone will get a copy of the Banking Summary and the Account Balance.

Income:

Money Market \$1.11

Expenses:

Reimbursement of Police Report (Mail Box Incident), Hardware for Buoy's, Landscape, Professional fees & Utilities.

Billings to be Approved today: Landscape for June \$400.00, Repair of Mailbox Area \$1,00.00, Water Bills (2) \$93.04, Postcards for mailing Dues \$53.00.

Reminder, dues will be mailed out within the next week, current monthly dues for fiscal year 2023-2024 will be \$380.00 per lot. Please send them early.

Question was asked who is paying for the damage to the mailbox area?

Pres. replied the responsible party said they will pay for it without using their insurance. If we don't hear from them soon the Sec. will type a letter or try and get in touch with them.

8. Financial Subcommittee Report

V. P. read the report and everything balances. Looks good.

9. Weed Spraying

V.P. has been trying to get in touch with Clean Lakes, which has done it in the past with no luck getting a return call. He then contacted Water Works based out of Windsor, they replied promptly. They came out and gave a proposal for the canal and the swim area for the HOA, and another proposal for along the shoreline for several members to pay themselves. The HOA approved the proposal for the canal and swim area June 26th, 2023. The weed spraying was done June 28th, 2023. It is a one-time application.

Question, could the lakeshore members be contacted next year in advance so they could have their area sprayed as well?

Answer, yes, we will notify the members in advance for the next year.

A member has concerns they didn't do an adequate job on their shoreline and asked for clarification as to what was done.

The Pres. displayed a map of the canal and the location of Parcel B in the canal. When the canal is sprayed for weeds, Parcel B is sprayed along with members property in the canal. It is unlawful for the HOA to pay for the spraying of members property in the canal. In the past the HOA has paid for the canal to be sprayed without charging the members that live along the canal. Going forward we will have to assess the canal members a portion of the cost for the spraying, approximately \$50.00 per member. With two of the Board members owning property along the canal they will have to be excused from a meeting determining the cost to be shared with those members.

10. Members Survey Results

Treas. Read the report. There were 62 responses. The Pier/Dock area 32 votes and 51.6%, Beach area had 27 votes with a 43.5%, Grounds keeping 26 votes and 41.9%, Safety and Security 26 votes and 41.9%, Canal Improvements 25 votes and 40.3%, HOA Documents 25 votes and 40.3%, Community Gatherings 22 votes and 35.5%, BBQ area with 20 votes and 32.3%, Mailbox area 19 votes and 30.6%, Would you be willing to volunteer 56 votes and 57.1%. The Sec. will email members the results of the survey to view for themselves and discuss it more at the next Board meeting.

The Pier Chairman has contacted several companies to get the demo work done on the pier that exceeds the setback requirements. Only two were willing to come out and give a proposal for the demo work. Should have the proposals in a few weeks. One company can do the work soon while the other is booked out till next year.

The Pres. commented the demo work wouldn't start until the boating season is over, safety reasons, we would only need to get a demo permit. We won't be putting in any new pilings so a CEQA permit won't be needed. When the demo is done, we can apply for an additional floating dock along the pier. Once we have the proposals in place, we can look at the finances too see when it can be done.

11. Adjust Rules and Regulation Fine schedule

Pres. stated that at the last Board meeting we do have the right to increase the fines as we see fit. Several members felt the fine, that was voted on, wasn't severe enough.

Pres. made a motion the fines for the Short-Term Rental Violation be increased to:

Initial Fine: \$800.00

Second Fine: \$1,500.00

Third Offense: \$3,000.00

Dir. Seconded and all were in favor.

12. Friends and Neighbors Report

Sec. read the report.

Since the last meeting of April 15th, 2023 these cards were sent to the Kono Tayee neighbors.

Get Well Wishes to:

Ron Pryor for heart stent surgery

Julia Wilkinson for hand surgery

Nancy Piazza for Covid

Congratulations and Welcome to:

Orion and Sarah Cassetto on the birth of their new baby and our newest little neighbor!

Just a reminder, if you would like to have a card sent to a Kono Tayee neighbor on behalf of our community, please contact Debi Cormack at 707 274-6680.

