

**TALLAVANA HOMEOWNERS' ASSOCIATION, INC.**

Minutes of the monthly Board of Directors meeting held on August 14<sup>th</sup>, 2007, at the Havana Public Library in Havana, Florida.

PRESENT: Tom Scott, Mike Mapstone, Diane Sheffield, Kimsey Helms, Bill Oswald, Rob Combs and Neil McDonald Board members, Debbie Robinson, Corporate Secretary. See attached list of others in attendance.

ABSENT:

The meeting was called to order at 7:01 pm by President, Tom Scott.

Corporate Secretary is recording the meeting for the purpose of accurate minutes. No one else is recording.

**Approval of Agenda:**

Revisions to the Agenda: Reading of letter from Ken Abele regarding Board member appointment and add item #3 under Other ACC Business: Bravo shed.

MIKE MAPSTONE MOVED TO APPROVE THE AGENDA AS REVISED. KIMSEY HELMS SECONDED THE MOTION. MOTION CARRIED.

**Approval/Corrections of July 2007 Minutes:**

Grammatical corrections and clarifications were made to the July Minutes.

KIMSEY HELMS MOVED TO APPROVE THE MINUTES AS CORRECTED. MIKE MAPSTONE SECONDED THE MOTION. MOTION CARRIED.

**Treasurer's Report:** Diane Sheffield reported the total deposit for July was \$20,309.00, routine operating expenses of \$16,814.22, \$47,324.00 in major project expenses, checking account balance is \$1,769.50, Money Market balance is \$46,425.13 and the balance in CDs/Savings is \$80,452.71. The larger routine expenses include the annual insurance premium for liability and E & O. Major project expenses included partial payment to Peavy for shoreline restoration, guardrail along dam and remaining balance on culvert replacements on Hickory.

Delinquent accounts update: To be discussed under New Business.

**Correspondence/Phone Calls:**

1. Neil McDonald with Kimsey Helms went to the dock after receiving a report of illegal fishing. The fishing party was gone by the time Neil and Kim got to the dock.
2. Tom reported receiving phone calls and emails concerning the north end of the lake. Details will be discussed under Lake Report.
3. Kimsey has received calls concerning the need for water diverters on Deer Pass. The diverters were removed when Peavy was doing some work and not replaced. Kim will contact Peavy to have the diverters replaced.
4. Board members received an email from member Steve Kinary in reference to the appointment of a Board Member. President Tom Scott did not respond to Steve's email because he was waiting to hear from our attorney regarding the issue.

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**Letter from Ken Abele regarding Appointment of Board Member by President:** President Tom Scott read the following letter from the THA attorney, Ken Abele. (Copy of letter inserted to minutes)

MEMORANDUM

**TO:** Lake Tallavana Board Members  
**FROM:** Ken Abele  
**DATE:** August 9, 2007  
**RE:** Appointment of Board Member by President

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You have asked me to give you an opinion regarding whether the recent appointment of a board member by President Tom Scott is valid. The facts, as explained to me, are that the Board has a vacancy due to Mike Jeffries resigning prior to completion of his term at the end of this year. Per Section 3(c) of the Bylaws, the Board voted three separate times in an attempt to fill the vacant seat. On each of the three votes, the Board deadlocked 3 for one candidate and 3 for the other candidate. After those 3 votes, President Tom Scott appointed the candidate he had voted for to the Board.

Section 3(c) of the Bylaws states, "Except as to vacancies resulting from removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining directors." Section 607.0809, Florida Statutes states, "Whenever a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, it may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, or by the shareholders, unless the articles of incorporation provide otherwise."

There is nothing within the Restrictive Covenants, Articles of Incorporation, or Bylaws of the Tallavana Homeowners' Association, Inc., on the procedure to follow to break a tie vote on the Board. Additionally, there is nothing within Chapter 720, Florida Statutes which addresses how to resolve a tie vote on the Board of Directors. Finally, there is no statutory procedure within Chapter 607, Florida Statutes for tie votes on the Board of Directors. It is my understanding that Roberts' Rules of Order may provide some authority to the President in such circumstances. However, other than customary use by the Board, these rules are not binding on the Board.

