

Abbe Springs Ranches HOA

2012 Annual Meeting Membership Minutes

March 3, 2012

The annual membership meeting of the Abbe Springs Ranches Homeowners' Association (HOA) was held at the High Country Lodge, Highway 60, Magdalena, New Mexico, on Saturday, March 3, 2012, at 11:00 am.

The meeting was called to order by President Marshall Adams at 11:00 am. Also present were the three other members of the board: Vice President Nancy Crowley, Secretary Michelle Vallentine and Treasurer Kat Brown.

All members in attendance introduced themselves. Including the officers, there were 21 members representing 30 lots. This number constituted a quorum per the By-Laws. All members present were reminded that they needed to have paid their 2012 Assessment Fee in order to be in good standing and participate in the meeting.

Secretary's Report

Prior to the meeting the membership had access to the minutes from the annual membership meeting held on March 5, 2011. A reading of the minutes was waived and the membership unanimously accepted them into the official records. During the discussion about the minutes a member asked about a current C&R issue, suggesting that the board was withholding information; since the topic was on the agenda under New Business it was deferred until later in the meeting.

Treasurer's Report

Members were reminded that all HOA financial reports are presented on an accrual versus a cash basis of accounting.

1. Balance Sheet 8-Year Comparison
 - a. The balance sheet was reviewed.
 - b. Following a motion and a second to approve the balance sheet, it was approved by a show of hands.
2. 2011 Income and Expense 8-Year Comparison
 - a. Regarding a question about the HOA's insurance expenses, the treasurer stated there are two policies, one for general liability and the other for directors and officers' liability.
 - b. The in-kind donations represent mileage/gas costs that the president donates while surveying the HOA roads. This donation is shown as income and then removed as an expense.
 - c. Following a motion and a second to approve the income and expense report, it was approved by a show of hands.
3. 2011 Actual vs. Budget Comparison & 2012 Proposed Budget
 - a. Regarding a question about the difference between the actual and budgeted entries for dues, the treasurer explained that the accrual basis of accounting mandates booking the full value invoiced by the corporation; the difference between what is accrued and what is received appears on the balance sheet under accounts receivable.
 - b. Regarding a question about professional fees, the treasurer explained it was a combination of continuing legal cases and the annual retainer fee for corporate counsel; the annual retainer cost is \$1,200 plus tax. A follow-up question asked for more detailed explanations of legal cases. The treasurer explained that the amount included two additional summary judgments to protect the HOA against members who are years in arrears of paying their assessment fees. Monies were also spent on a lawsuit regarding a C&R issue; a question was asked about the cost of suing the owner of lot 50 regarding the C&R issue and the president responded the total cost to date had been \$4,700.
 - c. Following motions and seconds to approve the 2011 budget report and the 2012 proposed budget, they were both approved by a show of hands.
4. Announcement and Approval of the 2012 Dues Assessment
 - a. The treasurer announced that the board was recommending that the annual dues remain at \$150. A concern was raised by a member that the fee should be increased to build the contingency fund higher in the event of unforeseen expenses. The president mentioned that the matter of raising the contingency fund was already on the board's agenda for the board meeting scheduled to follow the membership meeting and that he was confident, if the board agreed, the contingency fund could take another incremental increase without an increase in the assessment fee.

- b. A question was raised if the HOA could derive revenue from means other than the annual dues, such as a fundraiser. Some discussion followed and it was decided to table the idea.
 - c. A motion was made and seconded for the 2012 assessment fee to be \$150 and it was approved by a show of hands.
5. Accounts Receivable
- a. The amount due the HOA in late dues has been increasing each year. The amount due at the end of 2011 was \$10,709.
 - b. About 75% of the receivables at the end of last year are due from two lot owners. The board has taken measures to assure the HOA will receive the monies due the HOA. Via summary judgments filed in multiple jurisdictions in New Mexico, these two members will not be able to sell real property in the state without bringing their accounts current.
 - c. As of March 3, 2012, 14 members are in arrears with their fees from prior years.
 - d. The county raised the cost of filing liens, thus the fee charged to members in arrears has increased.