13. Residents Questions and Comments

Question: Why is there nothing being done about the yellow house, no fines?

Answer: There is not a fine at this time for the lack of weed control or the other items. We are in the process of updating all of our Rules.

Question: What is being done to maintain the easement between lots 8 and 9?

Answer: It is an easement for the purpose of a pipeline to connect the canal, not necessarily a walk way.

Question: Why isn't there any annual dues applied to the narrow lot between lots 49 & 50? Doesn't have a lot number but there is an AP#.

Answer: Yes, since there is an AP# the Annual Dues should apply. We will need to assign a lot number as well.

Question: The interest the HOA earned was \$1.11. If the money was put in an online account, E Trade, we would earn more with the ability to pull money out as needed.

Answer: We will look into it, and we might ask for your help.

Comment: Thank you to whomever decorated the mailbox area for the holiday.

Comment: Thank you to the Election Chairman for doing a fantastic job since taking on the duty.

Comment: Next Board meeting to adopt a new ruling regarding the Annual Policy, allowing a designated place where a member can acquire one, rather than mailing via USPS.

Comment: Next Board meeting to change a Board members term to two years.

14. Election Results

Chairman read the results.

Ballots returned 77, disqualified 0.

President:

John McCloskey 62

Vice President:

Todd Marshburn 72

Secretary:

Tom Atteberry 59

Brenda Reyes 18

Treasurer:

Debbie Pryor 57

Director:

Celeste Feldman 12

Jim Goudreau 5

Michael Kues 9

Chris LeGue 23

Larry Oreglia 26

15. Adjournment

Pres. made a motion to adjourn the meeting. Sec. seconded and all were in favor.
The meeting adjourned at 11:15 am.

PRESIDENTS REPORT

The Board is currently working on restating and correcting conflicting language in the Operating Rules. I am including additional information that was not fully presented at the July 1st meeting. The information, provided by the Kono Tayee HOA's attorney, Kyle C. Sproul (Sproul Trost, LLP), is in response to several questions pertaining to the maintenance of Parcel "B". The questions were asked by members, and board members during the rule's discussion portion of the April and May open meetings.

The information provided is for future reference at the coming board meetings. The Operating Rules are important, they allow the board to make necessary revisions without going to the members for a vote, and are the shortest of the three groups. The CC&R's and By-Laws have been revised by the attorney. Those documents contain required language which was missing from the old documents, and are lengthy. The restated CC&R's and By-Laws will need to be reviewed for conflicts in wording with the Operating Rules.

The board received the restated documents from the attorney on August 30, 2022. The board should consider having a monthly meeting to complete this task. The goal will be to have the documents completed, reviewed by the attorney, and ready for membership voting by the spring of 2024.

This information is presented to clarify, the Associations responsibility, for only the maintenance cost of "Parcel B". The property adjacent "Parcel B", including the canal banks, is the responsibility of the property owners that border "Parcel B".

John McCloskey

President Kono Tayee HOA

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-----Original Message-----

From: John McCloskey [mailto:jmcc7806@yahoo.com]
Sent: Monday, June 12, 2023 10:53 AM
To: Kyle Sproul
Subject: Parcel "B"

Good morning Kyle, I would like to know if it possible for the HOA, to gift over the property in the canal, the creates parcel "B" to the property owners that border parcel "B". The HOA did not purchase the canal from the developer. The county has no AP number assigned to it.

The 2 board members who own canal property seem reluctant to accept the financial responsibility associated with the weed spraying of private property outside of the parcel "B" boundary lines. I read the "conflict of interest" CC to them as stated in Davis-Stirling. They are having a difficult time accepting the statement. I don't believe the would be allowed to vote on this board issue.

One last item. If a member is fined for repeated rules violations, and refuses to pay the fine, and a lien is placed against the property, can we force the property into foreclosure to collect the debt. If so, please outline the process.

I would like to present all our options to the members at the July 1st meeting.