Thus, there is nothing in the statutes or governing documents authorizing or prohibiting the actions taken by the President. The Bylaws Section 6(b) provide the President with broad authorities and powers. Appointment power is not expressly listed. In Conlee Construction Co. vs. Cay Construction, 221 So.2d 792 (Fla. 4<sup>th</sup> DCA 1969), the appellate court affirmed action taken by the President of a corporation when the Board was deadlocked 2-2. The Court stated, "Although factionalism within a corporation is ordinarily settled by the practical device of majority rule, when a situation arises, however, where no majority vote can be marshaled, where the directors or stockholders are divided evenly and hopelessly on a controversial corporate matter, immediate action by an officer may be necessary to preserve vital interests." Whether the current situation fits within this exception is an open and debatable question.

With the above in mind, the Board has the following options:

1. Do nothing and proceed forward unless and until a judge says otherwise, or the election of a new board in January. There is potential that actions taken by the Board could be found to be invalid if the appointment is ruled invalid;

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2. Ask the members to vote to ratify the appointment;
3. File a declaratory judgment action and ask the Court to decide the issue;
4. Amend the Bylaws and agree on procedure to break tie votes;
5. Have another vote, and find a candidate who can get a majority of the votes; and/or
6. Operate the Board with six (6) members until the annual meeting in January.

In conclusion, I have not found any authority that authorizes or prohibits the action taken by the President.

KPA/ss

NEIL MCDONALD MOVED FOR THE BOARD TO VOTE ON EACH OPTION BY SECRET BALLOT. THERE COULD NOT BE A SECOND ON THE MOTION, AS FL STATE STATUES DO NOT ALLOW SECRET BALLOT AT BOARD MEETINGS, EXCEPT THEY MAY BE USED IN THE ELECTION OF OFFICERS.

There was discussion on the 6 options suggested by Ken Abele. By the time some of the options could be activated, the position in question would be taken care of at the Annual Membership meeting in January 2008. Another option was in violation of the governing documents. It was the consensus of the Board to narrow the options then vote.

NEIL MCDONALD AMENDED HIS MOTION FOR THE BOARD TO VOTE ON OPTIONS #1 AND #5. BILL OSWALD SECONDED THE MOTION.

FOLLOWING ARE THE RESULTS OF EACH OPTION:

IN FAVOR OF OPTION #1: KIMSEY HELMS, MIKE MAPSTONE, AND TOM SCOTT. AGAINST: NEIL MCDONALD AND BILL OSWALD. ABSTAINING: ROB COMBS AND DIANE SHEFFIELD.

IN FAVOR OF OPTION #5: ROB COMBS, BILL OSWALD AND NEIL MCDONALD. AGAINST: KIMSEY HELMS, MIKE MAPSTONE AND TOM SCOTT. ABSTAINING: DIANE SHEFFIELD

OPTION #1 CARRIED BY A MAJORITY, OPTION #5 ENDED IN A TIE. OPTION #1 IS THE ACTION TO BE TAKEN BY THE BOARD CONCERNING THE DEADLOCK AND THE APPOINTMENT TO FILL THE VACANCY ON THE BOARD.

## **BOARD REPORTS**

**Legal:** Diane Sheffield & Neil McDonald

A. Lambert runoff – There was to be a meeting on the Lambert property with THA Attorney Ken Abele, Sean McGlynn and Board members but was cancelled by Mr. Lambert. The meeting has not been rescheduled as of yet. Diane will check with Sean to see if he needs more pictures of the current conditions on the Lambert property.