Old Business

1. The 2011 Board Action/To Do List was reviewed in detail. The board pursued five significant initiatives in 2011.
 - a. Outsourcing for the HOA bookkeeping was investigated and tactics were detailed in the event that portions of our bookkeeping may need to be outsourced. It has been determined that approximately 100 hours of bookkeeping would need to be outsourced should a future treasurer not have an accounting background. This was put on hold pending the results of the board elections.
 - b. Cell phone service for Abbe has been an ongoing issue. The cell tower erected at Alamo has had little impact on properties at Abbe and service continues to be very sporadic. The board will continue its efforts to bring reliable cell phone service to Abbe with a two-prong attack of contacting Verizon regarding the ineffectiveness of the Alamo tower along with asking the office of Congressman Steve Pearce for assistance with the matter. The board asked members to write or email the office of Steve Pearce regarding the poor current state of cell phone service in Abbe.
 - c. Hard line phone service into Abbe is continuing to be pursued. The secretary encouraged members with structures on their ranches to download the WVN Communications forms on the HOA website, fill them out and send them to the address indicated. A concern was expressed regarding the personal information requested by WVN on the forms and it was agreed that the forms may be submitted without including any sensitive information. A request was made and the secretary agreed to resend the forms to those members for whom the HOA has email addresses. The purpose is to show how many members would be interested in local phone service, not to officially request it.
 - d. Forest Road 123 improvements that were recommended by the HOA board to the county were rejected due to a cut-back of the federal funds allocated to rural roads improvements. The board will stay in touch with the county in hopes that the program is refunded in the future.
 - e. The case against the drilling of deep wells in the Plains of Augustine has moved slowly and is still in the hands of the State Engineer. The HOA, along with a number of individual Abbe owners and other area landowners, are party to the suit to stop the drilling of these commercial wells that have the potential to bring a shortage of well water to property owners throughout the region.
2. Abbe Road maintenance was reviewed. Since 2004 the HOA has spent \$54,225 in maintaining and upgrading its 13.3-mile network of roads. Roads were not bladed in 2011 and there was only one \$555 repair needed as a result of the mild weather conditions experienced by Abbe. This resulted in a nice surplus to the 2011 financials. The president cautioned that many members had not experienced a harsh monsoon season and that bad weather would cause damage to our roads. A question was raised about whether the HOA has title to the road easement since an easement usually only applies to real property. The board agreed to consult counsel for the answer. A request was made to post maps of Abbe on the website. The vice president mentioned that there are already several maps available but she will review them to assure they show all roads. Snow plowing of the roads with permanent residents became an issue in January for the first time in the 10-year history of the HOA. The president contacted our road contractor but he does not have the proper equipment for snow plowing. The board is pursuing other options.

New Business

1. The lawsuit between the HOA and the owners of lot 50 was discussed within the guidelines provided to the board by legal counsel. The president read a statement from the HOA attorneys regarding the current status of the lawsuit. It stated:

"The dismissal granted by Judge Sweazea was simply a determination that the complaint which had been filed failed to state a claim because the Declaration of Covenants, Easements and Restrictions for Abbe Springs Ranches Subdivision contains an insufficient legal description and, therefore, fails to provide adequate notice to the public of the real estate sought to be bound by such declaration. This is not a determination of any merits. It is not a ruling that the covenants, easements and restrictions are invalid, void or unenforceable. It does not preclude further action. Any other comments on what the ruling is or is not, in the opinion of legal counsel, constitutes the discussion of legal theories, trial tactics, legal strategies and/or attorney work product, all of which involves breaching the attorney-client privilege. At this point the enforceability of the covenants, easements and restrictions for Abbe Springs Ranches Subdivision is still being discussed and what the board needs to know will be discussed in executive session with strict admonitions to not disclose these matters and thus violate our fiduciary responsibilities by breaching the attorney-client privilege. We are trying to do what is best for the homeowners as a group and the determination includes how we go forward from here."

