



AT Docksider

A Monthly Publication of The Ballena Bay Townhouse Association #1

Protecting property values and the quality of life in Ballena Bay – November 2007

ELECTION RESULTS

In 2006 the Board of Directors adopted new election rules as required by the State of California. In accordance with the rules, the results of the recent annual election are announced as follows:

I. Board Directors – 2008-2008 (1 Year Term)

(Alphabetical by last name)

Richard Bacigalupi

Jay Cherrie

Eric Coker

Gary Flanigan

Terry Klaus

II. Action Regarding Any Surplus From The Operating Budget

(IRS Revenue Ruling 70-604)

The vote was passed in-favor to transfer excess operating funds for 2007 (if any) to the Reserve Account.

President's Message

By Dick Bacigalupi

I would like to thank everyone for allowing me to serve as a director for another year. With help of my fellow directors we made much progress toward accomplishing many initiatives last year. I look forward to working with the new members to bring these and others to completion. I also would like to express my thanks to the many homeowners who volunteered their time and homes for the many community events we enjoyed last year. Specifically;

New Year's Round the Island

Isabella & Ed Foster, Michael & Donna Brownlee,
David & Pat Faustman, Audrey & Rico Kramer

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Massingham & Associates Management, 2247 National Avenue Hayward, CA 94545

At Docksider is published monthly by the Board of Directors, Ballena Bay Townhouse Association



March Community Directory	David Wiard & Jeff Frankel
Spring Garage Sale	Sue Cherrie
Landscape Committee	Pat Faustman (chair), Patty Klaus, Patty Corrigan, Bev Partridge & Kathy Walker
September BBTA Social	Patty Corrigan (chair), Pat Faustman, Patty Klaus, Bev Partridge, Kathy Walker & Arnold & Ann Dos Santos

Thanks are also extended to my fellow directors who took time from their busy schedules and to the prior board who initiated the two major projects worked on this year, rewrite of the By-laws and the reserve study to determine a long-term capital budget and funding requirements. Lastly, thanks to the homeowners who attended the meetings. Homeowner input is essential if a board is to address the association's needs.

If you did not attend the annual meeting it could be described as surprising at best. There was much discussion regarding the validity of the election process. In addition, there appeared to be a mis-understanding or mis-information regarding past actions of the board. The major items that were discussed were;

- **Election Process:** There were many questions and statements regarding the election process. Specifically, that the appointment of Massingham as the election inspector was not in accordance with the civil code. If you recall, the prior board adopted election rules as required by law that were used in last year's election. Prior to their adoption homeowners had a 30-day notice in which to file objections. In performing their due diligence the respective members would have carefully reviewed these rules prior to their unanimous acceptance. These were the exact same rules that were followed for the election this year. A copy of the Notice of Rule Change, Election & Voting Rules and Board Resolution Adopting Election and Voting Rules (signed by the secretary) are attached. To change the election rules during an annual meeting is not allowed by law nor would it be fair to those homeowners who had voted following the rules.
- **Dues Increase of \$730:** The statement that our dues for 2008 have been increase to \$730 is false. The budget for 2008 has not been approved. In fact, the decision was made to pass budgetary decision to the new board as they will be responsible for its management. Every board is faced with the financial challenge of balancing its fiduciary responsibility to maintain our homes and common area with the effect the dues may have on property values. It would be unfair to make that decision for an incoming board.



- **Home Repairs:** As stated in prior Dockside's the board has approved various roof replacements and repair and paint of 16 homes. Based on our consultant's recommendation, the roofs and buildings that were in the greatest need of replacement or repair will be done in 2007. The association has engaged All Seasons Roofing to do the roof replacements. They have almost completed with roofs identified on Ballena Blvd. then will move on to homes on Cola Ballena. The homes at 421 – 455 Cola Ballena are scheduled for repair and paint. Contracts have been signed with Silicon Valley Builders Group and Lupe's Painting to do the work. Silicon Builders are scheduled to begin work at 421-435 Cola Ballena on November 5th. Pollard Unlimited has been engaged as our project manager. Fortunately the additional funds from last year's dues increase has allowed us to do the roof replacements, as well as the building repair and paint, identified in the Reserve Study. The funds available in 2006 only allowed the for repair and paint of 12 homes.
- **By-Law Rewrite:** As explained in the cover letter that accompanied the rewritten By-laws you recently received, our current 6 page By-laws are out dated and do not reflect the current laws. The board has worked to complete this project that was started last year. To my dissatisfaction, the management company did not distribute them in time for your review prior to the annual meeting as planned. To ensure everyone has an opportunity for questions our attorney, Ric Fong, will be at the general meeting scheduled for November 8th. While the rewrite reflects our current By-laws, the inclusions required by law can be confusing. I, nor the other board members, would ask homeowners to approve the rewritten By-laws without the opportunity for questions. Bottom-line if you are uncomfortable with the By-laws or the proposed amendments you do not have to vote to approve them.