B. Lincicome – Some of the Board members met with Ken to discuss the best way to close this issue. Neil McDonald and Bill Oswald volunteered to take the agreement to Cindy Lincicome in hopes of obtaining her signature. Ken Abele will provide a copy of the agreement since Mr. Stivers has the original and has not been cooperative in returning correspondence and phone calls. The easements have

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been properly recorded. Diane will contact Ken for another copy of the agreement.

**Member Relations:** Mike Mapstone

There was no report for the number of visits to the website.

At the July Board meeting, Rick Kornmeier approached the Board concerning a second website he developed for Lake Tallavana. Rick's ideas were to provide more interactive capabilities, more photos, more information and links that would be of interest to Lake Tallavana residents. The Board moved to ask Rick to work with Linda Ortiz, the current web master, to update and freshen the appearance of the Lake Tallavana website.

From the July Board meeting, there was a misunderstanding and Rick declared the .org site the new official site of Lake Tallavana Homeowner's Association. This declaration was made on the original, official site of Tallavana Homeowners' Association, laketallavana.com. It was clarified that the .com site is the official site until the Board has made a decision.

The Board had hoped that Rick and Linda could work together on one site however; differences of opinions will not allow it.

There was discussion about both web sites. Neil McDonald asked the Board to vote on the person to handle the web site. Diane suggested taking another month to take a closer look at both websites. Kimsey suggested that this issue be tabled until next month to give the Board time to review both websites and in the mean time, the original .com site is the official website.

It was the consensus of the Board to table till next month, review both websites, and decide at the next Board meeting.

Member Jim Poss asked if the Board was aware of the revised FL State Statues concerning Homeowners' Associations. Diane already had a copy of the changes and will meet with Ken concerning questions on the revisions. Until her meeting with Ken, Diane cannot respond.

**Lake Management:** Tom Scott & Bill Oswald

Bill Oswald reported that 51 carp were harvested in July. He thinks that if there are many left, they have gone into the grass. There have been no reports of carp working in the grass so maybe they are about gone. Bill has seen lots of small fish but does not know what kind they are.

**Shoreline Restoration update** – No one is currently working on their shoreline. There are a couple of houses with rock piles but it is unclear if shoreline work will commence.

There will be a newsletter article asking the remaining shoreline residents if they would like to be added to the next addition to the permit and if so, to contact Tom Scott or Debbie Robinson. Also members who have completed their shoreline restoration will be asked to inform Debbie to give an idea of how many members on the permit have yet to do the work.

There was discussion of the timing of the next draw down. The next draw down depends on drought conditions and how many people will be working on their shorelines.

**D-8 Pond Restoration update** – Tom and Sean McGlynn met with DEP to explain the problem. DEP understands the problems in the D-8 area. The issue now is that the current sediment pond is in line with the flow of state waters. If there is to be a sediment removal pond, it needs to be off-line. State waters should enter the sediment removal pond; sediments drop out and cleaner water flows back into the main stream. A new plan will have to be devised.

**Dredging Project** – New item on the agenda.

There have been many concerns expressed about the current amount of weeds and the lack of water at normal pool on the north end of the lake. Funds that were scheduled to dredge the north end of the lake had to be moved to restore the shoreline along the dam. Residents on the north end attended the meeting and read a letter that included the following (paraphrases):

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Sediment has been building on the lakebed for years and the maintenance on the north end is long overdue. Even when the lake is at normal levels the water is extremely shallow along their properties. If there is no dredging yet continued drought, the residents will be left with nothing but a decaying marsh. The poor condition of the lake along their shorelines has diminished the value of their properties. The neighbors at the north end of the lake asked for the dredging to be implemented by 2008.

Signed by: A. Gordon Patton, Jr., Howard Garrison, Paul Keith, Kristina S. Holmen-Mohr, Herbert Granger, Mike Soprano and Jill Westendick.

Pictures showing the poor conditions of the north end of the lake and the even worse conditions of their shorelines accompanied their letter.

