

September 6, 2011 (5:30 -6:31 pm)

### TC Board Meeting with Howard Barewin

**Participants:** Howard Barewin, Don Lickteig, Gayle Voyles, John McKelvey,

#### Topic Discussed:

Howard: Proposed amendment to the Declaration and Bylaws: **it does *not* eliminate Section 9(b) of the Declaration, which grants the Association the discretion to assess repairs to Limited Common Areas only to the people who benefit from them.** I thought it would be better to not eliminate board discretion, just in case something arises where those folks should pay.

It also retains everything in Sections 1 and 2 of the Bylaws other than the parts that allocate expenses to the unit owners that benefit. I do not believe that Section 15(c)(ii) requires mortgagees to consent, since we're not changing "responsibility" for maintenance and repairs (remains with the association) but who pays for them.

Legal wording – Howard – what we're saying is "common expenses associated with limited common areas.... (4<sup>th</sup> line) Shall be accounted with each unit's percentage Interest as set forth in exhibit B of the declarations; provided, however, any common expense incurred as a result of an act or omission of a unit owner, it's tenant or any invitee, agent or contractor thereof, shall be borne by the unit owner.

IF it makes it more clear – Howard will change it to eliminate confusion between existing and proposed allocation – all units in accordance with the percentage formul (not just those units who directly benefit) – Howard will change.

Howard – the way it is existing now; some expenses are allocated to everyone; some are allocated to just those who benefit. The board has the discretion 9B to make the decision – guidelines 9B 1, 2, and 3:

"Assess ....as deems appropriate".

Existing Governing Documents – Declarations 9B – board has some discretion to make changes (Howard's interpretation); if they don't exercise that; the document (rest of it) rules.

We are suggesting to change the rest--to spread the expenses to all.

Howard – past board didn't allocate those expenses to those who benefit

Gayle – extraordinary expenses – carports – not really extraordinary in my mind.

Howard – I personally think it is important for the board to have some flexibility, just in case something happens.

Don – I don't; people are complaining that things are being handled differently than in the past.

Howard – It is a judgment call for the board – we could eliminate 9 B

The only exception to the rule, now is IF someone causes the damage. There may be a time when...

Don – damage to a balcony – what if too many go out on the balcony and can weaken it?

John – my preference is black or white (keep it the way it is; elimination of board discretion option).

Howard: Pond siltation – if you wanted those who benefit most (those next to it) may have to pay for the work. This is your decision, but as a lawyer – I'd like to see the board retain as much power as it can.

Don – I think we have to take the homeowners into account.

John – You would have people running for the board on the basis that expenses be shared by everyone; another – no, I'll go by the existing governing documents.

Howard – Board members have quit over the limited common element issue. We can eliminate 9B, if the board wishes.

Let's say something tied to construction going on-- on the other side; residents of that side of property want landscaping and screening to block noise (cover for three buildings) Landscaping \$20,000 – not caused by homeowners. Would that be a case where it might be important to have the board discretion option? That is an example of something you'd be giving up.

Don – we had one building that had termites. Everyone had to be assessed because termites would travel from building to building.

Gayle explained what she thought the board had agreed to; Howard thought he was to fix it to where the documents say that all expenses should be allocated to all homeowners. He thought the board would want some discretion.

John: I do understand your thoughts; IF your example – a group wanted to do that, they could bring it to the board and then we'd vote on it.

Special Assessment would only be only IF there were not sufficient funds to pay for the expense.

Howard – 9B of the Declarations is to be used in an extraordinary situation.

Don – 9B – now, as I am reading it over – it gives us the discretion.

John – painting the buildings, roofs, balconies, and decks are what people are talking about (They don't want to have to pay for these) – Should I get insurance, a homeowner asked?

Don: The previous boards should have been having homeowners pay for the painting and roof –

Howard: It sounds like you don't want the discretion.

Don: Maybe we (the board) need to revisit the situation.

Howard: 9b only gives the board the discretion to go one way. Roofs – limited common area – as is, those who benefit pay for it. It is common to have those expenses shared by those who benefit. In the governing documents – roofs are limited common areas.

Don: We don't want a long menu of proposed changes.

Howard - It is a great selling point – we fixed it and took out board discretion. It will be black and white what the HOA dues pay for and what homeowners pay.

Pool, lake, landscaping, -- common area –

John: Frankly, I don't think it will pass, anyway.

Howard: My initial thought was it won't pass.

Don: There are many who say they are not paying for the carports.

**Board needs to discuss the discretion issue (9B of Declarations) – want input from other board members who are not here**

Paragraph 2 – second sentence – this is binding on anyone that buys in here. Linda South had a question.

**If we can get with Gerald and Jo in the next day or two, Howard will be able to fix the wording-- to add clarity.**

Next week – we meet again.

We would have to be prepared to explain.

Howard shared that when the packet goes out about the proposed revision it is important to include disclosure of the expense that is sitting out there. Reference is needed regarding the \$140,000 current expense.

John: Let's say we take out the discretion, if we go with the first paragraph

Howard – paragraph 2 mentions the discretion, but I would leave it in IF we change the discretion part.

John: Limited Common Area expenses would be paid by all homeowners' (per square footage formula).

**The board will let Howard know what the decision is regarding the discretion.**

Howard will work on the wording to make it more clear that all expenses will be shared by all homeowners (via the square footage formula).

Don's concern – is that we leave it with something the future boards will be able to work with.

The meeting was adjourned at 6:30 pm.