

**Approved  
May 16, 2017  
as written**

PINE MEADOW RANCH OWNERS ASSOCIATION  
MONTHLY BOARD MEETING  
SHELDON D. RICHINS BUILDING  
PARK CITY, UTAH  
APRIL 18, 2017

In Attendance: Dan Heath - Vice President; Jodi Taylor, Treasurer; Honey Parker, Secretary; Jeremy Jespersen (Area 2); Dustin Kilbourne (Area 3); Robert Walthall (Area 4); Bruce Hutchinson (Area 5); Tom LeCheminant (Area 7). Tony Tyler – President, arrived later in the meeting.

Ex-Officio: Jody Robinson

Excused: Matt Brown (Area 1)

Guests: Kevin Bryant with Freeport Development representing a client on upper Tollgate; Larry Peterson, Lot PI-D-98; Leo Moshier, Lot D-75; Paul Sutor, Lot G-36; Jeremy and Lisa Warren, Lot SS-146-K; Brian Hobbs; Lot FM-D-169; Tom Brace, Lot FM-B-23; Amy Wright and Jason Smith, Lot FM-C-57; Kirby and Adrienne Wilson, Lot G-24-A; Glen Verrone, Lot A-42.

Dan Heath called the meeting to order and stated that the objective of this meeting was to get things accomplished rather than to fight or argue.

Jodi Taylor reported that the audit from 2014 has not been completed or signed. She had requested to see the audit for the last three months. Someone stated that there was a draft of the audit but Tony Tyler as President had not signed the auditor's management letter. Mr. Heath expected Mr. Tyler to provide an update on the audit when he arrives.

### **Approval of Minutes**

MOTION: Dustin Kilbourne moved to APPROVE the Minutes of March 21, 2017 as written. Robert Walthall seconded the motion.

VOTE: The motion passed. Honey Parker and Jodi Taylor abstained.

### **Open Visitor Forum**

Mr. LeCheminant, Lot D27, commented on the poor internet service on the Alexander side. A tower was installed on the Bobcat Springs area. They were looking for a piece of property that is owned by the PMRHOA, and he found Lot PI-F-47 on the corner of Uintah View Drive. He asked if there was any reason why they could not install a tower down off the hill on that corner in an effort to get better internet service. Mr. Heath asked if anyone objected to Mr. LeCheminant looking into it. There were no objections. Utah Broadband is the provider.

Glen Verrone, Lot A-42, raised an issue about the financials and the lack of transparency. His wife is an accountant who managed 10 different HOA accounts for nine years. She requested the financials earlier in the year from Carol and it took nearly three weeks to get them. HOA law states there are supposed to be provided within 24 hours because it belongs to the owners. After receiving the financials he questioned why they were done in a cash basis rather than an accrual basis. HOAs are non-profit organizations and should not show a profit. However, the financials provided showed a profit at the end of the fiscal year last year. Mr. Verrone also questioned why the 2014 audit was not signed off, and why Mr. Tyler did not agree with presenting the audit under GAAP rules. The IRS regulates those accounting practices and it is an accounting law. He requested that his questions be answered.

Honey Parker asked for an explanation of the difference between cash basis and accrual. She was told that when a company is owed money, it can be taken as a loss now or when it actually happens. If things are done on a cash basis, it does not account for future debts. Therefore, it could appear that the financials are strong, but in fact, they could be running in the red the entire time. On a cash basis, the profit and loss would not necessarily reflect the actual debts owed. Mr. Heath offered to speak with Carol and Mr. Tyler. Mr. Verrone was concerned about legal liability that could occur based on the lack of transparency.

Someone asked about Carol and whether she was a member of the Board. Mr. Heath replied that Carol was a hired independent bookkeeper and office manager. Carol was hired under the Pine Meadows Ranch Policies and Procedures because the Board decided that the office manager should be contracted by Pine Meadow Ranch to handle the day to day operations of business and the administration of the HOA. He noted that when Robert Rosing, the hired outside counsel, had stated that as HOAs grow the day to day operations become too large for volunteer organizations and it graduates from employing an office manager to hiring a management company. Hiring a bookkeeper/office manager relieved some of the duties of the Treasurer. Honey Parker noted that it also changed her responsibility as Secretary because Carol professionally produced the Minutes.

**Tony Tyler arrived.**

Jason Smith, Lot FM-C-57, asked if consideration has ever been given to replace Carol or to look at other alternatives. Mr. Heath stated that Carol has always done a good job for the Ranch and there was no reason to replace her.

