

Mr. Stone stated that the Board believes that the the membership should adopt a policy of achieving full funding over a reasonably short period of years, and to provide enough funds each year to perform the work for the coming year. He stated that the Board is asking the membership to approve an assessment of \$1,800 per home for the year 1990.

President Smith asked the committee chairs to outline their plans for 1990.

Marty Gross, Chair of Land Side Maintenance, stated that his plans for landscaping in 1990 are very basic. He stated that projects budgeted for landscaping of areas are as follows: \$2,000 for necessary tree work, \$6,000 for replanting and about \$2,000 for automating the remaining manual irrigation valves.

Archie Stone, Chair of Home Maintenance and Architecture, stated that the eight homes on Cola Ballena had been thoroughly inspected, then the siding and trim had been replaced and the homes had been repainted in new colors. He stated that the expenditure for the repairs had been \$3,700 per home. Mr. Stone stated that although the initial estimate to repair the other homes is more expensive, he has not reviewed it thoroughly, and believes it should be less expensive as the homes on Cola Ballena were in a much worse state of repair. He stated that the landings will also need some work over the next few years.

Bob Smith, Chair of Water Side Maintenance, stated that his committee addresses dock and landing repairs and dredging. He stated that silt buildup is damaging docks, and estimated that dredging in 1990 will cost \$16,500, and that dock repairs will cost over \$5,000 and piling replacement will cost \$16,000.

Archie Stone recapped that the amounts estimated by the committees totals approximately \$190,000 to be spent in 1990 out of the replacement reserves, which currently contain \$87,000.

OPEN FORUM

Jim Oliver asked how much of the estimated repair cost is allocated to home repairs. Mr. Stone stated that \$122,000 is projected for home repairs, \$14,000 for landing repairs, \$40,000 for water side maintenance and \$16,000 for landscaping. President Smith said that plans will be finalized at the next Board meeting as to which homes will be repaired next.

Dr. Schwartz stated that, if the membership approved a special assessment of \$1,800 per home this year, it would cover repairs to only a certain number of homes, and asked what would happen if a special assessment were not approved the following year. He asked whether the membership could commit the Association for more than one year. Mr. Stone stated that he did not believe the membership could commit the Board for years into the future. Mr. Scholtes stated that there might be a way to achieve the same aim by entering into long-term contracts with the contractors, but that generally the budget is established each year by the current board. He stated that one association he represents voted in a \$10,000 per unit special assessment to be paid in \$2,000 per year increments. Mr. Scholtes stated that it is also possible for homeowners to enter into a special agreement with the Association outside the regular assessment scheme, but stated that executing such an agreement can be complicated.

In response to a question, Mr. Stone stated that the assumption made in preparing the Replacement Plan was that 36 homes would be repaired per year over two years, but that in light of the higher estimate he received from the contractor, he would now roughly estimate it would take three years to complete repairs to all homes.

In response to a question, Mr. Stone stated that roofing repairs are not included in the estimates, and explained the background with regard to interpretation of the CC&Rs with regard to roof repair and replacement.

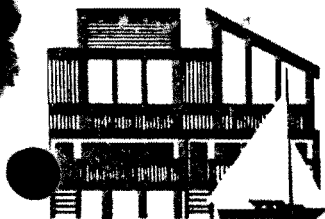
Jim Oliver stated that his reading of the CC&Rs indicates that performance by the Association of the type of home repair work included in the Replacement Plan is prohibited. Mr. Scholtes stated that, as an attorney specializing in this type of work, there is no question in his mind that the CC&Rs require that the subject work be done. Mr. Stone stated that the CC&Rs appear to authorize special assessments to defray the cost of any construction or reconstruction or expected repairs on capital improvements to common areas, and asked Mr. Scholtes whether state law overrides the CC&R provision. Mr. Scholtes stated that there is a perceived difference between the CC&Rs permits the Association to raise money to do and what the California legislature has said a homeowner association now must do. He stated that the California legislature has enacted in the last few years a number of laws which require homeowner associations to do certain things in respect to raising enough money to carry out the maintenance obligations that the association has, whether the subject of the maintenance is owned by the association or not. Mr. Scholtes stated that the legislature, through the California Civil Code, has said that the association is obligated under law to raise, through special and regular assessments, sufficient money to carry out the maintenance obligations set forth in the CC&Rs. He stated that the CC&Rs are very specific as to the maintenance obligations of the Association, including repair and replacement of roofs, siding, trim, etc.

Robert Partridge stated that through his reading of the CC&Rs it is very clear that the Board has the duty to protect the members' investment by exercising due care. He stated that due to the lack of maintenance over the past ten years, his home has suffered damage to floors due to water intrusion as a result of failure to seal around windows when painting was done.

Marshall Perry stated that he felt the solution was to approve an assessment of \$1,800 per home per year for four years, and that the Association's attorney indicated such an assessment can be accomplished.

MOTION: It was moved and seconded to approve a special assessment of \$7,200 per home payable in increments of \$150 per month over four years, commencing January 1, 1990, as long as each home is a member of the Association.

There was discussion of how to secure the assessment so that it could not be rescinded by a future Board and the legality of allowing the eleven Tideway homeowners to secede from the Association and not be held to paying the special assessment. In response to a question, Mr. Scholtes stated that the fundamental legal principle involved is the whether the Association has taken an action which is fair and reasonable, and stated that he felt the proposed motion represents the fairest and most reasonable way to address the situation.



Ballena Bay Townhouse Association

P.O. Box 512 • Alameda, Ca. 94501

Minutes of the Board Meeting 1/4/89

The meeting was held at 459 Cola Ballena and called to order by President Bob Smith at 7:45 pm. Attending were Board members: Bob Smith, Andy Hall, Marty Gross, Mike Edwards, and Ian Roger.

Other homeowners attending were:

| | | |
|----------------|----------------|-----------------|
| --Susan Gross | --Archie Stone | --Chuck Gallup |
| --Shep Gallup | --Ed Clancy | --Jackie Clancy |
| --Jim Neil | --Ruth Masonek | --Terry Klaus |
| --Royce Schulz | --John Buono | --Don Gutleben |
| --Jim McGrew | --Mili Moser | --Robin Sams |
| --John Sams | --Marcia Gerin | |

The minutes from the December 19th were approved.

President's report: Bob Smith noted that Mark Fong is now the attorney for the association.

Treasurer's report: Andy Hall reported that over one-half of the first quarter 89 dues have been collected. Joe West has been contacted for an estimate to file the '85, '86, '87 State taxes so we can get reinstated as a corporation. His estimate was \$ 250 per return maximum. Discussion of Federal and State tax issues followed. A motion was made that Andy Hall be authorized to contract with Joe West to fix the state tax problems. Motion carried 4 yes, 1 no. A more detailed monthly Treasurer's report was requested. Andy agreed to do this. A motion was made and passed to accept the Treasurer's report.

Committee reports:

Marty Gross, Chairman of the Committees reported that more volunteers for the Maintenance Committee were needed. A motion was made and passed to recirculate Archie Stone's suggested committee functions report to the committee chairpersons. Bob Smith agreed to make copies and distribute. Marty Gross directed each chairperson to develop a plan to present at the next Board meeting.

Architectural Committee: Ruth Masonek, Chairperson discussed clarification of the role of this committee. A high priority

Unfinished business:

Bob Smith reviewed a request from Mili Moser to install a 12 foot diameter TV satellite antenna dish on her roof. Discussion followed on a) the appearance of this particular dish and b) the precedence of allowing any dishes in the community (felt to be the most important issue). A vote was taken and the request was regretfully refused.

John Buono discussed the settlement agreement of his lawsuit against the Association. There was once again confusion on the actual document presented. It does not look like the one the Association Officers must sign. A motion was passed that Bob Smith will call Foley the Attorney and clarify. The document will be signed as soon as direction is received from the legal parties involved.

New Business:

Don Gutlaben submitted a plan to alter the docks in his group of homes so as to accommodate his boat and provide the other owners in that group with larger slips. The plan calls for no expense to the Association. The proposal was tabled and referred to the Marine Structures Committee and the Architecture committee for evaluation and discussion at the next Board meeting.

Andy Hall requested that the Board send a letter to Jerry Rasco to request removal of his 44 foot houseboat which is side-tied to Andy's dock. Andy was requested to send a letter to that effect to the Association. The Board will review the rules in the CC & Rs on this issue.

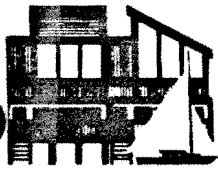
There was no other homeowners business. The next meeting was called for Wednesday, February 8th at 7:30 pm at the home of Bob Smith, 410 Tideway. All neighbors are invited to attend.

The meeting was adjourned at 11:15 pm.

Respectfully submitted:



Phil Braverman, Secretary



Ballena Bay Townhouse Association

P.O. Box 512 • Alameda, Ca. 94501

Minutes of the Board Meeting of 2/8/89 continued to 2/13/89

The meeting, held at 410 Tideway Drive, was called to order by President Bob Smith at 7:35. Attending were Board members Mike Edwards, Marty Gross, Andy Hall, Ian Roger, and Bob Smith.

Other homeowners attending were:

| | | |
|----------------|---------------|--------------|
| John Buono | Bob Partridge | Chuck Gallup |
| Jim McGrew | Bev Partridge | Shep Gallup |
| Phyllis McGrew | Jim Neil | Royce Schulz |

President's Report: Bob Smith read the minutes of the meeting of 1/4, which were approved with the following amendments:

Under Treasurer's Report: The third from last sentence is changed to read "A written monthly Treasurer's report was requested." instead of "A more detailed monthly report was requested."

Under New business: The second sentence is changed to read "The plan calls for no expense to other involved homeowners." instead of "The plan calls for no expense to the Association."

Treasurer's Report: Andy Hall advised that state tax returns for 1985, 1986, and 1987 have been prepared by accountant Joe West and submitted; West assures that, once these returns are processed by the State, the Association's corporate status should be restored without delay.

Hall submitted the Treasurer's report, which was reviewed and approved.

He also submitted for consideration a study entitled "1989 Proposed Income/Expense" which shows that, with the current level of annual assessment and expenditure the Association is operating at a slight loss, leaving nothing for adding to reserves nor for an improved level of maintenance.

Several purchases of more than \$50 have been made without purchase orders. The Board reiterated that from now on every purchase over \$50 shall be authorized by a purchase order signed by the Treasurer and one other board member.

Homeowners' Business:

Mosher Antenna: At the meeting of 1/4 the proposed installation of a 12-foot dish antenna on the Mosher roof at 427 Cola Ballena was disapproved by the Board. Mili Mosher has restudied the question and now proposes installation of a 6-foot dish antenna inside her patio area. It would be partially visible to the neighbors on each side but not from the street. The Board approved the installation, provided that the adjacent neighbors have no objection. The permission is subject to

revocation if the house is sold.

