

HOA MEETING QUAIL CREEK

Date / time 7/8/2013 7:00 PM | Location Quail Creek park RW, TX. 75032

Meeting called by	J byrnes, President	Attendees: J. Byrnes, C. Cook, K.Fuller, N.Peters,Mulden
Type of meeting	Ad-Hoc Committee	
Facilitator	Charles Cook, Secretary	Please read: CCR's, Bylaws
Note taker	Charles Cook, Secretary	Please bring: Any supporting information.
Timekeeper	Charles Cook, Secretary	

Agenda Items

Topic	Presenter	Time allotted
✓ Old Bussiness approved min. CC,JB,KF,NP	JB,CC	5 min, 3min
✓ Financials/Vote N/A not available	J Byrnes	5 min, 3min
✓ Table Discussions for anonymous letter threat lawsuit. J Byrnes	J Byrnes	5 min, 10min
✓ See above	J Byrnes	Min -2230
✓		
✓ 10 year CCR review		
✓		

Other Information

Observers Shiflett, Chaffen, Thompson, Peters, Fuller, York, Lee, Jordon,

Resources As provided by presenters

1. Old min approved by vote (unanimous)
2. Financials/Vote N/A not available at meeting

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HOA MEETING QUAIL CREEK P.2

These Minutes
were approved by
the Board on
October 14, 2014.

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- The meeting was called to order at 1906 by JB, welcome to all members and board. Group spoke about better information dissemination about times and meetings. (CC will add date time and place for next meeting to newsletter.)
- ~~Approval of min was called by JB min approved unanimously by board present.~~
- ~~Financials were called for approval, Financials not available not vote called.~~
- Group discussion of various issues, and confusions. JB called to table all issues and speak to the issue of anonymous E-mail from a unknown homeowner threatening lawsuit. Summary of discussion as follows:

K. fuller received a E-mail under name unknown to be a owner in quail creek. K.Fuller expressed that this was a unknown person to her and that she was informed that that person contacted her as he felt she was the only one on the board to be trusted to do the right thing in his mind. E-Mail threatened a law suit as follows:

Jon and Charles, you need to know that one of our fellow homeowners has sought legal counsel on this matter and is prepared to move forward with a lawsuit if this pool is not removed immediately.

These are the attorney's comments:

This is an exceptionally strong case because of the deliberate actions, rather than inactions, of the two board members. It is difficult to demonstrate to a court when a HOA board fails to enforce covenants that are expressly written, but when they actually violate them by granting a variance in writing, makes this case incredibly strong. I need a copy of the signed agreement between the board members and the Thompson's, if possible, but the copies of the emailed correspondence between the board members is enough to demonstrate their actions.

The two HOA board members have actually opened themselves to personal liability by moving outside of the parameters of their authority. A court cannot consider extenuating circumstance that these two board members present in a case

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like this because the authority granted to them under the covenants are unambiguous, as is the covenant expressly prohibiting above ground pools. The board has no authority to grant a variance, not to mention two members of that board. The covenant also does not allow them to create a date certain for taking down the pool, it must demand that the pool be taken down immediately.

The court views this kind of action as an action against homeowners, in much the same way as they would an HOA board requiring all homeowners to paint their home pink, or face a fine, when no such requirement exists. The two board member's reasoning is irrelevant; they cannot take arbitrary action against homeowners (the HOA). This also means that any damages that a court orders will be paid out of the personal funds of the two HOA board members. The case will be the HOA against the two board members.

Putting up an above ground pool out of public view is also a clear violation of the covenant.

Ironically, the Thompson's can actually join in this class-action against the two board members and receive damages as part of it because they are no longer the issue here, but the rogue actions of two board members. They can also sue the HOA for the cost of the iron fence if they build one and then, in the future, the HOA enforces the explicit prohibition. This is because they were granted a variance that will have forced them to build a fence (McLendon-Chisolm city ordinance), but the variance did not indemnify the HOA from costs incurred by the Thompson's, should they be required to take down the pool, and thereby the fence. That would get complicated because the Thompson's would have to sue the HOA (all homeowners) and then the homeowners would have to file suit against the rogue board members after that.

I recommend that I write a demand letter to the HOA board and at the same time, a letter be sent to all homeowners informing them of the actions by the two members of the board. I will add a response device for homeowners to either affirm the covenant or express their opposition to it (support of above ground pools) where they can also choose to join this class action lawsuit.

If we move forward I recommend that we seek damages equal to the diminished property value and appeal of the development because of these member's actions. Based on the size of your neighborhood and the average cost of houses, a class-Action lawsuit is in order here for damages that I recommend start at \$250,000. My firm's initial cost of the demand letter and letters to the homeowners is \$2,500.

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In addition to the initial fees, we would take 40% of the judgment. So, once we move forward, there is no turning back.

Understand that if the HOA, through a vote of the homeowners, agrees to amend the covenant allowing above ground pools, it will not change the lawsuit as the amendment would have happened after the violation of the two board members and they will still be liable. If either board members steps off the board, it will not change the lawsuit as they are responsible for their actions while they were members of the board.