Mr. Tyler stated that he has been working with Carol for five years as a Board member

and before that interacting with her as a full-time resident. He has worked with other accounting companies on an HOA capacity level, and they all have similar challenges. Mr. Tyler remarked that Pine Meadow Ranch is unique because they have a wide variety of uses, ownership, and divergent interests. He typically finds that Carol does not respond quickly to questions that have been asked over and over again. However, she responds fairly quickly to questions specifically related to costs such as HOA fees or collection procedures. She is also very responsive in some of the practical aspects of the accounting methodology, such as responding to bank requests, title companies, etc., which is a side that the HOA members never see. Mr. Tyler agreed that the Board could hire another company, but it would be at a substantially higher cost.

Mr. Verrone asked Mr. Tyler why the books were kept on a cash basis, which shows a profit, rather than an accrual basis. He also noted that Mr. Tyler would not sign off on the audit. Mr. Tyler explained that he would not sign off on the audit because it includes a disclaimer that says whoever signs the audit is personally responsible for the fact that the audit is presented as GAAP accounting methodology. Mr. Tyler clarified that his refusal to sign was because the waiver that he was required to sign represented something that he felt was false. He tried to get the auditing company to change it and they refused to do so. He also sent the HOA attorney, Ted Barnes, a draft of the audit to see if there is a way remedy this issue. He would follow up with Mr. Barnes.

Jason Smith stated that if he were in that position he would not accept personal responsibility either. Mr. Tyler stated that as a Board they are charged with the Fiduciary responsibility of the overall Ranch. The owners trust them to do that job, and they try to do it appropriately. Mr. Tyler explained that the audit says that they are using GAAP methodology to account for the finances of the HOA, which he believes is not true. As a fiduciary Board member to the overall Ranch, he could not sign it in good conscience, and the auditors could not finalize it without a signature.

Mr. Verrone understood that GAAP was generally accepted accounting practices, and he wanted to know why they were not using it. He thought that was a problem by itself. Mr. Tyler replied that it was done this way before his time, and he had no other answer.

Mr. Hutchinson remarked that they were spending a lot of time on an issue that was going nowhere, when they had other important items to discuss. Others argued that this was an important issue because transparency is important to people that trusted their HOA Board. Ms. Parker thought it was important to have this conversation and for Mr. Tyler to explain why he had not signed the audit. Mr. Tyler reported that the auditors tried to get Pat Kreis, the former Board Treasurer, to sign it and she also refused because of fiduciary concerns.

In response to a question about a process to complete the audit, Mr. Tyler stated that he tasked Ted Barnes a year ago with working on language on the waiver that the Board would be able to sign. He could submit it to Mr. Rosing if they wanted to go in that direction. Mr. Heath suggested that they ask Mr. Rosing to look at it.

Jodi Taylor asked Mr. Tyler what her role was as Treasurer. He stated that it was responsibility to communicate the finances to the Ranch community. Ms. Taylor complained that the financial documents had not been sent to her. Mr. Tyler acknowledged that it was a communication issue. He had a conference call with Carol and Robert Rosing, and both of them were supposed to contact Ms. Taylor to discuss how to give her access to the information so she could review and interpret them, as an effort to make Ms. Taylor comfortable with the way things are being handled. Ms. Taylor stated that she had not heard from either of them. Mr. Tyler would follow up with Carol and Mr. Rosing to find out why they had not contacted her Ms. Taylor.

Ms. Taylor understood that she was not allowed to contact Mr. Rosing. She requested that they sort out that issue this evening. Mr. Heath agreed. He stated that the HOA used to spend more on attorney fees than on road base. His understanding was that the Board designated Mr. Tyler as the person who would work with the attorney. Mr. Heath pointed out that when everyone would call the attorney whenever they had an issue or a question, it drove up the cost of legal fees. He suggested that if Ms. Taylor wanted to be authorized to contact Mr. Rosing, she should request that authorization from the Board. She should not make that contact on her own without Board authorization. Ms. Taylor clarified that others besides her have contacted Mr. Rosing.