Whatever the questions raised at the annual meeting, the board will move forward to address the needs of our association. At the next meeting we will vote on officer positions and assign committee responsibilities. The budget for 2008 must be approved and distributed by the required deadline. Capital projects for next year need to be identified and planned. Work needs to continue to determine a funding plan to address the long-term capital projects identified in the Reserve Study. On the social side we need to look for a chair and homeowners to volunteer their homes for the New Year Round the Island event in January. With the boards commitment combined with your support this and much more can be accomplished during the upcoming year.

I look forward to seeing you at the next meeting scheduled for this Thursday, November 8, at 7:30 PM.



Treasurer Message

By Gary Flanigan

I would like to thank the homeowners for allowing me to serve on the board this past year and who reelected me to serve again. I would also like to thank Dick Bacigalupi and Jeff Frankel, who worked hard with me on using the Reserve Study to create a long-term capital budget. This work formed the basis for the two alternative proposals for a special assessment which will shortly be put before the membership for consideration.

The accuracy of these two alternative proposals is being reviewed by our accountant, and will be circulated upon his review.

We come to the end of 2007 in a reasonably good current position, but with typically underfunded reserves. We estimate that the final year's numbers will show income at \$586,800, with Operating Expenses of \$223,400, Debt Service on the marina loan of \$137,400, and reserve funding of \$258,600. This will result in over-budget spending of \$32,600. This amount is more than made up for by the inadequately budgeted amounts allotted to Legal Expense and Landscaping. A discussion of these two areas of expense and budgeting is in the following section.

On major capital items, we began the year with reserves of \$87,800, and this was bolstered by transfers from the operating accounts of \$258,600, for a total of \$346,400. By year-end, we will have spent \$78,700 on Built-up Roofs, \$156,000 on Building Repair and Paint, and \$19,000 on the Wave Maze, for total capital spending of \$253,700. This will leave us with a reserve balance of \$92,700.

2008 Budget Preparation & Dues

The Board of Directors must distribute a 2008 budget to the members by Dec. 1, in order for it to take effect Jan. 1, 2008. This obviously means that the board will need to set a level for the 2008 dues. The outgoing board inherited the budget from the 2006 board, and for several reasons we decided to leave the approval of the 2008 budget to the incoming board, since they would have to administer it.

Who prepares and approves the budget?

As our community manager, Ric Perez of Massingham now develops a draft yearly budget based on his analysis of our operating expenses and needed maintenance capital expenses. However, the actual budget is approved by the Board. We sincerely regret the mis-information conveyed at the annual meeting that the intent of the outgoing board was raise your dues without full Board consideration. This is simply false; please let me explain.

Our current management company, Massingham, was hired by the 2006 Board to, among other things, prepare draft budgets so Board members no longer had to. Mr. Perez simply

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prepared a first-draft of the budget to include as much deferred maintenance as he deemed necessary. Much of the capital expenditure items were derived from the Reserve Study prepared by Pollard & Associates, who was as well contracted by the previous Board. Fundamentally the recommendations of a professional property management firm and independent professional consultant were followed. The manager has submitted a draft budget for the Board to consider. The incoming Board will be tasked with approving the current budget as submitted, or a version with modifications, and distributing it to the membership by December 1st.

Developing a budget is not a monumental task but it requires the best estimate of what things cost and how much you want to get done. When developing a budget, the first draft is generally a what-if scenario that includes all components of your wish-list and extra cushion in each category. Often times this first draft proves to be unpalatable, as such wish lists result in unacceptably high dues levels. Revisions are generally made until a best compromise is reached that fundamentally allows us to meet our fiduciary duty. Historically, this community has more often erred on the side of lower dues and ended up deferring maintenance to compensate.

It is important to note that there are two distinct sections of the budget, the operating budget and the reserve or capital budget. Much of the operating budget is beyond the control of the board. Such things as trash collection, insurance, meeting room expense, legal fees, management fees can be trimmed or expanded to only a small degree by engaging more or fewer services or higher or lower quality services. In general, most boards try to get the best value for the desired level of service, and over the years this area of expense is fairly consistent.

