

COSTA DEL MAR

San Carlos, Sonora, Mexico

Homeowners Association

Meeting Minutes (Revised 050110 – April instead of March on page 3)

Saturday, October 24, 2009

Location: CDM Clubhouse

Board Officers in attendance:

Scott Elliott – President
Dave Merrill – Treasurer
Maggie Candland – Board Secretary

Absent:

Ariel Obregon – Director of Governmental
And Legal Affairs
Juanito Wisner – Vice President

Interpreter: Katie Noonan

Sign In

Sign-in began at 9:00 a.m.

Called To Order

The meeting was called to order at 9:40 a.m. As there was not a first call quorum, the meeting adjourned and the second call represented 37% of the Owners. All business at the meeting was conducted in English and Spanish with the assistance of Katie Noonan. (*A quorum of 50.5% was established with mail-in ballots.*)

A brief discussion followed on the first call and second call. Scott noted that the bylaws of the association were formulated by the developer. Over the years, a first call quorum has been achieved at very few meetings. When there is a second call, the number of owners qualified for a quorum drops from 51% to 25%. There is no description in the bylaws to define exactly how the second call notice is to be given. Every single Board has used their discretion to do a second call on the same day as the first call otherwise the HOA would never have a meeting if it was pushed to another date. So the Board is running this meeting in exactly the same manner as we have done for the last 25 years. An Owner, Francisco Velez, said he would like to help and make sure the way the meetings are held is legal. It was noted that a bylaw change on this issue would take 75% of the Owners being in agreement.

Announcements

- Bill Popoff, the new owner of Lot 52, was welcomed to the meeting.

Review of Minutes from April 25, 2009, Meeting

Maggie read a summary of the minutes from the April 25, 2009, meeting.

Motion 09102405: *Upon a motion made by Diane Cimetta to accept the minutes as written, seconded by Doug Gilbert, the motion was unanimously approved by the Owners present. (Actual voting results: Yes: 98.3%; No: 1.7%)*

Review of Minutes from September 26, 2009, Special Meeting

Maggie read a summary of the minutes from the September 26, 2009, special meeting. It should be noted that the minutes were finalized four days after the meeting and were then reviewed by an attorney. The attorney approved the minutes as written yesterday.

Motion 09102406: *Upon a motion made by Bill Harrison to accept the minutes as written, seconded by Doug Gilbert, the motion was unanimously approved by the Owners present. (Actual voting results: Yes: 98.3%; No: 1.7%)*

Diane Cimetta then suggested that Owners take the responsibility of reading the minutes online or before the meeting begins and only come to the HOA meeting with any comments or questions.

Motion 09102407: *Upon a motion made by Diane Cimetta that Owners read the minutes of the previous meeting prior to the HOA meeting, seconded by Doug Gilbert, the motion was unanimously approved by the Owners present. (Actual voting results: Yes: 100%; No: 0%)*

Treasurer's Report (2009 Expenses, 2010 proposed Budget)

Dave reviewed the 2009 expenses. He noted that expenses are updated weekly and placed on the CDM website. Scott added that Dave does a tremendous amount of work on the website. Dave noted that Lines 10, 12, 17, 23, 33 and 41 are out of the ordinary as they are all related to Hurricane Jimena. Most of these expenses have been for minor repairs and cleanup.

Dave then reviewed the proposed 2010 Budget. An Owner asked now we have more homeowners, how can the garbage service cost less next year? Dave reported that we did not know the expense for 2009 so it was over-estimated. He added that column J gives the percentage difference between the 2009 and 2010 budget. It was noted that CDM will have two guards until the wall and fence are up. Line 25 is for insurance for the community. Dave went to Hambone and Mapfre and they will only insure buildings and not roads but will insure the guardhouse, clubhouse and pool and will provide liability insurance. It was noted that we are at a point in this community when we need insurance.