Gallup/Buono Lawsuit: Lawyers have still not come up with final language for a settlement, though recent correspondence indicates terms that are fully acceptable to the Association. The Board decided (voting 2 yes, 1 no, 2 abstentions) as follows: "If the insurance company is willing to settle as stipulated in the most recent correspondence between attorneys Chandler and Foley, the Board agrees." Ian Roger wished to go on record as believing that, in view of the provisions of Article VIII of the CC&R's, the Board lacks the jurisdiction to refuse this approval.

No Roof: Simon Ng's roof at 1233 Ballena Blvd. develops a substantial pool of water during rains, which remains long after the rain has stopped. The roof does not leak at present, but Ng is concerned for the long term. Jim Neil says that all the roofs in that group are subject to pooling. Bob Smith called Central Bay Roofing, who promised to inspect the situation, but have not yet done so. Bob Smith and Ian Roger will follow up.

Neil Remodeling: Jim Neil presented a well-documented request for Board approval of modifications to his master bedroom and adjacent sitting room. The Architecture Committee was not available for comment, but since the modifications are similar to changes which have been made on similar homes, and neighbors have stated in writing that they have no objections, the request was approved.

Gutleben Dock: At the Board meeting of 1/4 Don Gutleben requested permission to make major changes in the 8 docks from 1223 to 1237 Ballena Blvd. in order to accommodate his 58-foot boat.

Terry Klaus, chairman of the Marine Structures Committee, has studied the question and rendered a negative verbal report to Bob Smith.

Gutleben's immediate neighbors have expressed their written opposition, John Buono in a letter to the Board and Simon Ng in a letter to Andy Hall.

At this meeting affected neighbors Jim Neil and Archie Stone voiced their opposition, primarily because the extra length of the new angled docks would virtually eliminate the useful turning basin between 1215 and 1223 Ballena Blvd.

Despite a spirited defense of the Gutleben plan by Ian Roger, the Board denied Gutleben's request.

New Business: A start was made on review of the dues structure, but because of the lateness of the hour and the remaining length of the agenda, motion was made and carried to continue the meeting to 7:30 Monday 2/13 at 410 Tideway Drive. Royce Schulz and Archie Stone were requested to attend that meeting to present the CC&R's/Bylaws Committee report on the proposed CC&R amendment.

The meeting was temporarily adjourned at 9:40.

The continued meeting, held at 459 Cola Ballena, was called to order by President Bob Smith at 7:40 on Monday 13 February. Board members attending were Mike Edwards, Marty Gross, Andy Hall, Ian Roger, and Bob Smith. Other homeowners attending were Jim McGrew, Terry Klaus, Beverley Partridge, Susan Gross, and Jean Hall.

Finance

Jean Hall presented a budget for 1989 which does not reflect change in dues nor increase in quality of maintenance. The present dues level will result in about a break even budget, with little or no contribution to reserves, even if the level of maintenance of homes and the common area is kept at the present standard. Jean stated that she presents this budget as provisional pending Board clarification on maintenance standards and dues levels. The budget was approved on that basis as a temporary measure, pending further action which may follow the Financial Planning Meeting discussed below.

Archie Stone presented an analysis, prepared at the request of Treasurer Andy Hall, of the status of reserves for repair and replacement of common area facilities. Cost and useful life data for facilities were taken from a study presented by the Board in 1987. The analysis shows that, to develop a sinking fund with full provision for replacement of all facilities at the end of their useful lives, contributions to the fund should have been at the level of about \$38 per month per home throughout the life of the development, and reserves should now total \$825,000. Actual contributions have been about \$10 per month in recent years, and reserves are \$122,000.

State law requires that a Board report to homeowners annually on:

- Total cash reserves currently set aside for future repair and replacement
- Estimated remaining life and method of funding to defray cost of such repair and replacement.

There was discussion of whether this law requires that reserves be fully funded. If so, the Association has a major problem that must be faced.

Decision was reached to convene a special Financial Planning Meeting of the Board on Tuesday 21 February, at which Association attorney Mark Fong and a CPA of his choosing and confidence will be asked to address the Board on this subject, to clarify the law and, if a problem exists, to assist the Board in developing a legally defensible approach to the problem.

This will be a working session of the Board, not open to the public; the results will be summarized and distributed to all homeowners.

Landscaping

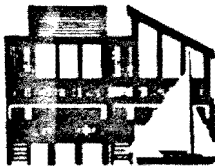
Susan Gross, Chair of the Landscaping Committee, reported on interviews with three landscaping contractors. She walked each of them through the neighborhoods and secured price proposals for an initial general cleanup and for on-going maintenance. She recommended that a contract be placed with Sundance Landscaping, at a price of \$6000 for initial cleanup and \$2000 per month for maintenance.

The recommendation was approved. Contract to be for 1 year starting March 1st, revocable on 30 days notice if work is unsatisfactory. Performance will be reviewed at the end of 3 months.

The meeting was adjourned at 9:45.



Archie Stone, Acting Secretary



**Ballena Bay
Townhouse
Association**

P.O. Box 512 • Alameda, Ca. 94501

**Minutes of Special Board Meeting
21 February 1989**

This was a special working session of the board, informal in nature (no voting), called to hear accountant's and lawyer's opinions and advice on the Board's responsibility for maintenance of financial reserves for replacement of common area facilities.

Invited speakers were:

David Levy of Levy and Company, Certified Public Accounts, Oakland
Michael Scholte of Chatsky, Fong and Fong, Attorneys at Law, Oakland

Both firms are specialized in the affairs of homeowner associations in their respective fields.

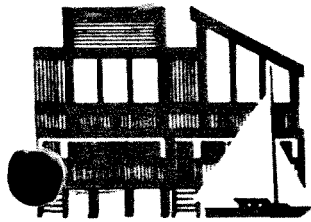
Unfortunately schedule conflicts required Mr. Levy to arrive early and leave early, Mr. Scholte to arrive late. There was substantial discussion with each but not at the same time. They were in complete agreement as to the advice they gave, summarized below.

The law which governs homeowner associations is the Davis-Stirling Common Interest Development Act, 1985. The Board has copies of the Act. The portions that specifically relate to the subject matter of this meeting are:

- §1365. Financial statements by associations
- §1365.5. Board of directors; duties
- §1366. Levy of assessments; limitation on increases; delinquent assessments; interest

In regard to reserves for replacement of facilities, the law requires, under §1365, that the Board report to the owners, prior to the beginning of each fiscal year:

- "(2) The identification of the total cash reserves set aside.
- "(3) The identification of the remaining useful life of, and the methods of funding used to defray the future repair, replacement, or additions to, those major components which the association is obligated to maintain.
- "4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement or additions to those major components that the association is obligated to maintain."



Ballena Bay Townhouse Association

P.O. Box 512 • Alameda, Ca. 94501

Minutes of Emergency Meeting
Board of Directors
March 19th 1989

The meeting was called to order by the President at 6.40 p.m. Attending at the Smith residence were Bob Smith, Andy Hall, Marty Gross, Ian Roger, Mike Edwards, and Archie Stone.

Minutes of Previous Meeting. The President read the minutes of the Special Board Meeting held on the 16th of March 1989, which had been prepared by Archie Stone. After reading these minutes The President made motion that they be accepted as read, Ian Roger stated that the minutes did not reflect what had actually been said at the meeting, particularly in the opening five paragraphs, considerable discussion ensued and President Smith stated that Archie Stone had in fact called the association attorney and had incorporated his statements into the minutes. Ian Roger said that minutes should reflect what was actually said and done, not something which had been learned later from someone who had not attended the meeting. He stated that he could not vote to approve minutes unless that were so. The president reminded the meeting that members could only attend for a limited period due to other commitments. Roger then moved that the minutes be accepted the motion passed unanimously.

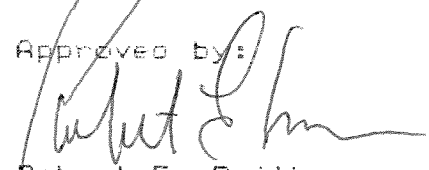
Issues Arising Since The Last Meeting. Most members reported that they had been subpoenaed for deposition by Donald Gutleben's attorney. President Smith stated that he thought that the service of the subpoenas was probably not legal or binding. Ian Roger said that he had asked the president to call this emergency meeting, to discover whether there was some way that the association could settle the law suit as he was worried that the association might not prevail particularly because of the inaccuracies that he saw in the court declarations. He read from the declaration of Andy Hall and pointed out some of the problems as he saw them. The president took the floor and said that he thought Roger was referring to his statement. He told the members that he had told the attorney that he (the attorney) had made some serious mistakes in his (Smith's) declaration. That he had signed the declaration and the attorney had promised to make the changes prior to filing the declaration. Roger again raised the question of inaccuracies in the declarations of the members in support of the action. The association might be in jeopardy since he feared because of these inaccuracies we might lose the action. President Smith did not share Roger's opinion. He said that there were very few law suits that are not amended prior to the final document going in front of the judge. Roger asked how we could amend the declarations that had been made in support of the issuance of the T.R.O. and the preliminary injunction.

The president pointed out that, the time that he had asked members to attend the meeting for, had more than passed and made motion that the meeting adjourn. The motion was seconded and carried. The meeting adjourned at 7.45pm.

Submitted by:

Ian Roger.
Acting Secretary

Approved by:


Robert E. Smith,
President.



**Ballena Bay
Townhouse
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P.O. Box 512 • Alameda, Ca. 94501

**MINUTES OF THE SPECIAL BOARD MEETING
of
16 MARCH 1989**

President Bob Smith called this meeting for the sole purpose of discussion and decision-making with respect to the Gutleben dock case. The meeting was called to order at 8:05.

There was general discussion of the development of this problem and the present situation:

On 2 March the Superior Court of Alameda County issued, at the Association's request, a temporary restraining order calling a halt to Mr. Gutleben's dock modifications and setting 14 March as the date for a court hearing.

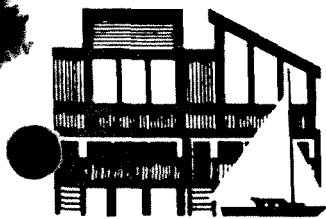
On 14 March the court issued a preliminary injunction pending the outcome of the Association's lawsuit against Gutleben. As a basis for his injunction the judge:

- found invalid Gutleben's claim that his application to modify his docks was automatically approved because the Association did not approve it within 30 days.
- found that Gutleben's application and plans did not conform to the minimum requirements stated in the CC&Rs.

The Association, as plaintiff in its intended lawsuit, is required by law to post a bond which the judge set at \$15,000.

After a thorough discussion of all aspects of the problem two motions were made, seconded, and passed:

1. The Association will offer to drop its lawsuit if Mr. Gutleben will:
 - Immediately restore the docks to their original condition at his own expense.



Ballena Bay Townhouse Association

P.O. Box 512 • Alameda. Ca. 94501

A closed meeting of the Board was held on 2/27. The original purpose was to discuss the proposed CC & R amendment. Attending were: Ian Roger, Mike Edwards, Marty Gross, and Andy Hall. The meeting was chaired by Vice President, Marty Gross as Bob Smith was ill and did not arrive until late in the meeting.

