Recap of Meeting July 20, 2010

HOA Members Represented

Aldea – The Vistas
Candelwood Villas II
Cathedral Canyon #1
Cathedral Canyon #5
Cathedral Canyon #17
Cathedral Canyon #18
Cathedral Springs
Montage at Mission Hills

Legal Counsel: Jennifer James, Attorney at Law – Epsten, Grinnell & Howell

Guests Present

Vic Gainer – Palm Springs HOA Presidents Council
Bill Maxwell – Mira Vista HOA, Rancho Mirage
Jim Tufo – Parc La Quinta HOA, La Quinta
Mark Riconosciuto – Indio Springs HOA, Indio
Carrie Timko, Esq – Community Association Counsel, Epsten, Grinnell & Howell
Michael Graves, RS – STC Reserve Consultants

Welcome: Bill Rieth, Co-Chair

Treasurer's Report – Al Hallinan, Treasurer
Balance: $43

Guest Speakers – Carrie Timko, Esq – Community Association Counsel, Epsten, Grinnell & Howell "What Every Board Should Know About Electronic Communications"

Carrie began with handing out an outline of her presentation and a Client Advisory flyer from Epsten, Grinnell & Howell "Electronic Discovery: Preserving Electronically Stored Information" by Carrie Timko.

She stated that communications can help/hurt you in a lawsuit.

1 Documents that may be transmitted electronically to members
   a Civil Code Section 1350.7 – allows for electronic transmission of certain documents with recipient consent.
   [Civil Code Section 1350.7(3) E-mail, facsimile, or other electronic means, if the recipient has agreed to that method of delivery. The agreement obtained by the association shall be consistent with the conditions for obtaining consumer consent described in Section 20 of the Corporations Code. If a document is delivered by electronic means, delivery is complete at the time of transmission.]
   You must have a record of transmission that is recoverable.

b Documents that may be transmitted electronically include those referenced under Civil Code Section 1363.005 – generally those required to be distributed annually to homeowners.

[Civil Code§1363.005. Disclosure Documents Index # The association shall, at the request of any member, distribute to the member, in the manner described in Section 1350.7, the following Disclosure Documents Index:

Disclosure Documents Index

Item	Description	Reference Code
1	Assessment and Reserve Funding Disclosure Summary (form)	CC Sec. 1365.2.5
2	Pro Forma Operating Budget or Pro Forma Operating Budget Summary	CCSec. 1365(a)
3	Assessment Collection Policy 1367.1(a)	CC Sec. 1365(e) and 1367.1(a)
4	Notice /Assessments and Foreclosure(form)	CC Sec. 1365.1
5	Insurance Coverage Summary	CC Sec. 1365(f)
6	Board Minutes Access	CC Sec. 1363.05(e)
7	Alternative Dispute Resolution (ADR) Rights (summary)	CC Sec. 1369.590
8	Internal Dispute Resolution (IDR) Rights (summary)	CC Sec. 1363.850
9	Architectural Changes Notice	CC Sec. 1378(c)
10	Secondary Address Notification Request	CC Sec. 1367.1(k)
11	Monetary Penalties Schedule	CC Sec. 1363(g)
12	Reserve Funding Plan (summary)	CC Sec. 1365(b)
13	Review of Financial Statement	CC Sec. 1365(c)
14	Annual Update of Reserve Study	CC Sec. 1365(a)]

c The association must obtain consent consistent with Corporations Code Section 20.

[Corporations Code §20. Electronic Transmission by the Corporation # "Electronic transmission by the corporation" means a communication delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the corporation, (2) posting on an electronic message board or network which the corporation has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission for communications under or pursuant to this code, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission under this code by a corporation to an individual shareholder or member of the corporation who is a natural person, and if an officer or director of the corporation, only if communicated to the recipient in that person's capacity as a shareholder or member, is not authorized unless, in addition to satisfying the requirements of this section, the consent to the transmission has been preceded by or includes a clear written statement to the recipient as to (a) any right of the recipient to

have the record provided or made available on paper or in nonelectronic form, (b) whether the consent applies only to that transmission, to specified categories of communications, or to all communications from the corporation, and (c) the procedures the recipient must use to withdraw consent. [2009]

2 Common problems with Board communications via email
   a Email communications between Board members could violate the Open Meetings Act (Civil Code section 1365.05(b).)
      i Civil Code Section 1363.05(j) defines a “meeting” that must be properly noticed to members.
      [(j) As used in this section, "meeting" includes any congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session.]
      ii Compare to Corporations Code Section 7211(b), which allows a Board to take action without a meeting by unanimous consent in writing.
      [Corporations Code§**7211. Board Meetings** (b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors. For purpose of this subdivision only, "all members of the board" does not include an # "interested director"[21] as defined in Section 5233, insofar as it is made applicable pursuant to Section 7238.
      iii Email may qualify as a “meeting” under Corporations Code Section 7211(a)(6).
      iv Matters related to Board business should be discussed only at properly noticed meetings.
      v Always check Bylaws regarding Board action without a meeting.
   b Emails between Board members and management are not privileged.
      i Documents that are not considered “privileged” are discoverable to opposing parties in litigation under Code of Civil Procedures Section 2017.010.
      ii The attorney-client privilege protects communications between the Board and/or manager and the attorney only.

   c Be careful what you write – an email could qualify as libel under Civil Code Section 45.