Capital expenses for construction and improvements related to the hurricane will be discussed later in the meeting and approval of the 2010 Budget was moved to the end of the meeting. Dave then explained the use of the reserve fund. Scott mentioned the list of Owners owing assessments and dues and noted that collecting outstanding amounts is getting more challenging in these economic times. Francisco suggested CDM should become more aggressive in collection procedures and Scott said it would be great if a group of people could be in charge of that. Bill Harrison offered to be on a committee for that purpose.

Motion 09102408: *A motion was made by Bill Harrison to approve the Treasurer's Report, seconded by Doug Gilbert, and approved unanimously by the Owners present. (Actual voting results: Yes: 96.4%; No: 3.6%)*

Drainage Report

Scott distributed a Google map of CDM from an engineer showing the areas where the North wall was breached. A Hurricane Jimena Rebuilding/Improvement Prioritized List (see bottom of page 6) was also distributed. Scott said that CDM is in the midst of an overwhelming unimaginable problem and we are looking at a risk and vulnerability that could take our community out. Any time there is above average rainfall there will be water up against our walls and there will be water coming through the front gate. In 25 years this has not happened. Basically, Puesta Del Sol and CDM are built on a flood plain. Now with a 14-story building on the East side with an entrance road higher than CDM, water runoff is blocked and it makes us the Venice of Sonora Bay. The CDM walls are old and are not designed to keep out a deluge of water. At this time we have to work together and go into a defensive mode for many reasons as the only things we control 100% are the perimeter walls/fence, the gate and the three passages to the beach. Currently CDM has an easement to our entrance road and we are investigating what our rights are to the road.

In discussions with the Paradiso Resort regarding sharing the cost of restoring the fence, they would like to pay for half of the fence but would have to make payments. As CDM benefits more from the fence, we will be responsible for it. It is thought that our best way to resolve our drainage issue is to come up with a solution with Paradiso such as underground drainage to their lagoon. Scott said he will continue discussions with Paradiso representatives. On the other side of CDM there are two issues: (1) how to get the natural drainage back to where it is supposed to be; and (2) getting the City of Guaymas to have restraint and not issue any more building permits. As legal matters can take years, CDM must come up with a solution to keep the water out.

Short Term

Insofar as we have no way to predict what is going to be allowed to be developed and whether CDM can have any influence whatsoever, in the short term we can control the walls/fence, gate and the three walkways to the beach. Scott has met with Puesta Del Sol to see if we are on the same page and the two developments are thinking very similarly to devise a method to keep the water out. This would entail a retention wall that would go several feet into the ground and could withstand standing water for a number of hours. A sea wall would truly protect our community. Scott then talked about installing a removable steel barrier at the front gate. He also reported that he has had a lot of meetings regarding the three passageways to the beach. He noted that our streets are much closer to sea level than those at other developments. To take those paths and make them open channels would then invite water from a tidal surge into our community. With culverts there are some issues with rocks and sand building up. The current best idea, subject to change, is to leave the paths at the same elevation as they have been forever and have an aqueduct running through them which has grates on it with a sluice or check valve. In answer to an Owner's question, Scott said that CDM was built for water to go into the lagoon and he is more than 50% confident that we can nail that down even if we have to buy an easement. Furthermore, research is continuing until we have a good plan for the walls and he will be meeting with Frank Ramiro who is working with Puesta Del Sol regarding engineering. Playa Blanca representatives have indicated that they will give us some relief by building culverts next to their entrance road. We do not have this agreement in writing yet.

Long Term

In the long term, CDM will be working with attorneys and hydrologists who have experience working with governmental entities.

Assessment

It is the Board's recommendation to pass the assessment as outlined on the Hurricane Jimena Rebuilding/Improvement Prioritized List (page 6) for a total of \$2,632,000 pesos (\$207,244 U.S. dollars). It is proposed that half of the assessment will be due on January 1st and the second payment will be due on April 1st of 2010. The average cost per lot will be about \$1,800 USD and a .5 lot would be about \$1,100 divided into two payments. For the short term plan, we can have something in place before the next rainy season. With regard to the three specific bids for construction of the walls, CDM will be hiring a separate engineer for a second opinion and then a committee will review the bids.