Since the full Board would not be present it was recommended by the Chairman of the CC & Rs Committee, Archie Stone, that discussion of the amendment to the CC & R's should be tabled until the next general Board meeting. Therefore Marty Gross removed the discussion of the CC & R's from the agenda. Ian Roger moved to discuss the issue anyway, and passed out a counter proposal to the CC & R committees work. (Mike Edwards was the only one at the meeting who had previously seen this). A vote on Ian's motion to discuss the issues was taken 2 for, 2 against. Did not pass.

The main differences in the proposals seem to be that the Committee's work as developed so far, makes it clear that the Association accept responsibility for the roofs and sidings. Ian's proposal states that the Association has no responsibility for the roofs and siding.

Mike Edwards moved to submit both Ian's and the Committee's proposals to the membership. Mike's motion was amended to "identify differences between the two CC & R amendments leaving intact all the wording submitted by the committee --except wording which may modify the committees report" this work to be performed by the committee and submitted back to the board.

Andy Hall moved that David Levy CPA do the taxes (due 3/15). Ian seconded. Motion passed.

Marty brought up the question of employee status. Stated as an attempt to bring up discussion of the new landscaping contract, Ian made a motion to "approve the use of Sundance as our landscape contractors" a motion previously approved by the Board at a prior meetings. Mike Edwards seconded. During the ensuing discussion, Ian questioned Marty Gross about possible involvement of his family in Sundance. Marty vigorously denied any involvement and questioned Ian on his source of information. Ian declined to reveal his source. Heated discussion followed and Bob Smith was called from a sick bed to break a tie vote. Motion to approve the use of Sundance carried.

Ian indicated he had not yet given termination notice to

Gutleben dock--background information

At the Jan 4 Board meeting Don Gutleben submitted a request to modify the eight 30 foot docks from 1223 to 1237 Ballena Blvd as follows:

- o place them on an angle
- o remove the headfloat from his slip
- o widen his dock to accommodate his approximately 58 foot boat

The request was tabled and referred to the Marine Structures Committee for study.

At the following Board meeting on Feb 8th, the Board, based on objections from Gutleben's immediately adjacent neighbors, input from the Chairman of the Marine Structures Committee, and objections voiced by attendees at the meeting, voted to deny Mr. Gutleben's request.

Members of the Board received a letter from Mr. Gutleben's attorney dated 2/15/89 quoting our CC & R's and stating that since the Board's negative decision was not taken within exactly 30 days of Gutleben's request, the request was automatically approved--and that Gutleben would proceed with his plan.

The CC & R citation in question, Article VIII - Architectural Control, references the Board's right to control the appearance of homeowner modifications to their own property for example: "building, fence, wall,...painting, finishing, exterior additions,...harmony of external design; color and location in relation to surrounding structures..." In the event said Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with."

As the proposed modification affects the Association owned common area, ie., the docks, Bob Smith immediately turned the matter over to the Association attorney with instructions to take appropriate action.

On approximately 22 February, without permission or permit, Mr. Gutleben began modification of the docks in question. Up to the date of this letter it was reported that he had removed the dock finger that separates his from Mr. Buono's slip, removed the head float at the head of his slip, and added an inclined dock finger which will form a divider between his and Buono's slips.

BALLENA BAY HOMEOWNERS ASSOCIATION
BOARD OF DIRECTORS MEETING OF APRIL 4, 1989

MINUTES

CALL TO ORDER/AGENDA REVIEW

The meeting was called to order by President Bob Smith at 7:40 p.m.

ATTENDANCE

In attendance were Bob Smith, Phil Braverman, Marty Gross, Andy Hall, Ian Roger and Mike Edwards. Also present were Rich Noble of Noble Community Management and Mike Scholtez of Chatsky, Fong and Fong, attorneys for the association.

APPROVAL OF MINUTES

1. Meeting of March 7, 1989

Recording Secretary Phil Braverman read the minutes of the March 7, 1989 Board of Directors meeting as revised on March 11, 1989.

Ian Roger expressed concerns regarding distribution of unapproved minutes, destruction of prior minutes, lack of clarity as to whether budget was approved, and status of committee to solicit bids from professional property managers. Mike Scholtez provided information regarding what constitutes proper minutes and common practice regarding their distribution. Mr. Roger and Captain Edward expressed their intent not to pay for Mr. Scholtez' attendance at the meeting.

MOTION: It was moved, seconded and passed to approve the minutes of the March 7, 1989 Board of Directors meeting as submitted (3/2).

2. Minutes of the Emergency Board Meeting of March 19, 1989

Recording Secretary Phil Braverman read the minutes of the Emergency Board Meeting of March 19, 1989.

MOTION: It was moved, seconded and passed to approve the minutes of the Special Board meeting as submitted (unanimous).

PRESIDENT'S REPORT

1. Selection of Management Firm

President Smith reported that a committee had researched management firms, sending requests for bids to 7 firms. The committee interviewed 3 of the 4 which responded, and unanimously recommended selection of Noble Community Management to the President, and the Association has entered into a contract with Noble Community Management.

2. Corporate Status

President Smith reported receipt of a Certificate of Revivor on March 24, 1989 which indicates that the Association has retained its status as a corporation.

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TREASURER'S REPORT

Treasurer Andy Hall explained that some of the receipts noted on the Actual Expenditures vs. Budget for the Quarter Ended March 31, 1989 represent prepayments. He reported that the interest on the certificate of deposit is paid every six months, so it is not included in the interest account as of the current statement, resulting in the interest to date being under budget. Mr. Hall also reported that the \$17.00 shown under other income reflects a refund from the IRS. Regarding income taxes and penalties, Mr. Hall explained late filings of Form 941 for June 30, 1988 incurred a penalty of \$147.20, and he noted he received in the mail from IRS a penalty of \$700.70 for late filing for the period ending December 31, 1987. Penalties assessed to date covering the past three years or so total around \$1,000.00. (Mr. Roger noted that a refund of \$700.00 had been received, resulting in the association being down \$300.00 net.) Mr. Hall further that he had just received the Forms DE43 for 1987, and will file them within the next week or two.

We need to address the issue of whether we should have an audit or a review of the books for 1988. Mr. Hall distributed copies of a letter from Levy, the association's accountant, who will be doing the association's 1988 federal and state tax returns. Levy quoted a cost of \$1,350 - \$1,450 for a complete audit and \$750 - \$850 for a review. The review includes some analysis, including review of bank statements and materials the association provides. An audit incorporates a review of the above materials, plus review of cancelled checks, invoices, obtain verification of bank balances and tax status. Since the Association has not been audited for several years, Mr. Hall recommended that an audit be performed.

MOTION: It was moved, seconded and passed that the Association retain the firm of Levy & Company to perform a complete audit of the books for the year 1988 (3/2).

Mr. Roger related that, in his experience, the IRS penalties will be rescinded.

MOTION: It was moved, seconded and passed to approve the Treasurer's report. (unanimous)

PRESENTATION BY RICH NOBLE, PRESIDENT OF NOBLE COMMUNITY MANAGEMENT

Rich Noble detailed Noble Community Management's 19 years of experience in management of homeowners' associations in Alameda, Santa Clara and Contra Costa Counties. He explained the company's philosophy of assisting homeowners' associations to function as mini-governments by keeping homeowners informed of board actions, and encouraging their participation in election of board members and serving on committees. He applauded the Association's strides in the last few months in retaining a law firm and accounting firm specializing in assisting homeowners' associations.

In response to questions from members, Mr. Noble explained that he used independent contractors to perform both routine and emergency maintenance. Mr. Noble explained the process for roof repairs and replacement based on establishment and review of reserve accounts, annual inspections and evaluations, and recommendations to the Board of appropriate action.

In response to another question from a member, Mr. Noble agreed to look into consolidation of the bonding on prior roof repairs, suggesting a complete inspection

be performed of all roofs within the Association. Mr. Noble explained that Noble Community Management would oversee performance of any contract for on-site services entered into by the Association. Mr. Noble also reported that Noble Community Management has reduced its fees by \$1.00 per unit to accommodate the Association's practice of billing dues quarterly. Mr. Noble explained the difference between condominiums and townhouses, and cited the townhouse associations managed by Noble Community Management.

Mr. Noble explained the process for notifying residents of planned painting and other maintenance activities.

In response to a question regarding changes in dues structure in the middle of a budget year, Mr. Noble indicated that the Board could make a determination of need for increase at any time.

Mr. Scholetz explained the difference between a condominium and planned unit development. Regarding the Davis-Sterling Common Interest Development Act of 1986, Mr. Scholetz explained that the Act provides that the Association shall levy regular and special assessments sufficient to perform its obligation under the governing documents and the civil code. The Board is breaking the law if it does not impose sufficient assessments to take care of the basic maintenance needs which are set out in its declaration. There is also a requirement that prudent reserves be maintained. The State of California law he cited governs over private law, outweighing and superseding anything to the contrary in the declaration. Therefore, the Board does not have a choice in the matter, but must levy appropriate assessments to meet its maintenance obligations, relying upon the opinion of experts to determine needed reserves.

Board Member Ian Roger asked whether the Board is authorized to increase assessments mid-year. Mr. Scholetz stated that Civil Code 1366 explicitly provides that the Association shall levy sufficient assessments to carry out its duties. If a Board of Directors determines during the course of the year that assessments are insufficient to cover operating expenses, it would be appropriate to alter the budget. There is nothing that says the Board can't.

In response to another question, Mr. Scholetz noted that the declaration attempts to set out what are the maintenance obligations of the Association. Another member asked whether the Board could eliminate an obligation that had not been met after the fact. Mr. Scholetz explained that the declaration can be amended.

RESIDENT'S TIME

A resident noted that the Board had taken the responsibility for managing the affairs of the Association since 1966. He expressed his feeling that the Board should have resigned rather than hiring a professional manager. He said that the current Board had indicated, at the time of their election, that they did not intend to hire a professional manager.

Another resident asked of Manager Rich Noble whether he was hired to work with the Board of Directors, and he replied in the affirmative.

WRITTEN CORRESPONDENCE

1. A letter from Mrs. Tonningsen at 1243 Ballena listing repairs needed at her residence.
2. A letter from Nola DeMeuse forwarding an assessment from contractor Jeffrey S. Jackson regarding work needing attention at her residence and requesting clarification as to which items would be repaired by the Association.
3. A letter from Mr. and Mrs. G. Holman at 1213 Ballena Boulevard noting water stains on the ceiling of the master bedroom of their residence, and requesting inspection and repair if necessary.

The correspondence was referred to Mr. Noble for investigation and a report to the Board at the next meeting.

COMMITTEE REPORTS

1. CC&R's - Archie Stone

Mr. Stone noted that the CC&R committee is in the process of obtaining homeowners' signatures on the amendment, and that 52% have signed. It is expected that all the signatures will be obtained by May 1, 1989.

2. Communications - Phil Braverman

Mr. Braverman reported that he and Robin are working on a community newsletter.