Mr. Tyler stated that his concern is that the Board did not authorize Mr. Rosing to be the HOA attorney. Mr. Rosing was hired and authorized to review the governing documents and to provide recommendations. During that process, other things came up and Mr. Rosing was asked to give his opinion, which he provided. Mr. Tyler clarified that he was not contesting the fact that Mr. Rosing spent the time and that the Board spent the money. However, Mr. Rosing had gone outside of the scope that he was authorized. Mr. Tyler asked if they wanted to switch attorneys and have Mr. Rosing be the HOA attorney. If they choose to do that, there were still outstanding items that fall under the scope of Mr. Barnes that would have to be transitioned over. Mr. Tyler was comfortable doing whatever the rest of the Board wanted to do. However, he was not comfortable having several people contact the attorney and spend hours that the HOA pays for without prior approval.

Mr. Tyler stated that he would send an email to Carol and ask her to communicate with Ms. Taylor and provide whatever information she needs to present the financials at each Board meeting. He noted that that Ms. Taylor should be given the unpaid bill

detail, the profit and loss/budget versus actual, and the balance sheet to review at every meeting.

In response to a question on the status of the CC&R process, Mr. Tyler stated that Roy Parker was working with Mr. Rosing and Mr. Parker had resigned from the Board. Mr. Tyler would follow up with Mr. Rosing to find out where he was in the process.

There was discussion on the pros and cons of replacing Ted Barnes with Robert Rosing as the HOA attorney. Ms. Taylor requested that the Board vote this evening on whether or not Mr. Rosing should attend Board meetings and whether or not to dismiss Ted Barnes as the HOA attorney.

Honey Parker asked for the cost of having Mr. Rosing attend every meeting. Ms. Taylor stated that Mr. Rosing charges \$250 per hour. Board Member Hutchinson questioned the purpose of having Mr. Rosing attend a meeting to listen to their discussions. Ms. Parker cited examples where it would be helpful to have an attorney present to give legal advice on some of the questions and issues that are raised during a meeting. She thought it might enable the Board to move through some of the discussions quicker because they would have expert advice.

Mr. Tyler stated that he personally would like to have an attorney present at every meeting, but the HOA operates on a small budget and every hour spent on an attorney could pay for a truckload of material for the roads. Someone noted that half the problem with the CC&Rs and why there is so much confusion is because there was lack of legal counsel when the amendments were passed. Mr. Tyler explained that the CC&Rs are the recorded document at Summit County. If the CC&Rs were amended, the amendment is required to be recorded. To his knowledge the CC&Rs have not been amended.

Several people commented on the merit of having an attorney present during the meetings. Mr. Tyler did not disagree. Someone suggested asking if Mr. Rosing for a fixed cost of one hour to attend the meetings. At \$250 an hour the total cost for the year would be \$3,000. Mr. Tyler stated that when he talks to Mr. Rosing about the CC&Rs and the audit, he would ask Mr. Rosing to give them an annual cost to attend the Board meetings on a monthly basis.

Mr. Tyler outlined the benefits of retaining Mr. Barnes as the HOA attorney. The first is his knowledge of the history of the HOA. Another benefit is that Mr. Barnes also represents the Water Company, which is the same stakeholder group. He pointed out that neither benefit would exist with Mr. Rosing, but it was not insurmountable. Jason Smith thought it was a matter of accountability, and it appears that Mr. Barnes does not

respond in a timely manner.

Someone suggested that the HOA could use Mr. Rosing and Mr. Barnes since they both have expertise in different areas. He did not believe they need to fire Mr. Barnes to use Mr. Rosing. Mr. Smith agreed, but he felt it was important to determine who would be the primary attorney for the HOA.

Mr. Heath returned to a previous comment and clarified that to his knowledge there were no amendments to the CC&Rs. Mr. Tyler explained that the Rules and Regulations were operational documents that the State allows HOAs to utilize to help set independent rules. They are not required to be recorded in order to be enforced. They are referenced under the CC&Rs, which allows the Board to change them from time to time. The Rules and Regulations are a living document and they have been changed over time. Mr. Tyler was not able to answer whether or not the Rules and Regulations could be passed by the Board or required the entire membership. It was another issue where it would be helpful to have an attorney present. Mr. Tyler was certain that the Bylaws require a vote by the membership. He explained, for example, that the HOA could pass rental restrictions but they are not enforceable under State law. In the five years he has been on the Board, he has talked more to attorneys about rental issues than anything else. Unless the recorded document that governs the HOA is amended to prohibit rentals, it is not enforceable.