Motion 09102409: *Upon a motion made by Diane Cimetta to approve the short term plan and assessment with 50% due on January 1, 2010, and 50% due on April 1, 2010, seconded by Doug Gilbert, the motion was approved by the majority of the Owners present with three Owners voting against and Owners of Lots 56, 21 and 52 who are undecided. (Actual voting results: Yes: 81%; No: 19%)*

Resolution 09102410 - Amendment to Resolution #040704 Voting Process

Following a brief discussion, everyone agreed that email voting via the internet on actions taken at an HOA meeting will be available for up to two weeks after the minutes of that meeting have been posted. It was noted that Owners can change their vote up to the deadline posted. The Amendment to Resolution #040704 reads as follows and will be posted on the CDM website:

CDM Voting Process Guidelines

It is proposed that we adopt the following CDM Voting Process Guidelines at CDM Beneficial Users' meetings:

1. Every Beneficial User entitled to vote shall have a number of votes equal to the proportion of their property (Article 38). Lot owners who are not current (60 days or more) on their unpaid balance (Annual Assessments, Special Assessments, late fees, etc.) are not allowed to vote except where noted in Paragraph 6.e. (See Resolution 040702 dated April 28, 2007, for previous resolution on voting and unpaid balance.)
2. There are three methods of voting:
 - a. VOTE in person. Attend the Beneficial Users' meeting and place your ballot in the ballot box.
 - b. PROXY – Whereby Lot Owner “x” may vote on behalf of Lot Owner “y” at a CDM Beneficial Users' meeting. Lot Owner “y” completes the Proxy Form and emails it to the CDM Board Secretary with a courtesy copy to the CDM President and Lot Owner “x” (Article 29).

Emailing/mailling instructions will be on the Proxy Form. See the CDM website for a Proxy Form.
Note: Article 29 states that a CDM Board Member can not represent a Beneficial User.

- c. EMAIL / MAIL – Whereby a Lot Owner may vote on a motion, resolution, or amendment via email or mail. The completed ballot must be emailed/mailed to the Election Committee who counts your vote. Emailing/mailling instructions will be on the absentee ballot form. The Election Committee will confirm receipt of the ballot by emailing back to the voter. CDM must have your email address to confirm receipt of an absentee ballot.
3. Election Committee:
 - a. The Election Committee consists of two (2) or more Beneficial User volunteers. The Election Committee acts as a Proxy when they receive your vote.
 - b. At least one member of the Election Committee must NOT be a member of the Administration (CDM Board).
 - c. The Election Committee volunteers serve for the month prior to the CDM meeting as well as during the voting period after the CDM meeting.
4. Motions, Resolutions, and Amendments (Proposals):
 - a. Proposals must be in English and Spanish. The website http://translate.google.com/translate_t# may be used to assist in translation.
 - b. Proposals greater than 2 paragraphs must have the paragraphs numbered (for ease of reference).
 - c. Proposal numbers are assigned by the CDM Board President (for ease of reference).
 - d. Proposals must be submitted on or before the first day of the CDM HOA meeting.
5. Voting:
 - a. Voting begins when a Beneficial User receives a ballot.
 - b. A ballot contains space for your 1) Name, 2) Lot number(s), 3) space for Yes, No, Abstain.
 - c. The ballot will also contain the 1) Proposal, 2) Poll closing date/time, 3) Voting instructions for sending your ballot by email or mail.
 - d. A Beneficial User may vote more than once on a proposal, but only the last vote counts. Previous votes are marked “invalid”.
 - e. All ballots and the quorum certification letter are kept by the CDM Administrator for one (1) year. (Or as required by Sonora Law)
 - f. All ballots are Secret Ballots and are only seen by the Election Committee and the CDM Board Secretary.
 - g. All ballots count toward the meeting quorum requirements.
6. General Timeline:
 - a. 30 – 15 days prior to the CDM meeting:
 - The “Official Notice” of a CDM meeting (Article 27) is emailed/mailed to the CDM distribution list by the CDM Administration.
 - b. Prior to and the day of the CDM meeting:
 - Motions, Resolutions and Amendments (Proposals) are made.
 - c. 1 to X days after the CDM Meeting Day:
 - Minutes are prepared, reviewed, and published.
 - Authors of proposals must provide their written version of the proposal to the CDM Board Secretary to ensure accuracy.
 - Motions, Resolutions, and Amendments (Proposals) are sent to Beneficial Users via their requested method (email, mail). If a requested method of delivery has not been specified, then email will be used for those with an email address, and mail for those without an email address.
 - Proposals and Ballots are published on the CDM website.
 - d. X to 15 days after the minutes are published:
 - For Proposals requiring greater than 50% of “Yes” votes to pass, then the voting will close 15 days after the minutes are published. The date/time that the voting closes will be on the ballot.
 - Reminders for ballot due dates will be sent periodically.
 - e. X to 30 days after the minutes are published:
 - For Proposals requiring 75% or more “Yes” votes to pass, then the voting will close 30 days after the minutes are published. The date/time that the voting closes will be on the ballot.