3. (Committee?) - Ian Roger

Mr. Roger read a letter from Dr. Vickery regarding the second quarter assessment, questioning whether the Board proceeded properly, and requesting that \$285 of his assessment be applied toward the second quarter and the other \$75 be credited toward the next quarter until the requirements of the CC&R's have been satisfied.

4. Marine Structures - Jim Neal

Andy Hall read a report from Mr. Neal, including a copy of a bid from Scott at Tideline Piling regarding the dock and piling at 312 Tideway, headport (?) piling at 328 Tideway, the double landing piling at 406 and 404 Tideway. The report noted that all four are critical in condition and in need of replacement. The estimated total cost for the repairs was \$2,600, and one-third of the total cost (\$365.00) was requested in order to commence the project, with the balance to be paid upon completion.

MOTION: It was moved, seconded and passed to approve the bid from Tideline to repair the four pilings (unanimous).

5. Landscape Committee - Susan Gross

Marty Gross read a letter from Mrs. Gross reporting on the progress of the Landscape Committee:

Mrs. Gross detailed the process she followed in requesting and considering bids for the work, noting that she presented three bids, two written and one verbal. She recommended that the Board accept the proposal of the middle bidder, Sundance Landscaping, noting for the record that no member of her or her husband's family had ever worked for or been a principal with Sundance Landscaping. Mrs. Gross reported on the progress of the cleanup work taking place on the grounds, and noted that she had received numerous calls from homeowners saying how happy they are with Sundance's work. (A copy of Mrs. Hall's report is attached to the minutes.)

Mr. Gross explained that the original bid from Sundance had been \$12,000 for cleanup and maintenance, but that only \$6,000 had been approved. A review will take place after the \$6,000 worth of work has been performed.

Mr. Roger noted that 16 trees were cut down and he considers this a disgrace. He then read a letter from Dr. Vickery expressing concerns regarding the work done on the planted areas on Ballena Boulevard.

MOTION: It was moved, seconded and passed to accept the committee reports as read (unanimous).

NEW BUSINESS

1. Status of Association Employee

President Smith reported that, since Noble Community Management will be handling contracting all work done at the Association, it did not seem appropriate to retain a full-time employee on the payroll.

MOTION: It was moved, seconded and passed to terminate the last Association employee with two weeks severance as of close of business on Wednesday, March 5, 1989.(3/2)

Mr. Noble would be willing to talk to the employee and evaluate the possibility of making use of his services through Noble Community Management.

OLD BUSINESS

1. Status of Buono v. Gallup Lawsuit

President Smith reported that he had spoken with Travelers Insurance and received correspondence from the attorney for Buono and Mr. ~~Gil~~ ^{Bill} Foley who was handling the matter prior to installation of the current Board. It was President Smith's opinion that the matter was close to settlement. The Board will announce the outcome to the membership once the matter is settled.

2. Status of Don Gutleben Dock Issue

President Smith asked Mike Scholetz to bring the members up to date on the status of this issue. Mr. Scholetz explained that Mr. Gutleben had made application to the Board on January 4, 1989 for alteration to the dock system in front of his and other homes. The Association felt that Mr. Gutleben should not continue the work, and directed Mr. Scholetz to seek judicial

relief in the Superior Court of Alameda County. Mr. Scholetz obtained a temporary restraining order, which is a short-term injunction, on March 2, 1989 and came back with a fuller hearing on the merits on March 14, 1989. Mr. Gutleben's attorney presented a number of documents and the association did the same. The presiding judge was not impressed with Mr. Gutleben's case, and granted the preliminary injunction ordering Mr. Gutleben to immediately cease and desist from continuing work on the dock system. The injunction will remain in place until the ultimate trial of the matter, which may occur later this year. Mr. Scholetz further explained that, whenever a preliminary injunction is issued, there must be a bond placed by the person obtaining the injunction. The purpose of the bond is to ensure a fund of money is available if, at the eventual trial the injunction proves to have been inadvertently granted, the enjoined party files for damages. Mr. Scholetz explained the Association is a corporation, run by a Board of Directors who are invested with the executive power by the State of California, corporate law and its governing documents to make decisions for the Association. He further explained that extensive efforts to resolve the dispute were unsuccessful, and that legal action was taken only after they proved fruitless.

Mr. Scholetz suggested that Board keep in mind that the personal safety is in their hands in respect to the common areas. There is what he believes is a dangerous condition in the area of Mr. Gutleben's dock. If personal injury or property damage should result due to the condition of the docks, those Board members who were aware of that condition and voted not to do anything about it could be exposing themselves to suit for liability from the injured party. There is precedent for this type of action.

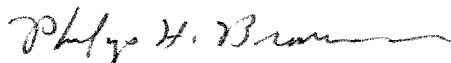
MOTION: It was moved and seconded to repair the dock and bill Mr. Gutleben for the repairs. Ayes: Gross, Hall and Smith. Nays: Edwards, Roger. Motion passed 3/2.

3. Setting of Date for Next Meeting

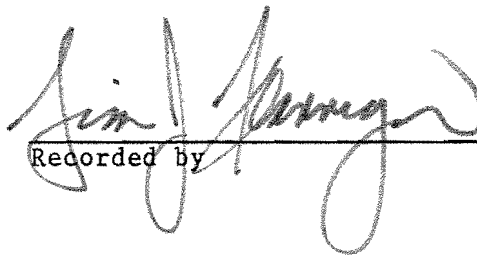
It was agreed that the next meeting will be held on Tuesday, May 2, 1989 at 7:30 p.m. at President Smith's residence.

ADJOURNMENT

There being no further business before the Board, the meeting was adjourned at 10:00 p.m.



Secretary


Recorded by

BALLENA BAY TOWNHOUSE ASSOCIATION
BOARD OF DIRECTORS MEETING OF MAY 2, 1989

MINUTES

CALL TO ORDER/AGENDA REVIEW

The meeting was called to order by President Bob Smith at 7:40 p.m.

ATTENDANCE

In attendance were Bob Smith, Phil Braverman, Marty Gross, Andy Hall and Ian Roger. Captain Edwards was absent. Also present was Rich Noble of Noble Community Management. Homeowners present were Joan Albin, Mel Schwartz, Mrs. Walker, Jim Oliver, Ed Foster, Archie and Ida Stone, Jim Neal and Charlie Gallup. Tom Sullivan was present, representing homeowner Jerry Rasco.

APPROVAL OF MINUTES

Board members noted several corrections.

MOTION: It was moved, seconded and passed to accept the minutes of the April 4, 1989 Board meeting as corrected (unanimous).

PRESIDENT'S REPORT

1. Minutes - President Smith noted that the minutes are now distributed as "Draft" minutes pending approval by the Board.
2. Landscaping - President Smith reported that there has been a lot of activity in the landscaping. The areas that look rough are a result of removing dead vegetation to enable new growth, and that some new growth is already evident.
3. New Members - President Smith noted new members Ed Foster, Jack and Page Likkens, Peter Rothschild, and Audrey and James Erlich. He encouraged those present to make an effort to meet the new members and make them feel welcome.

TREASURER'S REPORT

Andy Hall reported that, on the Income and Expense Statement under Income, Interest should reflect \$51.16 for April and \$1,064.97 Year to Date, and that the category entitled "Laundry and Miscellaneous" should read "Miscellaneous", with a balance of zero for April and \$17.00 Year to Date. He noted that the total income represents the quarter's income, and next month the income will be substantially less.

On the Cash Flow Statement, Mr. Hall updated the delinquent accounts to reflect a current balance due of \$7,233.57.

Mr. Hall noted that copies of the Treasurer's Report are available to any member during normal business hours. He also reported that he will meet with David Levy tomorrow to commence the audit.

MOTION: It was moved, seconded and passed that the Treasurer provide extra copies of the Treasurer's Report for all those attending the meetings.

Mr. Hall reported that the Association has been levied an additional \$332 in penalties on taxes for the last two quarters of 1986, all of 1987 and the first quarter of 1988. Considering the \$1,000 in penalties paid last month and the \$700 refund from the IRS for an overpayment for a prior period, net penalties are approximately \$1,300. Mr. Roger suggested that the treasurer challenge the IRS to prove any penalties owed.

There was discussion regarding the 10% penalty on late dues. Mr. Noble and Mr. Hall will meet to develop a delinquency policy in conformance with state law for presentation at the next Board meeting.

MOTION: It was moved, seconded and passed to accept the Treasurer's Report (unanimous).

RESIDENTS' TIME

Ed Foster presented a letter to the Board, and asked when the irrigation system would be repaired. Mr. Noble responded that he is recommending to the Board that the problems be identified throughout the development and the system be repaired as soon as possible. President Smith added that the project should move ahead in about two weeks.

Mel Schwartz asked when landscaping would be done at Cola Ballena, and Mrs. Gross responded that the landscapers indicated it would be done next week. Mr. Schwartz also asked whether the Association's accounting is on a cash or accrual basis. Mr. Noble explained that the statements are prepared on a cash basis, but that the Association's accounting is done on a modified accrual basis. Mr. Schwartz also offered to share his investment expertise with the treasurer in maximizing yield on the Association's cash accounts.

Tom Sullivan presented a letter from homeowner Jerry Rasco.

MOTION: It was moved, seconded and passed that the Board accept the letter as written correspondence to be addressed under Written Correspondence at the next Board meeting. Roll Call Vote: Ayes - Hall, Gross, Smith; Naes - Roger.

WRITTEN CORRESPONDENCE

1. Letter from Mrs. DeMuse Re: Repairs to her Residence

The letter from Mrs. DeMuse questions which of the repairs she notes are the responsibility of the Board to repair.

Mr. Hall expressed concern regarding Mrs. DeMuse's second ramp down to the head float, that the ramp would provide unrestricted access from the street to the dock. He felt it would be more appropriate to remove than repair the ramp.

Mr. Noble reported that his investigation reveals that some of the damage in the building may be the result of lack of maintenance (waterproofing) to the building, and therefore may be the responsibility of the Association. Mr. Noble will set up a time for the Board to tour the site this weekend.

MOTION: It was moved, seconded and passed to table action on Mrs. DeMuse's letter to the next Board meeting (unanimous).

2. Letters from Homeowners Aronoff, Rasco and Vickery

Mr. Noble reported that the letters referred to comments regarding the increase in assessments. Mr. Noble will address them under the Manager's Report.

MANAGER'S REPORT

1. Increase in Assessment - Mr. Noble explained that homeowners Aronoff, Oliver, Rasco and Vickery questioned the Board's power to increase assessments. He reminded the Board that the Association's attorney at the previous Board meeting had cited the legal grounds for increasing assessments for emergency situations. Mr. Noble felt that advice from counsel would be needed regarding the Board's response to the letters. Based upon his experience with other homeowners associations, it was Mr. Noble's opinion that the current assessment does not meet the Association's needs. Mr. Noble requested authorization to consult with the Association's attorney regarding proper interpretation of the Board's actions. If the Board's actions were not within its power, he would report at the next Board meeting as to what procedures would need to be followed in order to resolve the situation.