Mr. Heath clarified that the recorded CC&Rs have always been the same and they are recorded with Summit County. Years ago, the HOA was sued over the CC&Rs in court and the HOA CC&Rs prevailed. The CC&Rs are enforceable as written. Because things have changed over the years, the Board decided to hire Robert Rosing to review the CC&Rs and recommend potential amendments.

Jason Smith requested that the agenda be posted on the website prior to each meeting. Someone pointed out that if the agenda was posted in advance, more members would come to the Board meetings. It was also noted that in previous years draft minutes were posted on the website a week ahead so everyone could see what was discussed at the last meeting. Honey Parker stated that she was the one who posted the minutes, and about a year ago someone requested that she not post draft minutes. That person is no longer on the Board and she would start posting them again if people would like draft minutes posted. Once the minutes are approved, she or Mr. Kilbourne will replace the draft set with the approved set. She was asked to start posting the draft minutes again

Someone requested that plowing lower Forest Meadow remain on the agenda so it is not forgotten. She was told that it was discussed at length at the last meeting and it

was still a priority.

Jason Smith asked if there was a minimum attendance requirement for Board members to attend meetings. Mr. Tyler stated that a rule in the Bylaws stated that if a Board member misses more than two consecutive meetings, the Board could ask that person to resign and replace them. The Executive Committee is required to meet once a month. The Board as a whole is required to meet every quarter.

### **New Construction/Additions**

#### SS-146-K

Jeremy Warren, Lot SS-146-K, stated that they were planning to build on their lot. It is vacant except for a little shack. Mr. Warren understood that they were not currently part of the HOA. They were considering joining the Water Company as opposed to drilling a well. He had visited with the Water Company and received pre-approval. He wanted to understand the pre-approval requirements for the HOA.

Mr. Tyler stated that the primary intent for joining the HOA is to contribute towards maintaining the infrastructure that will service their home. Mr. Warren said he was told that they would not get plow service unless they paid a private plower. Mr. Tyler explained that the HOA plows from the bottom of the canyon at I-80, up to the gravel pit. They also plow from the gravel pit through the connector, which goes around Arapaho up to Valley View. The HOA has also been plowing Arapaho all the way through to Forest Meadow as a secondary access. For next year, they are looking at plowing the section of Forest Meadow where it turns off of Tollgate Canyon Road at the bottom, up to Junction Court. Mr. Tyler informed Mr. Warren that the other plowed roads on the Ranch are plowed by private plowers.

In terms of the requirements for pre-approval, Mr. Tyler stated that the HOA attorney handles the documents for joining and he would have to talk to the attorney about the process. Mr. Tyler asked if the Board wanted him to contact Mr. Rosing or Ted Barnes regarding the issue. Bruce Hutchinson believed Mr. Barnes would be less expensive because he has already done the research. Mr. Heath agreed.

Mr. Tyler suggested that Mr. Warren talk with the Architectural Committee after the meeting regarding the architectural controls and lot improvement procedures.

Mr. Heath remarked that years ago the HOA made an agreement with the Water Company that if an SS lot connected to the water system they would have to join the HOA to contribute to maintaining the roads they use. Over the years they started using

the term “annexation”, which is inaccurate, because the lot is not legally changing the plat or being annexed requiring a two-thirds membership vote. Mr. Heath suggested that Mr. Tyler speak with Mr. Barnes regarding that terminology. His understanding is that Mr. Warren would not be annexed as part of Forest Meadow Ranch without a two-thirds vote. Mr. Heath believed it was important to define that distinction.

Mr. Tyler would contact Mr. Warren with the information he requested after he speaks with Ted Barnes.

#### FM-D-169

Brian Hobbs, Lot FM-D-169, plans to build a 14' x 14', 196 square feet shed. The construction impact fee would be \$1.20 per square feet. It would be constructed of cedar planks and stained brown. The roof would be metal in either a dark green or dark gray color. Jeremy Jespersen, the Area 2 rep. had received all the documents electronically. If the Board wanted to vote this evening he could forward the documents to the Board member via email.

The Architectural Committee had no issues with the plans.

MOTION: Dan Heath moved to approve the 196 square feet shed with no water or power on Lot FM-D-169. Robert Walthall seconded the motion.

VOTE: The motion passed unanimously.

#### PI-G-14 – Impact Fee Refund

Mr. LeCheminant stated that the Board approved plans in January for a modern looking cabin. The owner decided not to build and Mr. LeCheminant had the owner send him an email stating his intent not to build and copied Carol on the email. If the owner re-applies to build, he would have to commit to any new changes in the Architectural Guidelines. The owner agreed to those terms. The owner was requesting a refund of the impact fees he paid in January.

