

# Special Board of Directors' Meeting Minutes

August 20, 2022, 10:00 a.m.

Mancos Public Library

Zoom Virtual Meeting



Before these minutes begin, the Board and I wish to apologize to you for the Zoom meeting. It was discovered, after the meeting, that the microphone system was not plugged into the computer. We are sorry for your inconvenience and frustration.

## Board Members Present

Allen Giannakopoulos (President), Heather Johnston (Vice President), Roy Wilkinson (Treasurer), Phil Mayor, Stephanie Morton (via Zoom), Sherry Nigteagle, and Charlie Osburn.

## HOA Members in Attendance

Nan Campbell, (Secretary), Paul Ruatti, David Nigteagle, Julie Horton, Chris Hinds, Russ Saricuse, Judi Wilkinson, and John Lett.

## HOA Members in Attendance via Zoom

Stephanie Hinds, Diane, Gary Linscott, Jaye, Robert Bolyard, Stan Wellborn, and Tawl.

## Introductory Comments

Allen introduced Heather Johnston to the Board and participants as the new Board Member and Vice President. Heather was appointed, after the resignation of Bob Sanders, to fulfill his term.

## Covenants Legal Investigation, Legal Memorandum, and Short-Term Rentals

For the past few years, there have been questions concerning the 1998 Covenants and subsequent amendments to those covenants in 2005 and 2008. For the past few months, the Board has been working with our attorney to determine the legality of CMRHOA, Inc's covenants.

Allen read the following statement:

“On January 22, 2022, the Board approved a motion to have the CMRHOA, Inc's. Covenants reviewed. We approached our law firm, Newbold Chapman, and began the process of gathering all the documents that they requested in order to perform this activity. The Legal Memorandum to the Board was completed in late April, and the Board met in private session with our attorney, Tyler Denning, on May 24<sup>th</sup>. The legal review was discussed, and all board member questions were addressed. On June 29<sup>th</sup>, the Board again met in private session and discussed the direction to take. All board member questions were addressed, and the Board agreed to move forward.

This part of the meeting is to address the direction that the Board has agreed to take. I am bringing a motion to the Board to:

'This is to stay the Association's enforcement of the 2005 and 2008 covenants, including enforcement of any prohibition against short-term rentals, pending amendment of the covenants.'

This direction, agreed upon by the Board is to allow CMRHOA, Inc. to only refer to the 1998 covenants at this time. It is critical to note that the law firm has reviewed the matter and informed the Board that there are legal issues with how the amendments were done that might lead a court to invalidate the amendments. Litigating the validity of the covenants could be time consuming and expensive. Accordingly, the Board is investigating methods for amending the covenants that will correct the problem without legal action.

In the meantime, and to avoid additional complications, the Board is staying the enforcement of the covenants.

On the issue of Short-Term Rentals, the issue is that the covenants do not specifically address short-term rentals, and a Colorado appellate court has held that a restriction on "commercial" uses is not a restriction on short-term, residential rentals. As restrictions on property are disfavored, any restriction prohibiting short-term rentals would need to be clear in order for a court to enforce it."

**A motion was made by Allen and seconded by Sherry to stay the Association's enforcement of the 2005 and 2008 covenants, including enforcement of any prohibition against short-term rentals, pending amendment of the covenants. The motion passed with 6 votes. Stephanie abstained since she did not have a clear connection on Zoom.**

The Board did not have any questions or comments, so comments were requested from the members. Paul Ruatti read from the 1998 covenants concerning no commercial business on the HOA properties which includes short-term rentals. It was explained that the Appellate Court of Colorado had ruled that short-term rentals on residential property did not meet the criteria for commercial enterprises.

David Nigteagle asked for clarification on separate units on one property. It was explained that if there are multiple units that have a single address, it is considered a single-family residence.

## **Safety and Scheduling of Events**

Allen read the following:

"The issue of safety during any Board sponsored event that occurs on our roadways is important to every homeowner of CMRHOA, Inc. Due to increased awareness, we find it necessary to institute a basic level of safety standards for any event of roadway intrusion for CMRHOA, Inc. This is necessary to protect our residents, our homeowners, our visitors, our volunteers, and our contractors. These steps follow the Work Zone Safety Consortium by the Federal Highway Administration: Temporary Traffic Control for Work Zones on Unpaved Roads; and the CDOT Traffic Manual Guidelines: Incident Management.