MOTION: It was moved, seconded and passed to authorize the Manager to consult with the Association's attorney regarding the assessment increase and report back to the Board at its next meeting.

2. Irrigation System - Mr. Noble reported that his inspection of the irrigation system revealed that valves have not been marked for proper locations. His inspection with Sundance Landscaping further revealed the system has electrical control valves, but most are inoperable in the automatic mode or at all. He noted that most, if not all, of the controllers would not pass City of Alameda code for proper wiring installation. Mr. Noble noted that most of the remaining valves appear to be manually operated, which are also in a state of general disrepair. In light of the fact that no accurate landscape plans exist, Mr. Noble had Mark Cunha of Cunha Irrigation submit a proposal for development of an accurate plan so that the irrigation system can be maintained and operated properly, and to facilitate development of a replacement reserve schedule. He detailed the proposal from Cunha Irrigation.
3. Hazards - Mr. Noble noted that, adjacent to 1237 Ballena Boulevard there is a pile of landscape and other debris which has been present for a considerable amount of time, and recommended that it be removed as it is a fire hazard. He also recommended that many of the large pine trees should be properly pruned or thinned, as they are causing asphalt or concrete damage to the common areas, and in some cases to private yards or walks. Mr. Noble suggested that a review of tree care be undertaken by the landscape committee and/or a qualified professional to determine which trees require topping, thinning, pruning, removal, root pruning, or installation of root barriers.
4. United Cable - Mr. Noble noted that a local distribution unit (LDU) which was part of the original cable system, which has since been abandoned and modified to another system. He noted that the LDU should have been removed at that time, and that he has requested United Cable remove it.

5. Restoration of the Gutleben Dock - Mr. Noble reported that he met with four contractors regarding restoration of the dock to its original configuration. He has received an estimates from Tim McNeil at Nicely Done quoting a range of \$1,000 to \$1,500 for the work, depending upon the difficulty of removing rusty bolts, etc., and from Scott at Tidelines in the amount of \$1,200. Mr. Noble noted that Scott later modified his quote to \$1,300.
6. Rules and Statues Governing Homeowners Associations - Mr. Noble called the Board's attention to information he received at the Community Association Manager's Conference relative to administration of homeowners associations which he had attached to their materials. He noted that included were statutes relative to directors' liability, financial statements, amendments of declarations (CC&Rs), local building department records, small claims court jurisdictions, health and safety codes, bad check laws, display of signs, vexatious litigation, exclusive use of common areas, etc. Mr. Noble stated that he would be issuing updates to the Board on a regular basis.
7. Architectural Guidelines - Mr. Noble reported that his inspection of the property to date reveals many additions or modifications of buildings which appear to be unrelated to the original construction. He requested copies of the records which would identify such additions or modifications and whether they have been approved by the Board in the past. He suggested that, if no such record exists, the architectural committee develop a record of all such additions or modifications so that a determination can be made as to repair and maintenance responsibilities. Mr. Noble's inspection to date, although limited primarily to Ballena Boulevard, revealed many repairs and maintenance requirements. He noted a deteriorated utility door, deteriorated exterior siding panels, ramp rails, ramp deck, supports, etc., and recommended that a complete inspection be undertaken by an appropriate qualified professional to determine the scope of required repairs and maintenance. Mr. Noble further suggested that a questionnaire be sent to each member asking them to note what maintenance problems they have experienced or have outstanding at this time.

Mr. Hall asked about a fence between 415 and 417 Cola Ballena which has been extended around a cable LDU to the point that it encroaches into the common area. He requested Mr. Noble investigate and report back to the Board.

MOTION: It was moved, seconded and passed to approve the Manager's Report.

COMMITTEE REPORTS

1. Marine Structures - Jim Neal reported that the committee had, with Board approval, commenced emergency repairs to a dock piling, a head float piling, and two landing pilings. He also noted that a survey of the docks at low tide was 90% complete, and that the pilings are deteriorating rapidly although most of the docks are in good repair. Mr. Neal further reported that the committee had the channel sounded for depth, and located a diver to inspect the pilings underneath the water, and it appears that dredging will almost certainly be required. Mr. Neal further reported that the committee will meet again prior to the next Board meeting, and present a full report and recommendation with sketches at the next Board meeting.

President Smith noted that Mrs. Aicampo has requested removal of a couple of floats. Mr. Neal responded that the float can be moved away from her dock and tie them up elsewhere. He noted that the committee has inventoried all the floats that are extra and will recommend to the Board that they be removed.

MOTION: It was moved, seconded and passed to accept the report of the Marine Structures Committee.

2. Landscape Committee - Susan Gross reported that the Al Getz Memorial Tree, a flowering crabapple, has been planted in the common area to the left, as one proceeds on Ballena Boulevard into the development, just before the bridge.

Mrs. Gross reported that the only remaining area in need of major pruning is Cola Ballena, and the other areas still need fine tuning. She explained that radical pruning has been done to make room for future growth. Although the initial pruning may appear alarming, the end result is attractive. Overall, she felt that the pruning had been carried out to her satisfaction.

Mrs. Gross explained that cleanup during the current landscaping work never included removal of the large areas of debris, but referred to the debris resulting from current pruning. She noted that many years' accumulation of debris is piled up in the common area, and recommended that its removal be put out to bid.

Mrs. Gross reported that the steps following the pruning are fertilization, pest control and watering. She expressed her concern that the irrigation system be brought up to code. Mrs. Gross noted that the lawn at 1201 has been very nicely landscaped and is now assumed to be common area, and felt that the Association should maintain it. She explained that most vegetation remaining on the site is drought tolerant, but that even drought tolerant plants need watering, and the sandy soil present at the site does not retain water. It is therefore imperative that watering take place to protect the Association's investment in the current landscaping work.

MOTION: It was moved, seconded and passed to accept the proposal from Cunha Irrigation for mapping the irrigation system.

(Board Member Ian Roger excused himself and left at this time.)

3. CC&Rs - Archie Stone reported that about 56% of the homeowners have voted in favor of the proposed CC&R amendment. No action by the Board is required pending further canvassing of votes during the next month.

MOTION: It was moved, seconded and passed to accept the report of CC&Rs committee.

NEW BUSINESS

1. Foley McIntosh Bill for Legal Services

President Smith explained that Mr. Foley was previously the Association's attorney, and represented Messrs. Roger, Edwards, McHugh and Hopkins in their suit against Andy Hall, Bob Smith, Marty Gross and the Ballena Bay Townhouse Association seeking a new election. President Smith noted that when Mr. Foley first billed the Association, the Board returned it to the Association's present

attorney with advice that the Association was not interested in paying it. President Smith reported that Mr. Foley has now filed a motion in Superior Court, asking the Court to rule on whether the bill is legitimate. President Smith stated that the current Association attorney has asked the Board to make a final statement as to their intent to pay the bill.

MOTION: It was moved, seconded and passed that the Association retain legal counsel to oppose payment of the bill from Mr. Foley (unanimous).

OLD BUSINESS

1. Status of Gallup/Buono vs. Ballena Bay Townhouse Association

President Smith asked Board members to review the proposed settlement agreement included in their meeting materials.

MOTION: It was moved, seconded and passed to authorize President Smith to sign the settlement proposal as submitted (unanimous).

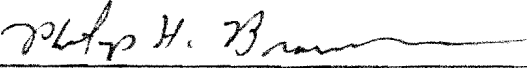
2. Status of Don Gutleben Dock Issue

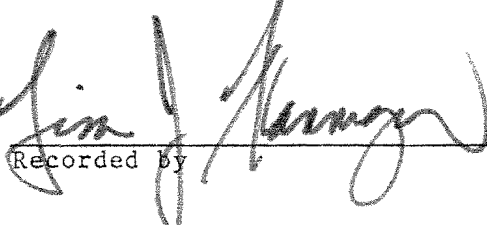
President Smith reminded Board members that they had voted at the previous Board meeting to restore the dock to its original condition and bill Mr. Gutleben for the cost. Mr. Noble reported that Tim McNeil of Nicely Done estimated a cost of \$1,000 to \$1,500 for completion of the dock repair project, and Scott of Tideline estimated \$1,300 to \$1,500.

MOTION: It was moved, seconded and passed to accept the bid from Tim McNeil of Nicely Done for repair of the Gutleben boat dock.

ADJOURNMENT/SET NEXT MEETING

There being no further business before the Board, the meeting was adjourned at 10:05 p.m. The next meeting will be held on June 6, 1989, at the Ballena Bay Yacht Club at 7:00 p.m.


Secretary


Recorded by

BALLENA BAY TOWNHOUSE ASSOCIATION
BOARD OF DIRECTORS MEETING OF JUNE 6, 1989

MINUTES

CALL TO ORDER/AGENDA REVIEW

The meeting was called to order by President Bob Smith at 7:35 p.m.

ATTENDANCE

In attendance were Bob Smith, Phil Braverman, Marty Gross and Andy Hall. Ian Roger and Captain Edwards were absent. Homeowners present were Shep and Chuck Gallup, Mel Schwartz, Jeff Frankel, Archie and Ida Stone, Beverly Partridge, Jim and Mary Neil, and Ruth Masonic. Representing the Robertsons at 312 Tideway was Valerie West.

APPROVAL OF MINUTES

MOTION: It was moved, seconded and passed to accept the minutes of the May 2, 1989 Board of Directors meeting as submitted (unanimous).

PRESIDENT'S REPORT

President Smith reported that several Board members and residents had cleaned up the area between the Buono home and the bridge, hauling 20,000 pounds of debris away. He expressed his appreciation to those who had helped.

President Smith also reported that Ian Roger's lawsuit against the Association was settled out of court, and that attorney Foley (who represented Mr. Roger) had sued the Association for his fees. He reported that Mr. Foley's suit has been settled in the Association's favor, but that there were fees owed Mr. Foley for prior representation. He stated that a letter had been received from Mr. Foley outlining the amount due, which would be considered under Written Correspondence. President Smith also stated that there was a lawsuit by Mr. Gutleben against the Association currently pending, but felt the Association would prevail in that matter as well.

MOTION: It was moved, seconded and passed to accept the President's Report (unanimous).

TREASURER'S REPORT

Andy Hall explained that the amount shown under liability insurance on the Income and Expense Statement represents insurance for the first quarter, and that 1/3 of that amount should be amortized for May, reducing the total to 5/3 of the amount shown. He also stated that the check to the Secretary of State for \$10.00 has been voided.

Regarding delinquent accounts, Mr. Hall stated that a letter from the attorney was sent to those homeowners who are delinquent explaining the legality of the dues increase. He stated that \$2,418 is owed for 508 Tideway, and that a letter from Barry Sgarrella would be discussed under Written Correspondence.