3 Electronic Discovery Act (Code of Civil Procedures Section 2016.010 et seq.)
   a Allows litigants to obtain electronically stored information (“ESI”) through the discovery process. They may search through information “reasonably expected” to lead to discovery of relevant information. You have a duty to preserve information when litigation may be reasonably expected.
   b ESI consists of any information stored electronically, including emails, text messages, voicemails, video recordings and other similar electronic media.

Make sure you always communicate in a professional, fiduciary capacity as a corporate officer. Don't get personal in communications.

c The duty to preserve ESI arises when a party reasonably anticipates litigation and extends to anyone who has potentially relevant ESI in their possession or under their control. If you use a computer at work, your employer's computers and servers are included.

d Once litigation is anticipated, refrain from deleting or destroying ESI.

e Implement a policy on ESI destruction to avoid spoliation of evidence claims. For example, policy to destroy all data not reasonably anticipated to be involved in litigation after 5 years.

If you cc attorney there will be about 95% probability if would be considered client-attorney privileged.

Less recording, documentation you have the better – easier to deny.

Guest Speakers – Michael Graves, RS – STC Reserve Consultants "Everything You Wanted to Know About Reserve Studies in Less Than 2 Hours Or More Than 2 Days"

Michael said he started he career as a Reserve Analyst in 1996. He is registered as Reserve Analyst #39; today Reserve Analysts are being registered with numbers above 2000.

He presented a POWERPOINT presentation

A Reserve Study is a physical and financial Analysis of a community's common area assets.

Physical Analysis

Component inventory – a categorized list of all assets
Condition assessment – what is the current condition of each asset
Life and valuation estimate – what is the remaining life of the asset and estimated replacement cost

Financial Analysis

Fund status – availability of reserve funds to meet short term needs
Funding plan – steps that should be taken to achieve where you want to be in 30 years

Reserve Study Specifications

I Full study – On site review of assets, counting and measuring components, estimating remaining life of each component and

replacement cost. Only needs to be done the first time a Reserve Study is performed.

II On site – onsite review of condition of components and evaluation of remaining life. Required every 3 years per the Civil Code.

III Financial update – update of funding plan only.

Request for Proposal for a Reserve Study

A HOA should provide as much information as possible to minimize the cost and maximize the benefit of the resulting study. Providing information in an RFP will help obtain comparable proposals. Information should include a site map, number of units, assessment level, and cost centers or beneficial areas (areas assessed differently due to availability of assets for their exclusive use) and component information.

Disclosure Requirements per the Civil Code

Disclosure Summary
Funding Plan – Adoption of what Reserves will be required
Executive/Reserve Summary – funding of expenditures that will be required next year
Deficiency Statement – funds required for 100% funding less current Reserves divided by the number of units

A Reserve Analysis is calculated at current cost rather than future cost.
Interest earned may not exceed 2% of discount rate by the Federal Reserve Bank of San Francisco.
Components with remaining life of greater than 30 years – may consider $0 or prorate replacement cost over entire life
Balances are to be disclosed as year end amounts

Funding Strategies

Straight Line – Fully funded
Cash Flow Methodology – “Pooling” ensures Association will have enough money on hand to all work when scheduled
Threshold – Most under used, make sure the Association always has at least $X,XXX in Reserves. Or Association stay XX% funded.

The National standard of Reserve Study Funding Principles recommends that Associations have sufficient money when needed.

A Reserve Study is a GUIDE – things can be changed/money can be used as you like. You do not HAVE to replace any item called for in the study. But, the Board should document why they are deviating from the recommendations contained in the Reserve Study.

Community Forum
No forum

Handouts – in addition to those mentioned above

- Article "Importance of Fire Extinguishers" Community Associations Institute
- Article "Free Directory Assistance for Cell Phones" Community Associations Institute
- Flyer, new edition available "Self-Management: A Guide for the Small Community Association" Community Associations Institute 2010

Website – http://hoapresidentscouncil.com , Click on "Cathedral City"

Next Meeting – Tuesday, August 17, 2010 at the Cathedral City – City Hall

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Tom Tousignant, Recorder