ALL Beneficial Users may vote on proposals requiring 75% “Yes” votes to pass.
 - f. X + 30 to 37 days:
 - The election Committee tallies the votes and provides the results to the CDM Board Secretary for inclusion in the meeting minutes.
 - Final meeting minutes are prepared and distributed to the CDM Beneficial Users.

- g. Note: Email may be used for discussion during the voting period. Emails will be posted on the website weekly.

Motion 09102410: *Upon a motion made, and seconded, the attendees at the HOA meeting unanimously agreed with this amendment. (Actual voting results: Yes: 100%; No: 0%)*

Motion 09102401 – Withdrawn.

Motion 09102402 – Withdrawn.

Motion 09102403 – Funding for Attorneys and Engineers Expenses in the Short Term

It was decided to include \$7,500 U.S. Dollars in the budget to cover the costs of any engineering/legal advice between now and April, 2010.

Motion: *Upon a motion made, and seconded, Motion #09102403 was approved by the majority of attendees at the meeting. (Actual voting results: Yes: 97.8%; No: 2.2%)*

Motion 09102404 – Withdrawn.

Old Business

Roads – Francisco reported that he will continue to work with Econobloc regarding how the roads were installed and if we can get any kind of warranty from this company. It was noted that the roads held up very well recently during the recent deluge of water.

New Business

- An Owner's representative felt that Board Members should pay for their own FM3's rather than the Association. It was explained that costs and fines were incurred in 2008 following a complaint to Immigration by a former Administrator for Costa Del Mar. At the April 2008 HOA meeting, the majority of Owners approved a motion to pay the difference between the cost of an FMT and an FM3 with an AC stamp for Board Members in order for them to conduct the business of the Association.

Motion 0910211: *Upon a motion made and seconded that Board Members pay for their own FM3's, Lots 20, 13, 91, 6 and 12 agreed with this motion and the majority of Owners at the meeting did not agree. (Actual voting results: Yes: 20.2%; No: 79.8%)*

- An Owner suggested that money be taken out of the clubhouse fund and used for Hurricane Jimena repairs and improvements. Scott noted that the Association is unable to undo an assessment that has already been passed. To do this, the bylaws would have to be changed. He added that the third clubhouse payment was due on October 1st and that needs to be paid, however, in the interests of being fair, he would support delaying the January payment for the clubhouse as now the reconstruction payment is due in January, 2010, along with the regular dues assessment.

