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## Recap of Meeting February 17, 2011

### HOA Members Represented

Aldea – The Vistas	Cathedral Canyon #8
Candelwood Villas II	Cathedral Canyon #18
Canyon Shores	Montage at Mission Hills
Cathedral Canyon #1	Rio del Sol – Las Casitas
Cathedral Canyon #2	Verano/Rio Vista Village
Cathedral Canyon #5	Villages at Rio del Sol

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

### Guests Present

Vic Gainer – Palm Springs HOA Presidents Council  
Dave Green – Palm Springs HOA Presidents Council  
Paul Williamson – Coachella Valley HOA Presidents Council  
Kelly Robertson – Desert Area Managers Networking  
Sam Toles – Councilman, City of Cathedral City  
David Peters – Peters & Freedman, LLP

**Welcome:** Al Hallinan, Co-Chair

**Treasurer's Report** – To be distributed

**Announcement:** Vic Gainer announced that he has completed obtaining agreements with Desert Electric Supply (for electrical supplies); Hajoca Corporation (for plumbing & HVAC supplies) and Vista Paint (for paint supplies). Vic handed out flyers and credit applications from Hajoca Corp. and Vista Paint. The contact information for Desert Electric is Marcus Bannerman at 760.327.1146

To use the agreements a HOA must complete a credit application with each firm. Once approved the HOA may buy supplies at discounted prices. Also, individual owners within the HOA may buy supplies under the agreement.

The application forms are available on the Coachella Valley HOA Presidents Council website (see below).

**Guest Speaker – “Desert Area Manager Networking (DAM)”** Kelly Robertson - DAM

Kelly said DAM is a group of onsite managers and folio managers that gets together monthly to discuss issues and hear guest speakers. In the past they have had programs on pool heating and changes in the laws.



Their next meeting will address cyber theft – protecting information on your website, types of information to be posted. The meeting will be 11:30 AM March 8<sup>th</sup> at Desert Falls.

Kelly can be contacted at [HOA@springscommunity.com](mailto:HOA@springscommunity.com)

**Guest Speaker – “Plans and Goals for Cathedral City”** Sam Toles – Councilman, City of Cathedral City

So much of what happens to the City budget is completely beyond their control. It is passed down to them from the State and Federal government.

He is the City’s representative on the Coachella Valley Energy Committee. He will be addressing the proposed rate increase by Southern California Edison. They are requesting rate increases even though the cost of natural gas is at its lowest cost in recent history. The City of Los Angeles Department of Water and Power, the big bloated public agency, has rates 30% lower than Edison.

Vic Gainer interjected that when Edison installed their new smart meter on his condo his bill jumped 50%. Sam said he also plans to address the new smart meters with the Committee.

The Governor wants to shut down redevelopment. Sam suggests amending it instead. Cathedral City has been built with redevelopment funds. It is the City’s main mechanism for attracting new businesses. Without new businesses and sources of employment young people graduating from local schools will have to leave the City to find jobs.

The City budget will be out of reserves by 2016. They must balance the budget. They must reduce the structural long term cost of compensation, benefits and pensions. The City will be negotiating with all four of their employee bargaining units in 2012. They will be trying to initiate a new tier of benefits similar to those that have been initiated in the private sector.

They need to encourage business through redevelopment and other incentives. He suggests reviewing policies that are restricting business to make Cathedral City more business friendly.

**Guest Speaker – “Update on HOA Legal Issues”** David Peters – Peters & Freedman, LLP

David began with a story about a young energetic lawyer meeting with Henry Ford for the first time. The young lawyer talked and talked about what he could do for Mr. Ford. Finally Mr. Ford stopped him and said “I know what I want to do, your job is to help me do it within the laws”



His presentation focused on the Open Meeting Act, Civil Code Section 1363.05. He pointed out that violations are punishable by fine up to \$5,000 per infraction in Small Claims Court – here in Indio, as well as other Courts in California.

Paragraph (b): “Any member of the association may attend meetings of the board of directors of the association, except when the board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member, upon the member’s request, regarding the member’s payment of assessments...” He noted that renters and perspective buyers are not homeowners. Allowing renters to attend meeting is questionable. Allowing perspective buyers to attend meetings is a NO.

Do not even talk to perspective buyers. If they need information refer them to the seller or the Property Manager as sources.

The duty of the Board is to protect, maintain and enhance the value of the project.

Continuing: (c) “Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.” He recommends not having executive session minutes, if you do keep them brief – issue, motion and vote. Not he said she said, etc.

Continuing (d): “The minutes, minutes proposed for adoption that are marked to indicate draft status, or summary of the minutes, of any meeting of the board of directors, other than an executive session, shall be available to members within 30 days of the meeting....” The purpose of minutes is to record actions of the Board. Failed motions do not need to be included.

Continuing (f): Notice of meeting – unless otherwise fixed in bylaws notice is minimum of 4 days. Associations incorporated before 1982 often had a 10 day notice in their bylaws. He recommends keeping items general on the agendas. For example: Landscape discussion (not landscape report). Include items you know that are going to come up before the meeting.

Continuing (g) “An emergency meeting of the board may be called by the board president of the association, or any two members of the governing body other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board , and which of necessity make it impracticable to provide notice as required by this section.” Be careful.

Continuing (h): “The board of directors of the association shall permit any member of the association to speak at any meeting of the association or the board of directors, except for meetings of the board held in executive session. A reasonable time limit for all members of the association to speak to the board of directors or



before a meeting of the association shall be established by the board of directors.” He recommends something like – 3 minutes each, not to exceed a total of 30 minutes.

Continuing (i): “Except as described in paragraphs (2) to (4), inclusive, the board of directors of the association may not discuss or take action on any item at a nonemergency meeting unless the item was placed on the agenda included in the notice that was posted and distributed pursuant to subdivision (f). This subdivision does not prohibit a resident who is not a member of the board from speaking on issues not on the agenda...” Again keep agenda items general to allow discussion of things that may come up. If members raise issues not on agenda respond with something like “Thank you for your input” or “We will look into that and discuss at the next Board meeting.”

Continuing (j): “As used in this section, “meeting” includes any congregation of a majority 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.” It is okay for board members to meet and discuss “things”, but not specific items on the agenda.

David mentioned a recent California Supreme Court decision – Narsted Decision. The Court found that CC&Rs are enforceable unless a provision is unreasonable. It is up to the person challenging the CC&Rs to prove a provision is unreasonable. Examples of unreasonable provisions:

- Absurd – Not rationally related to the protection or preservation of the project.
- Public Policy – “No black women may be allowed to...”
- Burden disproportionate to possible benefits

Rules – make sure they make sense and are good for the community.

If there is something in the CC&Rs that is not going to be done or enforced, get rid of it. It is a time bomb. It is important to read your CC&Rs, Bylaws and Rules and clean them up. In court the prevailing party is entitled to attorney fees.

The law supports good business judgment. Always make reasonable inquiries and informed decisions. The codification of the business judgment rule is in the Civil Code Section 7231.5

### **Community Forum**

There was no forum.

**Handouts** – in addition to those mentioned above:

- Legal Guide 2011 – Peters & Freedman, LLP



**Website** – <http://hoapresidentscouncil.com> , Click on “Cathedral City”

**Next Meeting** – Thursday, April 21, 2011 at the Cathedral City – City Hall

**NOTE: There is no meeting space available at City Hall in March. Therefore, there will be NO meeting of the Cathedral City HOA Presidents Council in March.**

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Tom Tousignant, Recorder