Tom stated that an immediate action would be to mow or cut the weeds. He spoke with a DEP regulator who said it was permissible. Prior to the meeting, Debbie consulted Sean on the possibilities of dredging. Sean suggested we get the permit before the end of this year while the DEP regulator that issues this particular permit is available. He is familiar with Lake Tallavana and our particular issues.

It was the consensus of the Board to proceed with the permitting, planning and costing for the dredging of the north end. Tom asked Debbie to call Sean and get the process started.

**Lake Watch** – Pat Powell: Lake Watch is suspended until the lake level returns. Pat reported that a crew from Florida Lake Watch was on the lake to sample for e-coli. The test results indicated that there are higher amounts found in some of the coves. The higher levels could be caused by faulty drain fields, full septic tanks and from the cormorants. With the water level down, it is obvious that some drain fields are running into the lake.

**Security:** Rob Combs

Rob reported that Scott Ivey worked 20 hours for the Association in July and another 15 hours on duty with the Gadsden Sheriff's Department. Scott performed 28 vehicle stops and 77 house checks.

Rob reported non-member fishing from the dock but they left after they were approached. Fish and Wildlife Officer Mike Fish has started patrolling. His very first stop at the gate was a non-resident attempting to gain entry to go fishing.

**Gate:** Bill will order the control box for the exit side. The control box was planned in this year's budget.

**Roads, Grounds & Dam:** Kimsey Helms

Kimsey reported that mowing is about every 2 weeks due to the current rainfall.

Kimsey is working with a Peavy representative to repair/seal the cracks on the portion of Tallavana Trail that has not been resurfaced in the last 4 years. The cracks need to be sealed to prevent water from the road base. The cost estimate is approximately \$9,000.00. Diane and Debbie will review the budget that the costs will be covered.

Kimsey also presented a cost of approximately \$300.00 for reflectors to be installed on the guardrail. It was the consensus of the to go ahead with the reflectors.

**COMMITTEE REPORTS**

**ACC:**

ACC Report – Since the full report is attached to minutes, a brief summary follows:

Approved submittals: John & Dona O'Neal, bathroom addition; Dr. & Mrs. Roberts, garden shed; Dawn Killelte, re-roofing; Howard Myers, tree removal; Richard & Martha Fox, carport with storage.

A submittal from Warren & Faith Jones, 2539 Tallavana Trail, is pending; more information is needed and still has not been received.

Other ACC Issues:

1. Rex shed – The ACC asked the Board to revisit the offer to Darlene Rex to have her front yard shed moved or removed. In November 2006 the Board made an offer to help defray the cost up to \$200 for the shed to be moved or removed completely.

When the Board began discussion, Neil McDonald reported that he had already spoken with Darlene. Darlene is not interested in moving or removing the shed. According to Neil, Darlene stated if the Board wants the shed gone from the front yard, they would have to pay for all of it. Otherwise, the shed remains as is. It was the consensus of the Board not to pursue the shed issue.

2. Morris real estate listing – The information on the realtor's listing for the Morris property includes a suggestion for an apartment above the garage. A letter will be written explaining the restrictive covenants and that it should be understood that whoever purchases the property does so with the understanding that the apartment is not for future rental income.

3. Bravo shed – Pat Powell is once again asking the Board to contact Mr. Bravo concerning his shed in the front yard. Mr. Bravo has stated on numerous occasions that he will move or remove the shed but there has been no action. Now Mr. Bravo states that he will return the shed to its original location after he completes his shoreline restoration. If moved now, Mr. Bravo feels the shed will hamper equipment access to his shoreline. Mac volunteered to talk with Mr. Bravo in the place of a letter from the Board.

**For the record, Minutes/Report of the ACC meeting are attached.**

**OLD BUSINESS**

1. Cypress trees – In previous Board meetings, there was discussion regarding the purchase of cypress trees for the shoreline. Although we need to place the order soon, it was determined to wait until we see how many other homeowners will be added to the permit. The cypress trees can be planted even after the water level returns to normal.