Motion 09102412: *Upon a motion made by Carl Hillestad to delay the fourth payment for the clubhouse from January 1, 2010, to October 1, 2010, seconded by Norene Sullivan, the motion was approved unanimously by the Owners present. (Actual voting results: Yes: 97.5%; No: 2.5%)*

- Dave proposed that we may have to use a portion of the North West corner of CDM (sewer lift area) for drainage and noted that it may be necessary to remove the small storage shack.

Motion 09102413: *Upon a motion made by Dave Merrill that we may have to use a portion of the NW corner of CDM (sewer lift area) for drainage, if necessary, seconded by*

Mark Charlesworth, the motion was approved unanimously by the Owners present. (Actual voting results: Yes: 93.7%; No: 6.3%)

- Dave proposed that any lawsuits or legal action against the CDM Home Owners Association, its Board (past or present), Special Committees (past or present), or Administrator, is equal liability for all of the CDM Owners. Bill Harrison said he would look into Errors and Omissions insurance and report back.

Motion 09102414: *Upon a motion made by Dave Merrill that any lawsuits or legal action against the CDM Home Owners Association, its Board (past or present), Special Committees (past or present), or Administrator, is equal liability for all of the CDM Owners, seconded by Mark Charlesworth, the motion was approved unanimously by the Owners present. (Actual voting results: Yes: 73.4%; No: 26.6%)*

- Dave proposed that Owners support the CDM Board and give a vote of confidence for the Hurricane Jimena Rebuilding/Improvement Emergency Fund (Special Assessment, 20% of the 2009 budget) that was approved by the CDM Board. CDM Owners were notified on September 16, 2009.

Motion 09102415: *Upon a motion made and seconded to support the CDM Board and give a vote of confidence in the CDM Board and the Hurricane Jimena Rebuilding/Improvement Emergency Fund (Special Assessment, 20% of the 2009 budget), this proposal was approved unanimously by the Owners present. (Actual voting results: Yes: 94.5%; No: 5.5%)*

- Following a discussion earlier in the meeting on the proposed 2010 Budget in the total amount of 1,730,000 pesos, the following motion was made:

Motion 09102416: *A motion was made by Bill Harrison to approve the 2010 Budget, seconded by Doug Gilbert, and approved unanimously by the Owners present. (Actual voting results: Yes: 92.3%; No: 7.7%)*

- Bill proposed that a secure fence be installed around the community pool area before the end of the year. The fence will have three gates with locks and may be made out of galvanized aluminum. It was suggested that \$4,000 U.S. Dollars be put into the budget to cover the cost. The plan will be approved by the Projects Commission.

Motion 09102417: *Upon a motion made by Bill Harrison to have the community pool area fenced, seconded by Doug Gilbert, this motion was approved unanimously by the Owners present. (Actual voting results: Yes: 70%; No: 30%)*

Adjournment

The meeting adjourned at 3:30 p.m.

Next Homeowners Association Meeting: Saturday, April 24, 2010, at 9:30 a.m., Clubhouse.

Respectfully submitted,

Maggie Candland

Maggie Candland, Secretary

Hurricane Jimena (HJ) Rebuilding / Improvement Prioritized list:

