

MINUTES OF THE SPECIAL MEETING OF THE
BOARD OF DIRECTORS OF THIRD LAGUNA HILLS MUTUAL
A CALIFORNIA NON-PROFIT MUTUAL BENEFIT CORPORATION

January 26, 2006

The Special Meeting of the Third Laguna Hills Mutual Board of Directors, a California non-profit mutual benefit corporation, was held on Thursday, January 26, 2006 at 10:00 A.M. at 24351 El Toro Road, Laguna Woods, California.

Directors Present: Richard Moos, Mark Schneider, Gunter Vogt, Jim Keysor, James Matson, Phyllis Fish, George Arnold, Robert Hatch, Dominic Burrasca

Directors Absent: Larry Souza, Raymond Gros

Others Present: Milt Johns, Patty Fox, Cris Trapp

CALL TO ORDER

Director Richard Moos, President of the Corporation, chaired the meeting and stated that it was a special meeting held pursuant to notice duly given and that a quorum was present. The meeting was called to order at 10:00 A.M.

Mr. Johns stated that the reason for the special meeting was to consider the resolution on approving improvements to exclusive uses of common area, and provided a summary of the issues pertaining to the resolution to comport with the new law.

Director Jim Matson made a motion to remove the resolution from the table. Director Mark Schneider seconded the motion. By a vote of 7-0-1 (Director Vogt abstained), the motion was removed from the table.

Discussion ensued on the resolution.

Mutual Member Dorothy Bilecki (3491-O) addressed her concerns with the resolution.

Staff recommended minor changes to the resolution to provided further clarifications.

By way of consensus, the Board approved the changes and agreed that they were not substantial enough to go through the required notification process.

By a unanimous vote of 8-0-0, the motion carried and the Board of Directors adopted the following resolution:

RESOLUTION 03-06-05

WHEREAS, in Resolution M3-02-35 dated July 16, 2002 (the "2002 Resolution"), the Board chose to "grandfather" existing improvements, additions or modifications of the manors or the area immediately adjacent thereto (collectively "Improvement"), in Third Mutual, that had been approved, and constructed, prior to

July 16, 2002, even though they encroached upon some portion of the Common Area, provided:

- (1) there was no threat to the safety of persons or property;
- (2) the Improvement met the construction and architectural standards of Third Mutual; and
- (3) there was no direction or order of a court requiring the Board to take contrary action; and

WHEREAS, the 2002 Resolution further provided that allowing any such encroachment would not constitute a transfer of Common Area into Exclusive Use Common Area; and

WHEREAS, the 2002 Resolution also provided that any Improvement not consistent with published standards could be required, at the owner's expense, to be removed if the Improvement was not either altered or reconstructed to be in conformity with such standards, and that the Board would demand the removal of any Improvement constructed after July 16, 2002 without the prior approval of the Board; and

WHEREAS, the CC&Rs prohibit the Board from transferring any portion of the Common Area to manor owners as Exclusive Use Common Area or Limited Use Common Area, without first obtaining written approval from two-thirds (2/3) of mortgagees or owners; however, effective January 1, 2006, new Section 1363.07 of the California Civil Code permits the Board to transfer portions of the Common Area as Exclusive Use Common Area without such owner approval under certain limited circumstances; and

NOW THEREFORE BE IT RESOLVED, January 26, 2006 that the Board has now reviewed the opinion letter and associated "Decision Tree" dated January 26, 2006 regarding this new statute as prepared by counsel, and hereby adopts the policy outlined in this Resolution (and the attachments hereto, discussed below), to govern the Board's decision making when owners who wish to construct an Improvement that may utilize an owner's separate interest, Exclusive Use Common Area or some portion of the Common Area of Third Mutual (all as defined in the CC&Rs), apply to the Board for authorization for the Improvement. Specifically, the Board, in determining whether the Improvement is to be approved, shall utilize the analysis in the Decision Tree, attached hereto to and incorporated into these Minutes.

RESOLVED FURTHER, that consistent with the Decision Tree, the Board shall consider the following when evaluating whether to approve a member application for the construction of an Improvement:

- (1) The Improvement must be consistent with:
 - (a) Third Mutual's architectural and building guidelines;
 - (b) the provisions of California Civil Code Section 1363.07; and
 - (c) Third Mutual's CC&Rs.

- (2) California Civil Code Section 1363.07(3)(E) permits the Board to approve (without an owner vote) an Improvement that is in an area that is generally inaccessible and is not of general use by other members of Third Mutual (typically entryway areas which are “trapped” between manors).
- (3) If the Improvement affects a neighboring manor, then proper notice and written permission for the Improvement shall be obtained by the Board from such affected neighbor.
- (4) If the proposed Improvement will be located partially or wholly upon Common Area, and is generally accessible to or could reasonably be used by or for the benefit of members other than the applying member, then the Board may reject a given application, unless the applying member demonstrates that the Improvement is *de minimis* and necessary for the manor benefiting from the use. Examples of such a “*de minimis*” use would be the addition of an air conditioning unit, heating unit or other equipment affecting the habitability of the manor and occupying a maximum of several square feet.
- (5) Pursuant to California Civil Code Section 1363.07(3)(B), the Board may also approve an Improvement that is located partially or wholly upon Common Area in order to eliminate or correct an encroachment due to errors in the original construction.