Mr. Hall reported that the Association has a \$25,000 certificate of deposit account at about 8.5% which matures around July 3, 1989, and relayed information regarding money market accounts. He stated that the Association has \$89,000 in a savings account and \$22,000 in checking, and recommended that \$25,000 to \$50,000 be deposited into a money market account. Mr. Hall also stated that a few thousand should be kept in the checking account for local expenses and tax deposits, and some funds should be kept in savings.

MOTION: It was moved, seconded and passed to authorize the Treasurer to move between \$25,000 and \$50,000 from savings into a money market account (unanimous).

MOTION: It was moved, seconded and passed to authorize the Treasurer to roll over \$25,000 from the current certificate of deposit into another six month certificate of deposit.

Mr. Hall reported that he had received notice of penalties from the IRS and Federal Unemployment Tax Administration totalling around \$101, one dating back to 1985. He stated that the accountant is proceeding with the audit, but will follow up with him. Mr. Hall also stated that he feels the cost of the irrigation survey should come out of the maintenance reserve account.

MOTION: It was moved, seconded and passed to approve the Treasurer's Report.

MANAGER'S REPORT

Manager Rich Noble was absent. Secretary Phil Braverman read a written report from Mr. Noble which contained several recommendations for Board action.

MOTION: It was moved, seconded and passed to have the Manager hire a professional building inspection firm to inspect building exteriors and fencing.

Mr. Noble will be asked to poll Board members for approval when he has obtained a cost for the inspection.

President Smith will formally request that prior management personnel and Directors produce all records, plans, work orders, contracts, specifications, architectural modifications or other such documents that may be in their possession which are rightfully the property of the Association. If this information is not forthcoming, the matter will be turned over to legal counsel for further action.

On the subject of the Manager's recommendation regarding tree pruning, the matter was delegated to the landscape committee.

MOTION: It was moved, seconded and passed to accept the Manager's report as submitted.

RESIDENTS TIME

1. Charlie Gallup of 415 Cola Ballena expressed concern regarding unlicensed automobiles and unlicensed boats in the development.

MOTION: It was moved, seconded and passed to authorize the President to contact the local authorities to take action upon identification in writing of illegally parked and/or unlicensed cars by Mr. Gallup.

2. Jim Oliver was present to address the assessment increase, which will be discussed under Written Correspondence.
3. Jim Neil presented the Treasurer with a bill for replacement of the shutter doors on his utility cabinet. Mr. Neil performed the work himself, and the bill in the amount of \$35 does not include installation, paint or hardware.

4. Jeff Frankel stated that he would have liked to help with the clean up, and would appreciate more advance notice in the future so he could participate.
5. Beverly Partridge announced that Neighborhood Watch is coordinating a National Night Out for August 9, 1989 and suggested that it might be a good opportunity to stage a communitywide event. She stated that she has Neighborhood Watch stickers available for homeowners who need them and she will write an article for the newsletter on these items.
6. Valerie West, attorney representing the Robertsons at 312 Tideway Drive requested Board approval of plans for an overhang to protect the Robertsons' window from water damage.

MOTION: It was moved, seconded and passed to approve the request by the Robertsons, contingent on their sharing the plans with other homeowners.

7. Marty Gross asked permission to redo the landscaping in the common area in front of his home, at his own expense, the plans for which had been developed by the landscaping committee. Mr. Gross also offered to move the walkway so the irrigation system could be extended to the area.

MOTION: It was moved, seconded and passed to approve the plans submitted by Marty Gross for redoing the landscaping her his home, at his own expense.

WRITTEN CORRESPONDENCE

1. Letter from Chatzky, Fong & Fong Regarding Roger v. Ballena Bay Townhouse Association

President Smith gave background information regarding this case, stating that the subject letter was informing the Association that the case regarding the election had been dismissed.

2. Letter from Chatzky, Fong & Fong Regarding 1989 Budget and Assessments

Secretary Phil Braverman summarized the letter. Treasurer Andy Hall stated that a copy of the letter had been sent along with their dues statement to all homeowners who are delinquent in payment of their dues.

3. Letter from Foley, McIntosh & Foley Regarding Gallup/Buono v. Ballena Bay Townhouse Association

President Smith stated that the suit has been settled.

4. Letter from Foley, McIntosh & Foley to Chatzky, Fong & Fong Regarding Legal Fees

President Smith explained that the fees in question are for services rendered prior to the first election which was the subject of Mr. Roger's lawsuit. He recommended that the matter be settled.

MOTION: It was moved, seconded and passed that the President consult with Mr. Schulte, and if he concurs, proceed with payment of the bill for \$1,450 from Foley, McIntosh and Foley.

5. Letter from Andre Delbecq Regarding Exterior Paint

Secretary Phil Braverman read the letter to the Board. The Manager will be asked to inform Mr. Delbecq that an exterior inspection will be performed.

6. Letter from F. Jay Bono on Behalf of Virginia Fowler at 408 Tideway Regarding Leaking Roof

Secretary Phil Braverman read the letter to the Board. Manager Rich Noble will be asked to write to Mr. Bono and Mrs. Fowler indicating that the roof question should be resolved with the pending CC&R revision, and that he will contact her neighbors to ascertain whether their roofs are also leaking.

7. Letter from Jerry Rasco Regarding Dues Increase

President Smith explained that Mr. Rasco's letter had been presented to the Board at its previous meeting, and that Mr. Rasco has since mailed the letter to all homeowners. He stated that Mr. Rasco will be mailed a copy of the attorney's letter addressing the dues increase.

8. Letter from Susan Gross at 1209 Ballena Boulevard Regarding Prior Owner's Dues Delinquency

Andy Hall explained that the previous owner had indicated that the dues had been paid, which later was found to be untrue. He stated that it would be very difficult to collect from the previous owner and he felt it was unfair to penalize the new owner for the mistake. President Smith will ask that Mr. Noble contact the title company, and if they are unwilling to take care of the matter, the delinquent dues be forgiven.

9. Letter from Great Sierra Group Regarding Unpaid Assessments

President Smith stated that the letter had been turned over to Mr. Noble.

COMMITTEE REPORTS

1. Landscape Committee - Marty Gross reported that committee chair Susan Gross will be contacting the members of the committee to arrange a walk through to inspect the work of the landscape company and determine future priorities. Mr. Gross indicated that he had not had an opportunity to review the report from Cunha Irrigation. President Smith stated that he had just received the report as well, and suggested that the Board members be polled at a later time.

2. CC&R Revisions - Archie Stone reported that the committee met in December and during January developed a revision to the CC&Rs. He explained that the amendment addresses assessments and an attempt to detail in a straightforward manner what the Association is responsible for doing on the exterior of the homes. Mr. Stone explained that the committee approached the project from two points of view: (1) development of a CC&R amendment on a minimal basis; and (2) a more detailed amendment proposal. He further explained that the two parallel amendments were developed and presented at a meeting of the homeowners, which was attended by around 20 members.

Mr. Stone reported that consensus was that the more detailed amendment was needed, and that the committee wrote up the amendment for Board approval and started getting member signatures in early March. Mr. Stone explained that passage of a CC&R amendment requires 75% of homeowners' approval for passage, and that 57% of the homeowners have signed to date. It was his opinion that it was impossible to get 75%. He stated that the Association's attorney advised him that state law takes into account the fact that no homeowner's association is ever able to get 75% of its members to agree on anything, and provides that, once 50% of the members have approved the amendment, the court can be petitioned to approve the amendment.

Mr. Stone stated that the committee has done all it can to obtain members' approval, and recommended that the Board petition the court for approval. He reported that he was advised that the cost would be \$1,000 to \$1,500 if there were no opposition, and the cost could go up to \$2,000 with opposition.

MOTION: It was moved, seconded and approved that the Association petition the court to approve the proposed CC&R amendment.

2. Marine Structures Committee - Jim Neil detailed the report of the marine structures committee in surveying the condition of dock pilings. Mr. Neil reported that there are a total of 191 pilings, of which 30 are in a hazardous condition (not counting the pilings which were recently replaced). He also stated that there are 27 private deck pilings (not included in the total piling count). Mr. Neil reported that Jim Robinson did a sounding of the channel which found that depths at -0.3 to -0.55 of mean low tide ranged from 7 to feet, and revealed some shoaling outside the channel near the wave maze. As result of his sounding, Mr. Robinson had not recommended any dredging be done at the center of the channel.

Mr. Neil noted that wave maze needs cleaning, and the lights on the channel markers do not work. He did not recommend the the lights be repaired, as he thought they may have intentionally been disconnected as they create confusion. Mr. Neil stated that two cables connect the wave maze pier to Pier 1 and 10 be repaired, and there are many floats missing which should be replaced by volunteers.

Mr. Neil reported that he, Bob Partridge and Archie Stone performed a complete mud survey at low tides when the head floats were aground, and that Fred Aiche of Inshore Divers examined the head floats and can give a recommended method and estimate for dredging. Mr. Neil stated that he, Archie Stone, Marty Gross and Les Shorter of Western Dock Enterprises examined the entire marina. He said that Mr. Shorter would be willing to give an estimate on piling replacement, and has a dredging permit for Tideway far east which he may be able to use for the Association's marina.

Mr. Neil reported that there were approximately 22 extra floats in the marina not counting the attached private dinghy floats. He recommended that they be removed as soon as possible, and will contact the Harbormaster to see if they are interested in the floats. It was also suggested that an ad be placed in a yachting magazine offering the floats for free. He will also see if the floats can be moved away from Phyllis Aicampo's dock in the next week.

Mr. Neil suggested that a log be kept of pilings replaced within the marina, and showed the Board a log he had started. As marine structures committee chair, Mr. Neil will keep the log up to date.

Mr. Neil recommended that the Board reach a decision regarding the pilings which have been added by individuals who have altered their original docks. He felt that, for alterations which have already occurred, that the Association retain responsibility, unless specifically otherwise noted at the time of alteration. For future modifications, the Association should make a decision upon approval of the alterations. Mr. Neil also felt the Association should decide who is responsible for maintaining pilings where individuals have extended their decks and added pilings. Mr. Hall indicated that the Board had determined that they were structural and for exclusive use common area, and thus are the responsibility of the individual homeowners. Mr. Neil felt that the issue should be clarified for future alterations.

Mr. Neil summed up the committee's recommendations, noting that the pilings in the marina are in a state of general disrepair and need replacing, the docks are in good condition with minor repairs needed in three sections, the dredging is a priority and should be given immediate attention, and that the wave maze is in sound condition and needs only cleaning. Mr. Neil further stated that the ramps appeared to be in good condition. President Smith suggested that any necessary repairs to the landings be coordinated with planned piling replacement. Mr. Neil stated that, with proper balancing, approximately one fourth of the pilings could be eliminated.

Mr. Neil further stated that the committee recommends that the management company pursue estimates and proposals from a minimum of three companies for the dredging and piling replacement work, noting that the committee would be happy to work with the management company. It was also the committee's recommendation that the work be phased, possibly over two or three years.

President Smith suggested that a special meeting of the Board, the committee, the Manager and Fred Aichele be planned to discuss the committee's recommendations and develop a plan of action.

MOTION: It was moved, seconded and passed to accept the report of the Marine Structures Committee and commend them for their efforts.