Priority	SC	EGC	EGC	Estimates	
1	\$78,400			\$100,000	Repair Road in front of Lots 131, 132, & 133 (includes Curb, Sidewalk and infrastructure) / Reparar calle enfrente de los lotes 131,132,133 (incluyendo bordes, banquetas e infraestructura)
2	\$56,000			\$40,000	Repair Road in front of Lots 106 & 107 (includes Curb, Sidewalk and infrastructure) / Reparar calle enfrente de los lotes 106 y 107 (incluyendo bordes, banquetas e infraestructura)
3				\$110,000	Restore Common Passage Way (between 132 & 133) / Restaurar el acceso de playa entre lotes 132 y 133
4				\$130,000	Culvert under front Gate road
4	\$1,013,520	\$1,383,000	\$1,798,000	\$1,400,000	North Wall (~1,000 ft) / Barda lado norte (~300m)
5				\$45,000	Repair West Boundary Fence / Reparar cerco del lado oeste
6				\$156,000	Common Passage Way Drainage / Formas mas comunes en el paso del drenaje
6				\$2,000	Remove Wall West end Calle Cortez / Remover barda lado oeste entre calle cortez
7				?	Paradiso - Create permanent easement, drainage / Paradiso - Creacion de servidumbre permanente de drenaje
7				\$130,000	Removable Barrier for Front Gate / Barrera extraible frente rejas de entrada para evitar entrada de agua
7	\$80,000			\$100,000	Use a portion of the NW corner of CDM for drainage improvement (See diagram). / Usar una porcion del lado noroeste de la esquina de CDM para mejoras del drenaje
7				\$2,000	Speed bump in front of Lot 25 to deflect the flow of water to the south / Una salida rapida enfrente del lote 25 para desviar el flujo del agua hacia el sur
7				\$417,000	Misc., Reserve
	\$1,227,920	\$1,383,000	\$1,798,000	\$2,632,000	Total Pesos
	\$96,687	\$108,898	\$141,575	\$202,462	Total USD (13:1)

Lot % of	Pesos		USD	
	01/01/10 de pago	01/01/10 de pago	01/01/10 Payment	03/01/10 Payment
0.5%	6,580	6,580	506	506
0.8%	10,528	10,528	810	810
1.3%	17,108	17,108	1,316	1,316

	As of 10/16/09, The following owners owe more than \$1,000 pesos for:	<u>Dues</u>	<u>Gate</u>	<u>Road</u>	<u>Total</u>
7			\$1,890		\$1,890
12		\$11,799	\$2,118	\$9,872	\$23,789
14		\$1,953	\$2,016		\$3,969
15		\$17,981	\$1,999	\$24,423	\$44,403
16		\$17,134	\$1,905	\$23,274	\$42,313
17		\$3,689			\$3,689
19		\$1,888		\$1,193	\$3,081
28		\$13,568	\$2,286	\$10,658	\$26,512
31		\$28,036	\$2,794	\$34,292	\$65,122
41		\$35,115	\$3,904	\$47,656	\$86,675
47		\$2,598	\$2,687		\$5,285
48		\$3,017	\$3,031	\$17,216	\$23,264
53		\$15,967	\$2,757	\$12,851	\$31,575
63		\$11,799	\$2,379		\$14,178
64			\$3,007		\$3,007
65		\$10,099	\$2,037	\$1,923	\$14,059
66			\$2,813		\$2,813
68			\$2,813		\$2,813
69		\$26,545	\$2,218	\$33,257	\$62,020
70			\$2,813		\$2,813
80		\$6,755	\$3,322		\$10,077
82			\$3,493		\$3,493
86			\$2,902	\$8,991	\$11,893
87			\$3,598		\$3,598
90		\$6,610	\$2,648		\$9,258
93		\$4,155	\$2,230	\$7,045	\$13,430
95		\$4,611	\$2,262		\$6,873
96		\$2,578			\$2,578
97		\$6,573	\$2,481		\$9,054
99		\$12,277	\$2,489	\$10,502	\$25,268
105			\$2,286		\$2,286
106			\$2,709		\$2,709
108		\$44,364		\$41,250	\$85,614
109		\$7,874	\$2,781	\$1,786	\$12,441
110		\$2,616			\$2,616
111		\$12,335	\$3,099		\$15,434
115			\$4,077		\$4,077
121		\$8,246			\$8,246
122		\$7,951			\$7,951
125			\$4,026		\$4,026
126		\$10,311	\$4,381	\$12,763	\$27,455
132		\$15,343	\$4,814	\$22,442	\$42,599
133			\$4,842		\$4,842
	> 1,000 pesos, Total	\$353,787	\$103,907	\$321,395	\$779,089
	<= 1,000 pesos, Total			\$2,331	
	Total owed			\$323,725	\$779,089