RESOLVED FURTHER, if the proposed Improvement is to be located entirely within an Exclusive Use Common Area already associated with a manor, the application may be approved provided the Improvement is in compliance with Third Mutual’s architectural and building guidelines, and otherwise permissible under Third Mutual’s CC&Rs. Compliance with Third Mutual’s architectural and building guidelines shall be a threshold required for any Improvement, whether located on a member’s separate interest, Exclusive Use Common Area or the Common Area.

RESOLVED FURTHER, that if the Board decides to grant a member the exclusive use for a portion of the Common Area where the Improvement will be located (partially or entirely), that member must, as a condition to receiving final approval for the Improvement, execute a recordable Common Area Agreement (substantially in the form of the Agreement Confirming Continuing Tenant In Common Ownership of Common Area, attached to and incorporated by reference into these minutes). Such Common Area Agreement provides, among other things, that the member agrees that the area in question shall become an exclusive use Common Area, and not the applying member’s separate interest. The Common Area Agreement also requires (consistently with new Civil Code Section 1363.07) that the member shall assume the responsibility for insuring and maintaining the area containing the Improvement, and agrees to indemnify Third Mutual for any and all claims pertaining to the Improvement.

RESOLVED FURTHER, that (consistent with the attached Decision Tree) several of the following objective factors shall be present prior to approving any alteration that will include an enclosure or otherwise encroach into the Common Area:

- (1) There is an existing wall of at least five feet (5') in height already enclosing the Common Area where the proposed alteration is to be located which has been in place for at least thirty (30) years;
- (2) The proposed alteration will not obstruct a neighbor's view and will be consistent with the architectural aesthetics and integrity of the community;
- (3) The encroachment into the Common Area will not impede ingress or egress of other members onto adjacent Common Area or impede community maintenance staff from going into or across the Common Area; and
- (4) The proposed area of alteration can only be reasonably accessed through or benefit the subject manor.
- (5) The proposed alteration would not negatively impact the ability of a neighboring manor to make a similar future alteration.

RESOLVED FURTHER, that Resolution M3-02-35 dated July 16, 2002 is hereby superseded and cancelled; and

RESOLVED FURTHER, that PCM officers and employees charged with the responsibility of overseeing construction of additions, modification and Improvements within Third Mutual are hereby authorized to take all appropriate actions consistently with these minutes and to carry out the purpose and intent of this Resolution.

By way of consensus, the Board agreed to add to the Agenda a discussion on a proposed legislative bill attempting to reduce the 100% voting requirement stipulated in the current law to change the condominium plan.

Ms. Wendy Bucknum, Legislative Analyst provided a summary of the proposed bill.

No action was taken.

Good of the Order

- Bud Nesvig (2392-3H) commented on informing the residents of the changes to the bill
- Dorothy Bilecki (3491-O) commented on the condo plan

The meeting recessed at 10:53 A.M. and reconvened into Executive Session at 10:56 A.M. to discuss litigation and member disciplinary issues.

With no further business before the Board of Directors, the special meeting was adjourned at 12:10 P.M.

Gunter Vogt, Secretary

DECISION TREE
January 26, 2006

FOR CONSIDERATION OF APPLICATIONS FOR ALTERATIONS

BY THE THIRD LAGUNA HILLS MUTUAL BOARD

This "Decision Tree" sets forth an outline that the Board should use when reviewing and considering Applications for Alterations.

STEP 1: Compliance with Community Standards

- The Board must first determine for each Application that it complies with all architectural and building guidelines within the community, whether the proposed alteration is entirely on the Member's own property, on Exclusive Use Common Area, or on Common Area.
- If all guidelines are not met, then the Application for Alteration should be rejected by the Board on that basis.
- If all guidelines are met, then the Board should proceed with **Step 2**.

STEP 2: Determine Whether the Area of the Proposed Alteration is Located in Common Area or Exclusive Use Common Area

- "Common Area" is defined as the entire common interest development except the separate interests. In a condominium project like Third, a "separate interest" is defined as an individual manor.
- "Exclusive Use Common Area" is defined as a portion of the Common Area designated by the CC&R's for the exclusive use of one or more, but fewer than all, of the owners of the separate interests, and is usually appurtenant (adjacent) to the separate interest (manor).
- If the Board decides that a proposed alteration will be located entirely on Exclusive Use Common Area, then go to **Step 3** below.
- If the Board decides that a proposed alteration will be located either entirely or partially on Common Area, then the Board should consider the proposed alteration as being located on Common Area and go to **Step 4** below.