Thank you, John



KT Secretary <ktsecretary@gmail.com>

Fw: Parcel "B"

1 message

John McCloskey <jmcc7806@yahoo.com>
To: KT Secretary <ktsecretary@gmail.com>

Mon, Jul 10, 2023 at 3:16 PM

----- Forwarded Message -----

From: Kyle Sproul <ksproul@sproullaw.com>
To: John McCloskey <jmcc7806@yahoo.com>
Sent: Monday, June 12, 2023 at 02:54:24 PM PDT
Subject: RE: Parcel "B"

Hi John, assuming for purposes of discussion the canal parcel is separately lettered and held by the Association by way of the subdivision map, it is technically possible to grant or convey common area (or portions of it) to third parties; however it is a nearly insurmountable task. Let me explain.

Conveying Common Area

For an association to transfer title of common areas to a third party, either: (1) the common interest development regime would have to be abandoned (i.e. dissolving the association, which requires approval by the members) or; (2) the members would have to approve transfer of a portion of the common area.

All owners have a legal interest in the Kono Tayee common property. Unless the canal property could be considered surplus and has no value or utility to any member (which it all very likely does), the common area will be considered integral to each separate interest and unanimous approval of the membership may be required to effect a valid conveyance—unless there is an express provision for a lesser vote for such a conveyance in the governing documents—which there is not in the Kono Tayee governing documents.

- I would need a copy of the recorded subdivision map to determine whether the parcel was dedicated to the association on the map

Obligation to Maintain.

You mention below that the two Board members feel reluctant to accept the financial responsibility associated with the weed spraying of private property outside of the parcel "B" boundary lines. They may feel reluctant, but the fact of the matter is that those two board members, and any other member with a property bordering the canal, already accepted that responsibility when they purchased their home.

CC&Rs 4b states the property owner is responsible to cut weeds over 6" high and remove all cuttings, *including the canal banks and beach fronts*. Properly enforcing that CC&R provision would obligate the owner to weed cut or spray the canal banks within his or her property line, at their own expense.

The Association may, if it wanted to, do that maintenance, but it would still be at the owners cost. However maintained, the owners cannot shirk the cost.

- Since the obligation is already codified in the CC&Rs, there is really no purpose in conveying any portion of the common area canal parcel to them.

One Alternative: Creating Exclusive Use Common Area of the Canal to those Bordering:

Since conveying common area is difficult and not advised, one alternative could be to designate the portions of the canal parcel on an engineered site plan as "Exclusive Use Common Area" ("EUCA") to the owners bordering the canal parcel. EUCA is simply common areas outside the owner's Lot which are reserved for the exclusive use of that owner.

The Association can grant EUCA to specified owners if it obtains the approval of 67% of the membership. (Civ. Code §4600(a).) When presenting the proposal for a vote, the Board will have to specify (i) whether the Association will receive any monetary consideration for the grant and (ii) whether the Association or the transferee (the owners bordering the canal) will be responsible for providing any insurance coverage for exclusive use of the common area. (Civ. Code §4600(c).)

The grant of EUCA would be evidenced in a document recorded with Lake County with an attached surveyed site plan evidencing the dimensions, thus obviating the need to subdivide the property. Those specified owners would not be in title to the canal property; however, the specified owners would have sole use of the area to the exclusion of all other members and the Association. The Board may condition approval on the recorded instrument containing a covenant requiring the benefited to maintain the EUCA area.

- Again I do not believe this is necessary since the maintenance obligation is already expressed in the CC&Rs.

Imposing Liens on Fines.

Fines cannot be collected through nonjudicial foreclosures (trustee sales). Civ. Code § 5725(b).

Fines cannot be treated as assessments nor included in delinquent assessment liens that are foreclosed nonjudicially. Fines can be included in liens that are foreclosed judicially, but judicial foreclosures are extremely rare in California and used only where the mortgage lacks a power of sale clause.

For nonpayment of fines, Kono is practically limited to suspending membership privileges, recouping the unpaid sum in small claims court, or regular court if the fine exceeds the jurisdictional limit.

Kyle Sproul, Esq.