After several discussions with the Montezuma County Road & Highway Director, our insurance company, Liberty Mutual, and our law firm, Newbold Chapman, it was made apparent that our roads require certain basic standards when **“there is any worker intrusion into the road space, for any work or event being performed.”**

We have arrived at the following six steps:

1. Every road event must have a Traffic Control Plan (TCP). This does not have to be complicated; a drawing of the area, identifying where the work is to be done, and also where the warning signs and safety devices will be placed, is adequate. Contractors that are engaged to work for CMRHOA, Inc. need to have this done for us, and then both the contractor and a CMRHOA officer will sign off on the TCP prior to the approval of such work. Should the work be internal CMR Board sponsored with volunteers, with or without delivery drivers, then the same occurs, but the volunteer requesting the work shall create the TCP; it will be signed off by the volunteer and a CMRHOA officer. The direction here from all was crystal clear – no TCP, no work. Examples of a TCP are in the Federal Highway Administration's Guide for Maintaining Unpaved Roads.
2. Communications to the HOA. Emails must be sent no less than 12 hours prior to any event or work being performed, alerting residents to the situation. There are currently four officers and board members that can post these communications when they receive it.
3. On the day of the event, Road Work signs, along with a traffic cone next to it, shall be placed at both ends of the work prior to the start of the event. These signs alert the public that road work is ahead. In the event of a parade, the same alerts are to be instituted.
4. If this is a single area event, such as a mitigation project or culvert maintenance, traffic cones must be placed to separate the travel lane from the work lane. Prudent judgment shall be used to determine if the area requires flagmen with reflective vests and communication devices. At the end of the event, all the safety equipment shall be removed.
5. On events that occur on a hill, on a curve, or any other blind area, traffic cones are typically not used due to the type of work being performed. Instead, there must be flagmen with reflective vests and communication devices. At the end of the event, all the safety equipment shall be removed.
6. All TCPs with work completed will be then entered into a Master Worksheet on our website listing the work done, where it was done, and the Contractor used. This is to be public domain knowledge.
7. Finally, all individuals on the three groups that could possibly have worker intrusion into the road space – in our case, the Mitigation group, the Roads group, and the Member Relations group – shall agree to sign a waiver of liability knowing that they are performing volunteer work on the road space, and that CMRHOA, Inc. has no insurance that covers them during any such work. Anyone that wishes to volunteer in this manner must have a signed waiver on file with the Board.

So, I am making a motion to adopt these minimum standards, effective immediately.

I am also asking for a motion to create an ad-hoc group known as the Safety and Scheduling Group, to assist in the continued development of the road plan; the collection of all TCPs; and the communication of these standards to all involved. This will be a three-person group."

**It was moved by Allen and seconded by Phil to adopt the seven minimum standards for traffic safety that are written above. The motion passed 6-0. Stephanie had left the meeting due to Zoom technical issues.**

Discussion for the Board and Members dealt with the following:

What about an emergency? In the event of an emergency, all the steps would not be taken. Traffic signs would be out and communicating to the residents would occur as soon as possible. TCPs would be created and filed for reference purposes after the fact.

Communication to the residents. All of the Board realizes that communicating to our residents is a tricky situation. Many do not read their emails and emails go only to the property owners while some properties are rented. Also, there are more and more teenagers driving on the roads. It was discussed how the "word" could get out with better results. Suggestions were made to include renters' email addresses; add more family email addresses (teens); put a visual cue on the Fire Barn; and put notices on the mailboxes.

Judi Wilkinson brought up the fact that safety for our road crews is of utmost importance. We still have people speeding down our roads with no concern for others. She cited an incident that recently occurred at 7:30 a.m. after a rainstorm.

Allen read a statement from Liberty Mutual that stated that volunteer equipment (ATVs, tractors, trailers, etc.) would not be covered under the HOA insurance if they were damaged or someone was hurt. He also called his homeowner's insurance company and was told that homeowner's insurance would not cover any damage if the equipment was off the property.

Paul Ruatti said that Allen was given a quote from American Family Insurance in 2021 that would have covered all the volunteer equipment and would also have been less of a premium. The insurance agent said that the underwriters would write this in the policy. Nan Campbell read the minutes from the July 16, 2022 meeting which reported that Bob Sanders and Charlie Osburn had contacted various insurance companies sending them our current policy and asking them if they could do better with the restrictions and the premium. Their answer was "No, stick with what you have." Roy Wilkinson brought up the point that in 2021 our insurance had been "red flagged".

**It was moved by Allen and seconded by Heather to establish an Ad hoc Committee for Safety and Scheduling. The motion passed 6-0.**

The members of the Ad hoc Committee are David Nigteagle, Chair, Allen Giannakopoulos, and Heather Johnston.

**The meeting was adjourned at 10:53 a.m.**