NEW BUSINESS - There was none

OLD BUSINESS

1. Status of Gutleben Dock Issue

President Smith reported that he had received two bids for the repairs, one of which was accepted. He stated that the contractor was scared off by Mr. Roger, who threatened the contractor with litigation, and the contractor has since withdrawn his bid. Mr. Smith stated that one other bid had been received, at almost three times the cost of the previous bid, and the contractor was again greeted by Mr. Roger, who informed him that the work could not be done without building permit. It was Mr. Smith's understanding that Mr. Roger then informed the city that the site was under litigation and a building permit should not be issued.

President Smith stated that the Association's attorney then contacted the building department, explaining the urgent nature of the work and potential damage which could result from a delay. Mr. Smith further stated that the Association had reapplied for the building permit and he expected it would be issued within a few days, and that a contractor was ready to proceed with the work immediately upon issuance of the permit. President Smith explained the legal background regarding Mr. Gutleben's dock, and stated that Mr. Gutleben would be billed for the full cost of the repairs.

2. Consideration of Request by Mrs. Demuse that Association Share Cost of Repairs

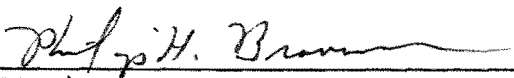
President Smith explained that Board members and Mr. Noble inspected Mrs. Demuse residence, and Mr. Noble had indicated that he felt the Association should carry some responsibility for the repairs.

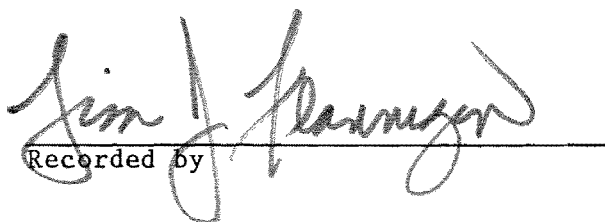
Mr. Hall stated that Mrs. Demuse's approach to the ramp was in the common area, and it has been pointed out to him that it is the only access which is common property and may be valuable in light of the marine repair work the Association is considering. He therefore felt the Association is responsible for the ramp and the approach, and suggested that a better gate be installed to restrict access.

MOTION: It was moved, seconded and passed to to authorize Mr. Noble to proceed with repairs to the ramp, the approach walkway, the siding and trim (but not the dry rot) at Mrs. Demuse's residence.

ADJOURNMENT/SET NEXT MEETING

There being no further business before the Board, the meeting was adjourned at 10:45 p.m. The next Board meeting will be held on July 11, 1989 at 7:30 p.m. at the Ballena Bay Yacht Club. The meeting notice will invite members to come at 7:00 p.m. for refreshments.


Secretary


Recorded by

BALLENA BAY TOWNHOUSE ASSOCIATION
BOARD OF DIRECTORS MEETING OF JULY 13, 1989

MINUTES

CALL TO ORDER/AGENDA REVIEW

The meeting was called to order by President Bob Smith at 7:40 p.m. Mr. Roger requested that an item entitled "Matters Arising" be added to the agenda under New Business.

ATTENDANCE

In attendance were Bob Smith, Marty Gross, Ian Roger, Mike Edwards and Andy Hall. Homeowners present were Shep and Chuck Gallup, Mel and Janis Schwartz, Archie and Ida Stone, John and Ingrid Buono, Jim and Mary Neil, Agnes Ringo, Joan Albin, Sally Tonningsen, Robert Descombe and Don Gutleben.

APPROVAL OF MINUTES

MOTION: It was moved, seconded and passed to accept the minutes of the June 6, 1989 Board of Directors meeting as submitted (unanimous).

PRESIDENT'S REPORT

President Smith reported that the Board has been working hard, especially with regard to maintenance. He reported that a number of letters had been received regarding the dues increase and legal expenses, and that these letters have been referred to Manager Rich Noble for response. Mr. Smith stated that he would be happy to meet with homeowners regarding their concerns on an individual basis.

MOTION: It was moved, seconded and passed to approve the President's Report.

TREASURER'S REPORT

Andy Hall explained that the excess of revenue over expenses is misleading due to quarterly payments which have not been amortized.

Mr. Hall stated that two of the delinquent accounts have been brought current and the Association had received partial payment on a third. He stated that the largest delinquent account, owed by Great Sierra Group in the amount of \$2,418.87, is under investigation. Mr. Hall reported that he had contacted Alameda Associates regarding the account, who assured him that they would investigate further and report back to him. Mr. Hall reported that the homeowner owing \$1,018.35, Mr. Sherman, refuses to pay until his roof is repaired or replaced by the Association. Mr. Noble will set up a meeting between Mr. Sherman, Mr. Smith and Mr. Noble to discuss the situation.

Mr. Hall agreed to investigate and provide additional information regarding the reserve balances.

MOTION: It was moved, seconded and passed to accept the Treasurer's Report.

Mr. Roger suggested a change in the format for the Budget Comparison, and will meet with Mr. Noble to explain in detail so that Mr. Noble can determine whether the change can be made.

MANAGER'S REPORT

1. Irrigation System - Mr. Noble reported that the irrigation work by Cunha Irrigation is nearly complete, and that Sundance Landscaping is making adjustments. Mike Edwards stated that he received a letter from Mrs. Lilywhite expressing dissatisfaction with the irrigation system. Mr. Noble explained that Cunha had repaired the clocks and major valves, and that Sundance is adjusting the heads and nozzles.
2. Trees - Mr. Noble reported that a letter had been received from Patrick and Patricia Hayes regarding trees, and that he has requested Sundance to submit a recommendation relative to the pine trees at 1215 Ballena Boulevard.
3. Landscaping - Mr. Noble reported that he has asked Sundance to consider twice a week service (instead of once weekly), and believed they had attempted to come out twice one week. He stated that they will inform him if the increase in service will require any adjustments to their fee.
4. Dock Restoration - Mr. Noble reported that the restoration work to the dock at 1237 is nearly complete, if not fully complete. He stated that the repairman reported the work was done, but Mr. Noble had not had an opportunity to inspect.
5. Reserve Study - Mr. Noble stated that as discussed at the previous Board meeting and based on his observations of the project and the fact that the Association has never had a reserve study done, he requested two firms to submit proposals for performing such an inspection, evaluation and reserve study. Mr. Noble provided Board with a copy of the bid received from construction consultant Lee Saylor Company for their review and consideration. He explained that the Sterling-Davis Act requires that a reserve study be performed to show how the Association determined replacement cost. Mr. Roger stated that there is no requirement that the study be performed by a consultant.

Mr. Noble reported that he had Roofing Industry Consultants inspect the buildings relative to waterproofing, but he has not received their report.

MOTION: It was moved, seconded and passed to accept the Manager's Report.

RESIDENTS' TIME

1. Mary Neil asked Mr. Noble when the automatic sprinklers and clocks will be fixed near her home. He explained that she is in one of the sections which were not included in Cunha's original proposal, and stated that he would check with Sundance.
2. Mel Schwartz asked whether landscaping will be installed on the two narrow strips of dirt on each side of his home (453 Cola Ballena), and who would be responsible for watering those areas. Mr. Gross stated that those problems would be addressed under the report of the Landscaping Committee.

Mr. Schwartz stated that the header boards (redwood strips) separating the concrete blocks on the street side of the gate and between the gate and his front door are rotten. He also stated that the driveway is cracking, causing elevation of the driveway and preventing the garage door from closing properly. Mr. Gross responded that the Association is responsible for replacing the header boards. Mr. Noble will investigate the problem with the driveway.

3. Don Gutleben asked what will be done on the grassy area near 1237 and 1235 Ballena Boulevard, as everything had been chopped down and the utility cabinets are visible. Mr. Noble explained that the irrigation clock had been defective and has since been rebuilt. Mr. Gross asked that the matter be deferred for discussion under the report of the Landscaping Committee.
4. Mr. Coker stated that the door which covers the meters at 445 Cola Ballena has been replaced three times and has been hanging by a thread for the past year. Mr. Noble will contact Mr. Coker regarding the matter.
5. Sally Tonningsen expressed concern regarding homeowners hiring private contractors to perform repairs or landscaping and then billing the Association. President Smith stated that homeowners observing needed maintenance should contact Mr. Noble.
6. Ingrid Buono thanked the Board for clearing the rubbish. She asked whether it would be appropriate for the Buono's to submit a landscaping plan for the area in front of their residence, to be installed and maintained at their expense. She was encouraged to work through the landscaping committee to bring a plan before the Board for approval, and Archie Stone offered his assistance.
7. Charles Gallup asked whether the Board had received a report from the architectural committee regarding color schemes for repainting. President Smith explained that Ruth Masonek was working on this, and stated that a lot of preparation work needed to be done prior to painting. He suggested that a subcommittee be formed to perform an inspection in preparation for painting. Mr. Roger stated that Pagano's Hardware has the color scheme on file. Mr. Noble will obtain a copy of the information from Pagano's. Sally Tonningsen reported that the McGrew's had painted their railing blue, which does not fit with the current color scheme. President Smith stated that Mr. McGrew did not receive Board approval, and it will be repainted.
8. Mr. Coker asked what action would be taken regarding the deteriorated pier at 443, 445, and 447 Cola Ballena. Jim Neil reported that it is earmarked for replacement, and made note of the fact that the pile ring is missing. President Smith stated that Mr. Neil would give a more detailed report later in the meeting.
9. Charles Gallup reported that there are root problems with the Monterey Pines, and asked that consideration be given to removing all Monterey Pines from the development. Marty Gross stated that the trees were originally placed to close to the home, and they were placed in lawn areas, both of which are not recommended. He recommended that every Monterey Pine tree should be removed.

WRITTEN CORRESPONDENCE

1. Patrick and Patricia Hayes, 1215 Ballena Boulevard, Regarding Pine Trees - Mr. Noble explained that the first part of the letter addresses the same issue as raised by Mr. Gallup regarding root problems from the Monterey Pine trees. He stated that he had requested a recommendation from Sundance Landscaping, and they have verbally indicated that at least half of the Monterey Pines should be removed. Mr. Noble stated that he would forward their recommendation to the landscaping committee. Regarding the issue of water leaking from the main water line, Mr. Noble stated that he would investigate.

2. Letter from John Buono, 1237 Ballena Boulevard - President Smith thanked Mr. Buono for his letter of thanks regarding the rubbish removal.

COMMITTEE REPORTS

1. Marine Structures - Jim Neil explained to Mr. Roger and Mr. Edwards, who were absent from the previous Board meeting, that the committee had prepared and submitted a dock plan to the Board and the Manager, and gave them each a copy.

- a. Dredging - Mr. Neil recommended that the Board consider the dredging report from Inshore Divers which he had forwarded to them. He explained that he had had Fred Aichele inspect the floats and suggest possible schemes for dredging underneath them, and had asked Mr. Aichele to prepare a bid of the cost, which was forwarded to all Board members. He forwarded the committee's recommendation that the Board approve the proposal.