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Fw: Follow Up - Parcel "B" maintenance

1 message

John McCloskey <jmcc7806@yahoo.com>
To: KT Secretary <ktsecretary@gmail.com>

Mon, Jul 10, 2023 at 3:15 PM

----- Forwarded Message -----

From: Kyle Sproul <ksproul@sproullaw.com>
To: John McCloskey <jmcc7806@yahoo.com>
Sent: Wednesday, June 7, 2023 at 09:00:01 AM PDT
Subject: RE: Follow Up - Parcel "B" maintenance

Hi John, following up on my call with you yesterday afternoon with some alternatives the Board may consider when it comes to canal bank maintenance. On rereading the governing documents more closely, it appears the Association's maintenance authority is limited to Parcel B only, and not to maintenance of weeds within private lot lines outside of the Parcel B property line. Here are the procedures as I see them, with authority for each. Call or write me if you have questions.

1. Step 1: The Association may notice each owner to cut weeds over 6" high and otherwise abate weeds on the canal bank in a clean, neat and orderly condition, with a deadline to complete the abatement within 25 days of the notice. If the Owner fails to perform this duty, the Association may do the work themselves and specially assess each non-complying owner for the cost of doing so. Including a service charge. If the Owner fails to pay the assessment, the Association may place a lien on the property (CC&Rs Section 8(b).)

a. Authority: CC&Rs Section 4(b)

b) All lots shall be kept and maintained in a clean, neat and orderly condition. The property owner is responsible for cutting weeds over 6" high, removal of trash or cuttings. The Corporation will notify the property owners in writing to comply within 25 days. If an owner fails to comply, the Corporation will have the work done and the owner will be assessed for costs plus a service charge. **This includes canal banks and beach fronts.**

2. Step 2: The Association is responsible for weed cleaning and aquatic spraying within the Parcel B lot lines. The Association's cost to hire a contractor to perform the work is approximately \$6,500. If the Association does not have the liquidity in its reserve accounts to retain this contractor, the Association may levy a special assessment against the membership to cover the cost of the contractor. If the \$6,500 exceeds 5% of the Association's *budgeted gross expenses* for the previous fiscal year, then member approval is required to levy the special assessment. If the \$6,500 is less than 5%, then the Board may levy the assessment without member approval.

a. Authority: Bylaws Section 8

8. The Committee Chairperson shall recommend to the Board of Directors when weed cleaning, aquatic spraying, and dredging of the canal (Parcel B only) is needed. The Board must approve proposed expenditures and sign the contract prior to any work being done.

b. CC&Rs Section 8(b)

8 - The Corporation shall have the power from time to time.

a) To levy special assessments against each building site. "Building site" is hereby defined as being any lot shown on the Kono Tayee Estates map, with the exception of Lots 63 and 64 and the area reserved for Homeowners facilities. If a dwelling occupies one lot and a portion of an adjacent lot the parcel will be considered as only one building site subject to one assessment and entitled to only one vote.

b) Special assessments may be used for the following purposes:

To reimburse the corporation for the cost to the corporation of the prevention or abatement of any nuisance or any other condition on a building site in violation of these restrictions.

To raise funds for the acquisition of real property to be used as "common area" as such terms are defined in Article II, Section 3, of the by-laws of Home Owners of Kono Tayee Estates.

To defray the cost of maintenance of the canal (parcel)

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-----Original Message-----

From: John McCloskey [mailto:jmcc7806@yahoo.com]

Sent: Monday, June 05, 2023 12:36 PM

To: Kyle Sproul

Subject: Parcel "B" maintenance

Good afternoon Kyle, I would like to schedule a phone conversation with you to discuss the language in our By-Laws, specifically, Article IX, Committees, Architectural Committee-Responsibilities and Duties, number 8, dealing with the financial responsibility of weed spraying in the canal. The breakdown is roughly 60/40, with 60% being private property. The HOA's annual meeting is July 1st, and this issue is on the agenda for discussion. Thank you.