Let me know how you would like to proceed.

Discussion continued while the anonymous homeowner had threatened to sue the HOA
Comments from attorney through E-Mail : The case will be the HOA against the two board members. Asking for the homeowner if he would like to begin an action for a class action lawsuit from the HOA in reference the pool.

- Through discussions the following was found to be Fact. Last meeting the board had made agreement to talk to homeowner and let him know the pool was not allowed. One member of the board felt that the action was to tell the homeowner to remove the pool immediately and felt misled. When two board members visited with the homeowners with pool, the homeowner understood it was not allowed and asked to keep it up, both board members said it was not allowed and is expressly prohibited, and said in essence it needs to come down, send us a letter of your intent. Both members wanted to reach a compromise and hoped a letter of intent to remove the pool by a date certain would satisfy the board and homeowner association members. A letter was received by Board president during this time a number of E-mails were send back and forth between board members with our feeling as to what was a reasonable time frame. Those letters were shared with the anonymous homeowner by unknown member. Likely by mistake in reply w/ CC line by members in reply to other board members. This resulted in the homeowner believing and other members that E-Mails were giving approval for the pool to stay up. While three members felt it was a reasonable amount of time –Sept 7, Two others did not. Two abstained from the conversation. The time line to this point was **24 June board meeting pool discussion, June 25-27 meet with homeowner with pool, Jun 28 received letter from Pool homeowner saying he will take it down by Sept 7th, E-mails summary: Jun 28 JB: we have stuck a compromise and the homeowner has agreed to take the pool down by Sept 7, Jun 28 KF: this is a variance and it must be taken down immediately wants to call a special meeting. Jun 28 JB: No variance was given only time to let homeowner accept taking it down and the time frame is less that if we were to force the issue. Jun 28 NP agrees with**

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KF tell them to take pool down immediately and call meeting. **Jun 28 JB:** Please refrain from including homeowners in our E-mails, Discussions for record should be agreed on by the board, Where does it stipulate a time frame for enforcement? **Jun 28 CC:** I agree they are expressly prohibited, I spoke to home owners they agreed pool should come down and did not intend to violate CCR's, I believe in diffusing the situation and they sent a letter stating it would come down by a date certain that is well before the date it would come down if they decide to push back, I believe its reasonable. I do not believe we should have a special meeting, I believe JB should talk with the homeowner and explain what has happened to alleviate his fears. **Jun 29 KF:** Rather than to talk to homeowners we need to focused on violators, The pool is a violation that is prohibited and can never be allowed. There is no mention of time to enforce I believe the by-laws allow the board to use its discretion and common sense in dealing with issues, However allowing them to Sept 7 is too long and July 7 should be the date. **Jul 1 KF:** I have not had response from either of you and stopped by the pool owners today asked them to take it down and it is prohibited, I told him a attorney has been contacted and my visit today was a attempt to stop it from going further. (At this point the above attorney letter excerpt was attached by KF.

- Within 8 days a anonymous owner allegedly contacted an attorney in effect to circumvent the board and its duties and process through intimidation.
- No variance was given to the pool home owners.
- The city was contacted by a unknown homeowner letting them know the pool was in the community.
- During the Board meeting held July 8, 16 days after initial meeting with Pool homeowner, Board members and community attending were asked who the Jim Douglas was as he was not on any roles or membership lists, No one knew who he was and KF was asked to expound on who this person is KF said she did not know. It was brought up that in the future anonymous communication should be disregarded and only homeowner complaints should be regarded. KF said the person had indicated to her he was afraid that if he used his real name he would be ostracized from the neighborhood.
- All members and attendee agreed the pool was not allowed in the CCR's and it should be removed. Many felt the time frame sent by the homeowner was reasonable a number felt it was not. Thoughts were expressed that we must be neighborly and work together to solve issues others felt that immediate action was the way to proceed or the CCR's will be abused.
- Time frames were discussed and the Texas HOA law and Bylaws on how to proceed. It was concluded that our bylaws require us to send out a letter of violation after this meeting. With the Texas law amending the CCR's to specific

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language if the pool remains up at the next meeting and a letter of intent to fine is sent. See attachment.

- It was discussed that a special meeting can be called but there is a 30 day notice requirement in our by-laws and this was the next meeting we could talk to the issue.
- It was discussed that the records of the community remain in disarray and we are working to put them in order. KF and NP asked to be included in the work.
- JB would attempt to contact the anonymous homeowner again.
- That the 10 year mark for the HOA rules and amendments is coming in Oct. That the whole community was under one set (2003) as it supersedes the others and speaks to that in the CCR's dated 2003, That its important to get the information out the owners about the vote to amend. That a copy of the CCR's should be sent to community with next newsletter explain how we can make changes and how the vote will take place.
- That we must do a better job with letting the community know the date and time of meetings.
- Summary: A letter will be sent out by the board to the pool homeowner to officially let them know the pool not allowed by CCR's and must be removed.
- Work to set up the vote and CCR's amendments should proceed quickly.
- Next meeting if the pool is not down we will talk through the next step in the process.

Meeting ended