STEP 3: Exclusive Use Common Area

- The Board may approve applications (consistent with **Step 1** above) where the alteration will be constructed entirely on Exclusive Use Common Area.

STEP 4: Common Area

- If a proposed alteration is to be located entirely or partially on or over Common Area, the Board should first decide whether such Common Area is *generally inaccessible* and is *not of general use* to the other members of Third, or is only accessible to and of use by the applicant. If the proposed alteration would affect Common Area that is *generally accessible to* or could reasonably be used by or benefit members other than the applicant, go to **Step 5** below.
- If the Board decides that the affected Common Area is generally inaccessible to and is not of general use to the membership at large, then go to **Step 6** below.
- If the Board decides that a grant of exclusive use of the affected Common Area would eliminate or correct encroachments due to errors in construction of any improvements, then go to **Step 7** below.
- If the proposed alteration is over Common Area and generally accessible and reasonably usable by or beneficial to members other than the applicant and an enclosure will be constructed, then go to **Step 5**, then to **Step 8** below.

STEP 5: Common Area Accessible to and Usable by Members Other Than the Applicant

- The Board generally should not approve an Application where the proposed alteration is located partially or entirely on Common Area that could reasonably be accessible to or used by or benefit other Members of Third, unless the alteration is a *de minimus* (minimal) and necessary use OR such approval is to eliminate or correct encroachments due to errors in construction (see **Step 7** below).
- “*De minimus and necessary*” mean a maximum of several square feet, as necessary and appropriate to accommodate a heating unit, air conditioning unit, or similar equipment necessary to the habitability of a Member’s manor.
- If the Board decides that the proposed alteration will occupy more than *de minimus* area or is unnecessary, then the Board should disapprove the Application.
- If the Application is approved as “*de minimus and necessary*”, the applicant should execute an Agreement Confirming Continuing Tenant in Common Ownership of Common Area (“Common Area Agreement”) as a condition of approval (see **Step 9** below).

STEP 6: Common Area Inaccessible and Not of General Use to the Members at

Large

- If a proposed alteration is over an area that is technically Common Area on the Condo Plan, but such area is not accessible to the membership at large (e.g., this most commonly occurs with entryway areas which are “trapped” between manors), then a prerequisite to approval is to transfer the burden of management and maintenance by having the applicant execute a Common Area Agreement (see **Step 9** below), which also establishes that only exclusive use is being granted.
- If a neighboring manor or manors may be affected (but the proposed alteration is still inaccessible to the membership at large), then the Board should provide written notice to and obtain written consent from the owners of those affected manors prior to approving the Application which will grant the applicant exclusive use.

STEP 7: Grant of Exclusive Use to Eliminate or Correct Encroachments Due to Construction Errors

- New statutory language enables the Board to grant exclusive use of certain areas which are technically Common Area to eliminate or correct encroachments due to errors in construction of any improvements.
- Any such grant of exclusive use to eliminate or correct encroachments due to errors in construction should be documented with the Common Area Agreement.

STEP 8: Objective Factors Needed to Approve Enclosure

- The Board should determine that at least several of the following objective factors are present prior to approving any alteration that will include an enclosure, or otherwise encroach into the third dimension of the Common Area:
 - There is an existing wall of at least five feet (5') in height already enclosing the Common Area where the proposed alteration is to be located which has been in place for at least 30 years;
 - The proposed alteration will not obstruct a neighbor's view and will be consistent with the architectural aesthetics and integrity of the community;
 - The encroachment into the third dimension will not impede ingress or egress of other members onto adjacent Common Area or impede community maintenance staff from going into or across the Common Area;
 - The proposed area of alteration can only be reasonably accessed through or benefit the subject manor.

STEP 9: Recordable Agreement Requirement

- Before the Board gives final approval for any proposed alteration that will be constructed on any property that is not entirely Exclusive Use Common Area, the Board should require that a recordable Common Area Agreement be executed by the applicant. (We have provided staff with a suggested form of such an Agreement).
- The Common Area Agreement should be required where:
 - (1) The proposed alteration is “*de minimus and necessary*” and located on Common Area; or
 - (2) The proposed alteration is located on an area that is technically Common Area on the Condo Plan, but is inaccessible and is not of general use (such as the trapped entryway areas); or
 - (3) The proposed alteration includes an enclosure which extends into the third dimension of the Common Area and is not reasonably accessible or beneficial to the membership at large; or
 - (4) The proposed alteration is on an area that is technically Common Area (i.e. in the recorded Condominium Plan), but appears as part of the original as-built construction to constitute Exclusive Use Common Area, and the Board approves the alteration because the grant of exclusive use of such area is necessary to eliminate or correct encroachments due to errors in construction.
 - (5) The proposed alteration would not negatively impact the ability of a neighboring manor to make a similar future alteration.