Sincerely, John McCloskey

-----Original Message-----

From: John Mccloskey [mailto:jmcc7806@yahoo.com]

Sent: Monday, June 26, 2023 9:31 AM

To: Kyle Sproul

Subject: Conflict of Interest

Good morning Kyle. Currently the board has 2 of its members that own canal property. Should those board members excuse themselves from voting on the issue of " Parcel B " weed spraying and overall canal maintenance. The 2 directors have been receiving free weed spraying, for 25 years, and have objected to an assessment for the weed spraying of the private property that borders Parcel "B".

You have addressed this issue via email which I will read to the members at the July 1st meeting. If you could also comment on the "Conflict of Interest" or " Interested Director" as referred to in Davis-Stirling, that will also be very helpful.

Thank you, John

Fw: Conflict of Interest

1 message

John McCloskey <jmcc7806@yahoo.com>
To: KT Secretary <ktsecretary@gmail.com>

Mon, Jul 10, 2023 at 2:56 PM

----- Forwarded Message -----

From: Kyle Sproul <ksproul@sproullaw.com>
To: John McCloskey <jmcc7806@yahoo.com>
Sent: Wednesday, June 28, 2023 at 11:24:32 AM PDT
Subject: RE: Conflict of Interest

John thank you for your patience on this response. The answer depends on what issue is exactly being presented for vote. If the vote is to shift the maintenance responsibility of the private parcels bordering the canal from the Association onto the Owners (including the 2 interested directors), then this is a classic Raven's Cove Townhomes, Inc. v. Knuppe Development Co. (1981) 114 Cal.App.3d 783 situation where a director cannot decide for the association that benefits their owner interests at the expense of the Association and membership. The two directors would recuse themselves from the discussion and the vote and a majority of the remaining non-interested directors would have to approve that decision.

If the vote instead is to impose a special assessment needed to pay for the maintenance of the private parcels bordering the canal (including the 2 interested directors), then I still think that board vote is an interested director matter same as above if the total amount of the special assessment is less than 5%. If that special assessment is more than 5% of your budgeted gross expenses for this fiscal year, then a vote of the entire membership would be required, and the 2 directors would be permitted to participate in voting in that case since it is a member vote not a director vote.

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DIRECTOR CONFLICTS OF INTEREST

No man is allowed to be a judge in his own cause because his interest would certainly bias his judgment and, not improbably, corrupt his integrity. -James Madison (4th US President, Federalist Paper #10.)



2-Minute video

Interested Director. An "interested director" is one who has an interest in the outcome of a board decision because he/she receives a personal benefit from the decision that is different from the benefit conferred on other members of the association. This creates a conflict of interest for the director which has the potential of influencing his/her vote as a board member. Decisions which are influenced by personal interests rather than the interests of the association can lead to a breach of the director's fiduciary duties.

Business Judgment Rule. When a director acts in his/her own personal interests instead of the association's, the director loses the protections of the Business Judgment Rule:

An exception to the presumption afforded by the business judgment rule ... is that it does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest. (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1045-1046.)

Example. A board member votes to award a roofing contract to a company owned by the director or the director's spouse, brother, son, granddaughter, etc. The award of the contract results in a personal benefit to the director. Such contracts are voidable.

Not a Conflict. Oftentimes board members vote on matters that result in a benefit to them that is not a conflict of interest because the matter also benefits the membership as a whole. For example, if a board member votes to add security patrols to the development, there is no conflict of interest since the benefit he receives from the patrol is same benefit received by all members of the association.

Avoid Liability. Potential liability can be avoided if:

1. Full Disclosure. The interested director fully discloses the conflict.
2. No Influence on Vote. The interested director leaves the room so remaining directors can discuss the issue fully and freely and vote without the interested director.
3. Just & Reasonable. Even if the director makes full disclosure and avoids influencing the vote, the transaction must be fair and reasonable as to the association at the time it is authorized, approved or ratified. (Corp. Code § 7233; Corp. Code § 310.)

Regardless of whether he has a material financial interest, a director "may not make decisions for the association that benefit their own interests at the expense of the association and its members." *Raven's Cove Townhomes, Inc. v. Knuppe Development Co.* (1981) 114 Cal.App.3d 783. A director who breaches the basic fiduciary duties are liable to the Association. (Id.) Where a director finds himself in a position to vote on a matter in which he has a personal interest, he should be recused.