The reserve or capital budget is where we as a community decide how much major maintenance to do. How many homes which need new roofs will get them? How many homes can we afford to paint? What level of repair or replacement should we specify for the docks? While it might seem that the budget is more flexible here, keeping dues low at the expense of necessary repairs and replacements is surely a false economy. There is a rational amount of reserve expenditure to be made in a given year, and it is specified by the detail of the Long Term Capital Budget, which is derived from the Reserve Study. This budget identifies which major repairs on which units will need to be done in any particular year. It is important to note that, in an ideal situation where the association's reserves were funded, these repairs would always be made as scheduled, since cash flow would not be an issue. Instead, recent boards have had to decide "among the houses that need repair this year which can we afford to repair, and which will have to be postponed?"

A few noteworthy items mentioned at the annual meeting as being over-budget are Legal and Landscape. This is simply due to the fact that the budgeted amounts for these areas were not adequately estimated. In fiscal year 2006, the prior board had Legal expenses of approximately \$22,700. They budgeted \$1,200 for all of 2007! The actual amount for 2007 is likely to end up in the range of \$16,300, which is \$6,000 less than was spent in 2006. Still, since in effect almost nothing was budgeted for 2007, the financial statements make Legal look way over budget.



Our landscaping contract was scaled back dramatically to cut costs; the quantity and quality of the work was so compromised that endless complaints were brought to the attention of the Board and Management. The Board collectively agreed additional work had to be contracted to respond to community disenchantment. Again, the budget was set to a very low level and a very low level of service is what we got! When, at homeowner insistence, we increased the scope of the work, the extra expense appears as over budget, since the budget was set at an inadequate level.

With regard to the level of our dues and property values, it is interesting to note that around the 1996 time frame, our annual dues were approximately 1% of our home's market value and homes were selling; and today they are roughly 0.6% of current market and now they're not. As we are all aware, the subprime fiasco has spread to almost all areas of the housing market. This climate is certainly helping cause sales to be slow or non-existent. Also many East Bay HOA communities of condo-townhouse-type have dues that are running approximately 0.8% of home market value and they don't have the expense of marinas. While high dues certainly are a deterrent to selling a home, so surely are neglected repairs. A prospective buyer facing thousands or tens of thousands of dollars in deferred maintenance will certainly be put off as well as he/she might be by a particular dues level. Century 21 suggests on their website that buyers should expect to spend 1% annually on repairs. Given an average value of \$1 million for our homes, that would translate to \$10,000 per year per home, or dues of \$833 per month. Per the same source, buyers of older homes (like ours) should expect to spend more.

We need to strive to have our neighborhood running smoothly and we need to repair and replace those parts of our infrastructure which need attention. We have a significant shortfall in our capital reserves from dues having been kept artificially low for several years. In order to get our association on track financially, the needed money must either come from dues or an assessment.

There is no free lunch.

Waterside

By Terry Klaus

First I would like to thank the community for having me serve on the 2007 Board and re-electing me for a successive term. My plan is to follow through with the work I initiated last term which is now nearing the eve of completion. I would also like to thank fellow homeowners, Rob Larsen and David Wiard, who assisted me during the year to help with the analysis and reviving of the wave maze. For the benefit of those unable to attend the Annual Meeting I reported that we are in the final phase of engaging Topper Industries to add additional floatation to the wave maze.



From the Landscape Committee

By Patricia Faustman

I would like to thank the Board for the opportunity to serve as chair for the landscape committee. I would also like to thank all of the wonderful members of the committee, Pat Corrigan, Patty Klaus, Kathy Walker, Isabella Foster and Bev Partridge. I am willing to serve again, and hope all of the members will join me if the new Board approves this landscape committee.

LEGAL CORNER

Election Process

By Ric Perez, Community Manager

For the many of you who were not able to attend the recently completed election of the Board of Directors on October 25, 2007, you should be advised that there were attempts to disrupt the process by requesting that already cast ballots be revoked, (so that eleventh hour nominees could be voted for), as well as the questioning of the appointment of the Election Inspector (in this case Manager Ric Perez) and his authority to make decisions. While adding last minute nominees (from the floor) is not a new concept, the actual process of the elections has been changed dramatically by the legislature (effective July 1, 2006). To that end, the secret ballot, (and double envelope system) has taken the place of previous practices. While nominees can still be added to the slate from the floor, this does not typically yield desired results as those who have already participated by ballot are most likely unfamiliar with the decision of these late arrivals (candidates).