The suggestion was made for the Board to set parameters for refunds to take away any financial liability for the HOA. Mr. Tyler thought it was a good point. The Guidelines should either state that the impact fee can be refundable under specific terms; or that impact fees cannot be refunded.

MOTION: Dan Heath moved to approve refunding the impact fee for Lot PI-G-14 on the terms that PI-G-14 would be subject to any new changes in the Architectural



Guidelines. Dustin Kilbourne seconded the motion.

VOTE: The motion passed unanimously.

It was noted that the modern design that was approved for Lot PI-G-14 was not in line with the Architectural Guidelines. Mr. Heath believed the Architectural Committee would have to review the guidelines and the process, similar to the other governing documents, because things have changed. What was right in 1971 may not be valid today. Mr. Tyler believed there were differing points of view regarding architecture on the Ranch.

#### PI-D-98

The owner of PI-D-98 on Alexander presented plans for a 12' x 16', 192 square feet shed. It was an A-shed and it would have brown asphalt shingles. He showed the colors of the outside siding and the trim. It was a wood-like composite siding.

The Architectural Committee had no issues with the shed as proposed. There would be no power to the shed. At \$1.20 per square feet, the impact fee would be \$230.40.

MOTION: Dan Heath moved to approve the 192 square feet shed with no water or power for Lot PI-D-98. Bruce Hutchinson seconded the motion.

VOTE: The motion passed unanimously.

#### PI-G-36

Mr. LeCheminant had sent the Board plans for Lot PI-G-36 electronically. The roof would be either dark green or dark brown. Mr. Heath would like the roof color to be written as either dark green or dark brown. The owner specified the roof color as dark green. The Lot Improvement Plan Agreement was completed and signed. It would be sent to Carol with the paid fees.

MOTION: Tom LeCheminant moved to approve the plans for Lot PI-G-36. Dan Heath seconded the motion.

VOTE: The motion passed unanimously.

#### **Ranch Manager's Report**

Jody Robinson reported that he was asked to provide costs for road base. It would cost

\$22,075 to do Lower Forest Meadow going off the main road past the pond to Junction Court. It is a main artery and straight topsoil. He noted it only needed to go as far as Andrew Burton's, because the rest is good gravel. He would primarily have to do the turns through the canyon piece from the pond up.

Jody stated that he was cleaning ditches and culverts and trying to keep the water off the roads. Mr. Heath requested to walk with Jody to point out some of the problem areas where additional ditching was needed.

Mr. Tyler stated that typically the April meeting is when they ask the individual Area Reps to drive their areas and provide a list of potential projects and problem areas in their area. At the May meeting, the lists are compiled into one list and the projects are prioritized based on Jody's time.

Jody stated that he would need tires for the dump truck and the grader. He would have a cost estimate for the next meeting. He would also get an estimate on a roller for the summer.

Mr. Tyler had not had the opportunity to meet with Jody to write a job description for an assistant ranch manager. He was willing to pass it to someone else who was willing to do it.

Ms. Taylor asked for an executive session to discuss expenditures. Based on Jody's report there will be a lot of expenses. She did not think the time set aside at a meeting was enough time to make these budget decisions. Mr. Tyler replied that the Board typically reviews the expenditures at the May meeting. Ms. Taylor felt they needed an additional meeting to focus on the budget and expenses. Mr. Tyler pointed out that most of the expenses were already in the budget that was approved at the Annual Meeting. Jody clarified that he only needed to get a quote on the tires and the roller for the Board to approve.

Ms. Taylor believed the Board needed to meet more than once a month because there is never enough time to discuss everything in one meeting.

### **Monthly Budget Review**

The Board reviewed the unpaid bills detail.

MOTION: Tony Tyler moved to Approve the unpaid bills detail as outlined. Mr.

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LeCheminant seconded the motion.

VOTE: The motion passed unanimously.

Mr. Heath asked the Area Reps to get the word out to people in their area to contact him if they want their names on the list for mailboxes. He needed to order the mailboxes as soon as possible.

Mr. Heath understood that there was a volunteer for an Area Rep to replace Roy Parker in Area 6. Mr. Tyler stated that the Board would discuss it at the next meeting.

The meeting of the Pine Meadow Owners Association Board adjourned at 7:45 p.m.

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