**NEW BUSINESS**

1. Beckwith – Mr. & Mrs. Beckwith are seriously delinquent in their assessments. They were unable to make payments in a timely manner. They were having financial difficulties to the point of filing bankruptcy. The situation is such that the Homeowners' Association can legally begin the collection process or a lien may be filed on the property. Mr. & Mrs. Beckwith sent a letter to the Board asking for consideration to approve a payment plan. Their plan states that they will make a monthly payment of \$200.00 a month until their account is current.

DIANE SHEFFIELD MOVED TO ACCEPT THEIR PAYMENT PLAN WITH THE STIPULATION THAT IF A PAYMENT IS IN DEFAULT AFTER 60 DAYS, THEN A LIEN WILL BE AUTOMATICALLY FILED ON THE PROPERTY. BILL OSWALD SECONDED THE MOTION. MOTION CARRIED.

There have been attorney's fees incurred in the process of collecting from the Beckwith's. The Board suggested that attorney fees be considered and included when attempting to collect from delinquent accounts including adding that amount to the lien.

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President Tom Scott asked that the information found when researching the Restrictive Covenants on Deer Pass parcels be sent to the Board members so that it may be discussed at the next Board meeting.

With no further business, meeting was adjourned at 9:23 p.m.

Respectfully submitted,

Debra Robinson  
Corporate Secretary

**TALLAVANA HOMEOWNERS' ASSOCIATION, INC.  
ARCHITECTURAL CONTROL COMMITTEE**

**August 7, 2007**

**Minutes/Report**

Meeting of the monthly Architectural Control Committee (ACC) was held on August 7, 2007 at the public meeting room at the Havana Library.

PRESENT: ACC Members –Pat Powell, Earl Mills, Linda Ritchie, Virginia Everett and Jim Grantham.  
THA Members –Ray & Julie Zimmerman, Jim & Sue Poss, Neil McDonald, Rod Pigott, Jan Roche and Corporate Secretary, Debbie Robinson.

**Approvals:**

John & Dona O'Neal, 2331 Tallavana Trail, submittal for bathroom addition to the back of the home. The addition is 9' X 15', with exterior to match existing house.

Dr. & Mrs. Ivan Roberts, 3565 Tallavana Trail, submittal for garden shed. The 10' x 6' garden shed is to be placed on an existing concrete slab behind the garage where it will not be visible from the road.

Dawn Kilette, 2336 Tallavana Trail, submittal for roofing shingles replacement. Shingles are to be the same type and color. The contractor is responsible for disposal of old shingles.

Howard Myers, 3027 Tallavana Trail, submittal for tree removal. The tree is diseased and is a threat to the deck and hot tub located at the back of the home. Tree is not in the buffer. Per Mr. Myers, his homeowner's insurance agent recommended the removal of the tree.

Richard & Martha Fox, 459 Honeysuckle Dr., submittal for carport with storage. Overall size of structure is 36' x 20', (carport is 20' x 24'), colors to match house, located at end of the driveway. No buffers are encroached and no trees to be removed.

***Pending:***

Warren & Faith Jones, 2539 Tallavana Trail, submittal to replace gate and add additional gate. Jones' would like to replace the existing chain link gate with an electric iron gate. More information and drawings are needed in order for the ACC to determine what changes are to be made.

***Other ACC Issues:***

Earl Mills asked that the front yard shed of Darlene Rex be placed on the Agenda for the upcoming Board meeting. The ACC would like the Board to consider repeating their previous offer to Darlene regarding the reimbursement up to \$200 to move or remove her shed from the front yard.

Pat Powell would like the Board to write to Mr. Bravo concerning the shed in his front yard. Mr. Bravo told Pat that he would move the shed to its original location after he has his shoreline restored. He would like to leave space for heavy equipment. Mr. Bravo is on the list to be added to the next amended permit, however, the permit will not be amended until there are between 10-15 people to add and currently there are two.

Respectfully submitted,

Debbie Robinson, Corporate Secretary for Tallavana Homeowners' Association

APPROVED