These new rules pursuant to Civil Code Section 1363.03 were adopted by the previous Board of Directors. The current Board held the same position and appointed the Manager as the Inspector in keeping with past practice (which did not come under fire at the last election Oct 3, 2006). Nomination forms for this election were sent out to the members in accordance with the new election process, deadlines for returns set, and all candidates had equal access afforded them. There were no requests received as made by the candidates for access to any association media, websites, newsletters, or any other media.

For the record, the Board decides how it will choose the independent elections inspector. They could have decided to allow the members to vote on the inspector or they could have chosen to appoint. Logically, Board appointments work better than election. Understand that it is not easy to find inspectors in the outside world, yet, and get some professional guidance for options.



The previous Board sought legal advice (as was suggested) and obtained assistance in conforming to the new law making sure the Board and Association were in compliance with the then new requirements. Those election rules yielded the Board's appointment of the Manager, who was already familiar with the new law's aspects. It should be noted that Boards will want to find qualified people to serve in this function, not someone who will balk or bolt in the face of adversity.

It was the expressed intent of the inspector to those in attendance to be as equally fair, impartial, and compliant in the completion of his duties with respect to the procedure. Ably assisted by legal counsel (who was present) and a third person (picked from the membership) to tabulate the votes, the results were announced in total with the election winners being: incumbents Dick Bacigalupi, Gary Flanigan, and Terry Klaus, and new members Erik Coker and Jay Cherrie.

By-Laws Restatement – *Going State-of-the-Art*
By Dick Bacigalupi

These are the words used by our legal counsel at the Annual Meeting to best describe what we are getting in our re-statement of our governing documents. For those present at the meeting or for those who have already received their voting packet and read the enclosed explanatory letter, this serves to clarify some misleading information conveyed prior to the meeting and describe the larger picture related to the process.

Let us remember why we began this. In 2006 it was asked from the floor in the presence of our attorney about making changes to our existing governing documents. Mr. Fong then advised that doing so would very costly since our documents were very dated by current standards. He recommended we first consider restating our documents to current standards so they would better suited for future amendments. The seated Board requested a restatement proposal and subsequently approved the expenditure. The first draft was delivered to the Board for review and comment. Following the annual meeting, the 2007 resumed the review process and carried the process to the current stage which is the membership vote on the By-Laws portion. The current Board elected to work with the simpler of the two documents first since they are essentially independent of each other. Once the By-Laws are passed, work will begin on the CC&R's.

So why is it referred to as re-statement (rewrite) rather than a By-Law change? A re-statement by most descriptions merely brings older documents into a modern format and includes all mandatory state laws that have been implemented over time. Since our documents were originally written in the late 1960's vast amounts of legislation has accumulated, this brings the revised document from 7 to 30 pages. Because so much content has been added, the 2007 Board directed our attorney that the fundamental document should not include any changes unless it is mandated by law. This is so members will more easily know what is mandatory by law and not have to try and differentiate this from non-mandatory content. However, there are additional components recommended by our attorney that would bring our documents in line with other modern associations.



These separate line items require a vote as well as they would change the original document and are not a matter of state law, just good practice. In 2006 the Board felt there was overwhelming community support conveyed at the annual meeting to be like other modern associations. This revised document is best described as what a new association would have if it were a new development.

The voting requirement to pass these has been researched and conveyed in the explanatory enclosures. That said, the By-Laws require a smaller affirmative vote of the membership than the CC&R's. We elected to limit amendments to only those recommended by the attorney since every proposed amendment would require formal drafting by our attorney before it reached the ballot. Not imposing this limit would use up substantial time and certainly escalate cost further beyond current budget allotments. However, once passed in the restated format, future amendments should be more easily drafted for approval by the membership.

Please give them great consideration and cast your vote. This is your opportunity to consider the greater good of the community and shape its future.

Dockside Contributions

If there is something you would like to have included in the Dockside contact Dick Bacigalupi. If you would like to receive the Dockside via email please contact Ric Perez at Massingham & Associates.



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CALENDAR OF EVENTS

BBTA Board Meeting
7:30 PM Ballena Bay Yacht Club

Second Thursday of Each Month

BBTA 'Round the Island

January 1, 2008

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