As a result of the complaint dismissal there is currently no lawsuit; however, the HOA has an issue with our C&R document resulting from the dismissal. The basis for the dismissal needs to be addressed by the HOA to assure that all property owners are subject to the HOA C&Rs. The president reminded all present that the developer for Abbe Springs presented all original buyers with copies of legal documents for Abbe Springs that included the C&Rs. Initials and signatures were required on the documents by all buyers that they or their attorneys had read and understood the documents prior to the developer's acceptance of a sales contract. Subsequent owners of properties were bound to the same requirements by language in their deeds.

Responding to a comment that the board is conducting business in private, the president stated that the board does not conduct any corporate matters in a secret fashion but the board had discussed issues related to this lawsuit – as well as matters concerning other lot owners – in executive session at its board meetings under the direct advice from corporate counsel. Upon additional questioning from members, the president reported the following history of the situation:

- a. Regarding how many people complained about the structure on lot 50, the president stated seven complaints were received prior to the board taking up the issue several years ago.
- b. Three official attempts were made by the board to discuss the matter with the owners prior to any legal action. None resulted in any progress towards a solution.
- c. The owners' attorney presented the president with a letter that dictated that board members were no longer permitted to have any direct contact with the owners.
- d. The president turned the owners' letter and the matter over to the HOA attorney. The filing of the complaint followed.

A member citing legal knowledge brought up his concern that in his opinion the lot 50 issue should not have been dismissed and as a result of the dismissal the HOA has been put in a precarious position. He recommended that the parties work out a motion to vacate, thus making the legal ruling basically disappear. He stated that his understanding of the lot 50 ruling caused the HOA to lose something because lot 50 is no longer part of Abbe Springs. The same member asked the president if he had consulted counsel on a prior question of whether or not the Condominium Act applied to Abbe Springs. The president stated that he had and corporate counsel had stated the act did not apply.

A question was posed if matters such as this could be put to a vote by members in the future. The president replied by recommending that members review the By-Laws, specifically the areas regarding the duties of the board. Another member asked if we can just drop the issue. The president stated that there is no complaint at this time but the basis on which the complaint was dismissed needs to be corrected. This will impact the entire HOA and will require legal counsel to resolve. A question was posed as to who is going to pay the new legal fees. The president stated the HOA will pay the fees of the corporate attorneys while the matter is being resolved. A member stated that he is aware of two individuals who have placed their properties up for sale as a result of this matter. Another member stated that she does not believe anything that the president says. Finally, a member commented that he felt the board had done an excellent job in keeping the fees down.

The president concluded this discussion by stating that the board adopted a new policy in August 2010 regarding C&R complaints; the policy is posted on the website and requires any C&R complaint by one owner against another to be delivered to the board in writing prior to the board addressing the issue.

2. Under general announcements the vice president recommended that the HOA make better use of email vs. 'snail mail' and requested that members respond in a timely manner to emails sent out by the board in order to save time and HOA costs. A member asked if we could have an auto response added to the email. The vice president had previously looked into it but it carried a fixed cost of around \$30 per month. Rather than take on additional costs it was decided that members just need to hit reply. The vice president asked all members to review the website contact list and advise her of any changes or additions. A member urged other members to focus on positive actions and email the board with suggestions for improvements. A question was raised regarding well digging at Abbe and it was mentioned that Jim Johnson is drilling in the area (505)835-2380. William's Windmill is doing the same 575-835-1630.
3. Volunteer proctors Dave Smith and Bruce Holsapple counted all votes submitted for the election of two board members. The election results were announced by the vice president: Kat Brown was re-elected with 52 votes; Vikki Kyffin was elected with 39 votes; and Leroy Bieber received 32 votes.

A motion was offered and seconded and the membership unanimously voted to adjourn the meeting at 1:17 pm MST.

DATED: May 16, 2012

Minutes presented by:

Michelle Vallentine

Digitally signed by Michelle Vallentine
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Date: 2012.05.17 16:14:27 -0600

Michelle Vallentine, Secretary

Minutes approved by:



Marshall Adams, President

Also approved via email by:
Vice President Nancy Crowley and
Treasurer Kat Brown