Mr. Neil reported that Les Shorter had proposed another method for dredging involving removal of the floats, bringing in a scoop dredge, performing the dredging, and replacing the floats. He stated that Mr. Shorter indicated the cost for dredging permits would be between \$5,000 and \$6,000, that it would take about 18 months to secure the permits, and that they would be good for 5 years.

- b. Surplus Floats - Mr. Neil reported that several alternatives are under consideration for disposing of the 22 surplus floats. He suggested that some be donated to the Sea Scouts, that some be used to replace some of the floats in the marina, and that the remaining surplus floats be taken to the hole by the wave maze and broken up. Mr. Neil suggested that if any homeowners want them for use as dinghy docks that they claim them soon.
- c. Wave Maze Maintenance - Mr. Neil suggested that a work party be formed to remove debris from the wave maze on Saturday, July 15th at 10:00 a.m., and solicited volunteers.
- d. General - Mr. Neil recommended that he meet with Mr. Noble to entertain bids for the work which needs to be done.

MOTION: It was moved, seconded and passed to approve the report of the Marine Structures Committee.

Mr. Gross suggested that the process of applying for dredging permits be started and in the meantime do the suction dredging to save the headfloats.

MOTION: It was moved, seconded and passed to accept the proposal of Inshore Divers, provided the cost does not exceed \$2,280.

Mr. Neil requested Mr. Roger join him in meeting with Mr. Aichele dockside to discuss the project.

MOTION: It was moved, seconded and passed to authorize the Marine Structures Committee to work with Mr. Noble to formulate long-range plans for dredging.

Archie Stone suggested that the surplus floats be floated over to the mudflat area for storage.

MOTION: It was moved, seconded and passed to dispose of the surplus docks in the most cost effective manner through formation of a subcommittee, chaired by Mike Edwards, which would poll homeowners in the area neighboring the storage site proposed by Mr. Stone, and to investigate other disposal methods at a cost not to exceed \$1,000, as soon as possible.

Jim Neil requested that anyone interested in participating on the Marine Structures Committee call him.

2. Landscape Committee - Marty Gross recommended the Board approve the request of Jeannette Holman.

MOTION: It was moved, seconded and passed to accept the recommendation of the Landscaping Committee regarding the request by Jeannette Holman.

Mr. Gross presented a report from Landscape Committee chair Susan Gross.

MOTION: It was moved, seconded and passed that Mr. Noble express concerns to Sundance Landscaping regarding their current service, explore with them the possibility of biweekly service, and to simultaneously request bids from at least two other landscape maintenance companies for biweekly service.

MOTION: It was moved, seconded and passed to accept the Landscape Committee report.

NEW BUSINESS

1. Draft Copy of Annual Financial Report for Period Ending 12/31/88

MOTION: It was moved, seconded and passed to defer action on the annual financial report to the next Board meeting.

2. Reserve Study Proposal by Lee Saylor Company - President Smith stated that Mr. Noble has requested other proposals, and suggested that action await receipt of more proposals.

MOTION: It was moved, seconded and passed to defer action on the reserve study proposal by Lee Saylor Company until other bids are received.

3. Matters Arising - Ian Roger had added this item to the agenda in order to address actions taken by the Board at the meeting of June 6, 1989, from which he was absent.

OLD BUSINESS

1. Status of Don Gutleben Dock Issue - President Smith stated that there has been a new suit filed against the Association by Mr. Gutleben, which has been turned over to the attorney and the insurance company for disposition. Mr. Hall explained that the Association's attorney has suggested that the Association request a summary judgment, whereby all the facts are submitted to the judge for approval and the judge makes a decision, rather than go through a jury trial.

MOTION: It was moved, seconded and passed to petition the court for summary judgment to speed the hearing process and minimize legal costs.

ADJOURNMENT

There being no further action before the Board, the meeting was adjourned at 10:25 p.m. The next meeting was set for August 8, 1989 at the Ballena Bay Yacht Club at 7:30 p.m.

Philip H. Brown
Secretary

Jim J. [Signature]
Recorded by

BALLENA BAY TOWNHOUSE ASSOCIATION
BOARD OF DIRECTORS MEETING OF AUGUST 15, 1989

MINUTES

CALL TO ORDER/AGENDA REVIEW

The meeting was called to order by President Bob Smith at 7:35 p.m.

Mr. Roger requested that an item entitled "Matters Arising from the Minutes" be added to each Board agenda under Old Business.

ATTENDANCE

In attendance were Bob Smith, Marty Gross, Ian Roger and Andy Hall. Homeowners present were Shep and Chuck Gallup, Mel and Janis Schwartz, Archie and Ida Stone, John and Ingrid Buono, Jim and Mary Neil, Agnes Ringo, Jim Oliver, Joan Albin, Allison Braverman, and Robert Descombe.

APPROVAL OF MINUTES

MOTION: It was moved, seconded and passed to accept the minutes of the July 13, 1989 Board of Directors meeting as corrected. Ayes: Gross, Hall, Smith. Nay: Roger.

PRESIDENT'S REPORT

President Smith expressed regret that homeowner Jim McGrew has been hospitalized for surgery related to a heart condition.

MOTION: It was moved, seconded and passed that the Board expresses its regret that Mr. McGrew is suffering ill health, and wishes him a speedy recovery (unanimous).

President Smith reported that the Association has been embroiled in legal problems during the past 12 months, but that the Board is not giving up in its efforts to protecting and improving the value of the homes, and the Board members have rededicated themselves to that effort, as has property manager Rich Noble. He stated that he was not at liberty to discuss the legal issues, as the adversary in three of the four lawsuits was present in the room. He stated that he, Mr. Hall and Mr. Gross have worked very hard, and that it is unfortunate that one member of the Board has disrupted the process. He urged the homeowners to consider carefully who they elect to the Board at the next election. Mr. Smith commended the work of the Landscape and Marine Structures Committees, and stated that he had never received a report from the Maintenance Committee.

MOTION: It was moved, seconded and passed to approve the President's Report. Ayes: Gross, Hall, Smith. Nay: Roger.

TREASURER'S REPORT

Andy Hall reported that the Association is well within its budget, with the exception of the area of legal expenses, which is well over budget. Mr. Roger asked that Mr. Hall provide a breakdown of the legal expenses at the next meeting. Mr. Hall reported that a draft of the audit has been received, and the delay in its preparation was due to late confirmation of certain figures by the bank.

MOTION: It was moved, seconded and passed to distribute the audit to the homeowners once it has been finalized and the accountant is satisfied that all disclosures have been received.

Mr. Hall reported that he has not received the current insurance bill. He stated that the policy expired on August 1st and there is a binder in place, but he does not know what the premium will be.

Mr. Hall reported that \$30,000 has been moved from the savings account (where it was earning a little over 6% interest) into a money market account (where it is earning 8.3%). He stated that there is no penalty for drawing against the funds in the money market account.

MOTION: It was moved, seconded and passed to accept the Treasurer's Report, and commend him on the improved yield on the Association's funds.

MANAGER'S REPORT

In the absence of Manager Rich Noble, President Smith reported that Mr. Noble had submitted his resignation effective September 1, but that he has now agreed to stay on an additional month.

MOTION: It was moved, seconded and passed to accept the Manager's Report.

RESIDENTS' TIME

Robert Descomb asked what action has been taken regarding dredging. Mr. Neil stated that the information would be presented as part of his report on the Marine Structures Committee later in the meeting.

Allison Braverman stated that when she purchased her home she was told the Association carried earthquake insurance, but later discovered that it did not. She asked the Board to research the cost per homeowner of obtaining earthquake insurance, whether the Board were to purchase the coverage or individual homeowners could form a group to obtain a better rate. Mr. Roger stated that the Association's coverage was not renewed because the insurance company refused to renew. He stated that discussions with the architect, Mr. Kirkland, and research revealed that the homes are built on piers which are anchored to bedrock, minimizing possible earthquake damage. Mr. Schwartz suggested that Mr. Kirkland be invited to attend a Board meeting and explain.

President Smith asked if Mrs. Braverman would chair a special committee on insurance, and she accepted. Mr. Neil suggested that the Association consider forming an earthquake preparedness committee. President Smith stated that Mr. Neil's point was well taken.

MOTION: It was moved, seconded and passed that the Board investigate availability and cost of obtaining earthquake insurance and bring the matter to a vote of the members (unanimous).

Jim Oliver asked why the Board petitioned the court for approval of the CC&R amendment. Archie Stone explained the law which provides for the petition process. Mr. Oliver asked what the next step would be, now that the petition has been denied. Mr. Stone stated that the committee would renew its efforts to obtain the

necessary signatures. Mr. Stone further explained that the movement to amend the CC&R's was initiated by homeowners, not the Board, but that the Board had approved and funded the petitioning of the court. President Smith stated that the Association's attorney has indicated he is still awaiting notice of final ruling from the judge.

Shep Gallup stated that two publications are available which may be helpful to the Board and members of the Association, California Homeowners' Digest by Gerard and Griffin, and the CNAI News.

Mary Neil stated that Bev Partridge and her committee did an outstanding job putting together the neighborhood social, and it was a nice opportunity to meet neighbors.

WRITTEN CORRESPONDENCE

There was none.

COMMITTEE REPORTS

1. Marine Structures Committee - Jim Neil reported that on July 17th a crew of volunteers, including Mike Edwards, Archie Stone, Ingrid Buono and Ian Roger, cleaned up the wave maze. He stated that Ian Roger replaced the cables in between the trestles of the wave maze with the floats. Mr. Neil stated that the cable on the opposite is broken, and he and Mr. Roger will repair it.

Mr. Neil stated that there is an erosion spot near the wave maze, for which the Habormaster's office is inclined to deny responsibility. He stated that he hopes to have it resolved before any high tides.

Mr. Neil recommended that a minimum of two Board members meet with three committee members to decide the priorities for the Marine Structures Committee.

Regarding dredging, Mr. Neil stated that he had assumed Mr. Noble would implement the dredging plans once approved. He stated that he had met with Fred Aichele and Ian Roger to resolve Mr. Roger's questions regarding the bid. He stated that they had decided that permits should be obtained if any dredging were done that, because if there were any complaints about dredging performed without a permit, a stop work order would be issued and it would be more difficult to reapply for permits. Mr. Neil stated that he has a call in to Wes Shorter of Western Dock Enterprises, who has indicated that he would be able to secure the permits. Mr. Neil will relay any information on cost to the Board once he receives it from Mr. Shorter. Mr. Neil did not know how long it would take to receive the permits.

Mr. Neil asked where the Board wants to start with piling replacement. A meeting was scheduled for August 16th for Mr. Neil, Andy Hall and Bob Smith to discuss piling replacement.

Mr. Neil stated that the committee is considering sending a questionnaire to all homeowners asking them what work they see that needs to be done at their pier. Andy hall offered to have the questionnaires copied.

MOTION: It was moved, seconded and passed to accept the report of the Marine Structures Committee (unanimous).

2. Landscape Committee - Marty Gross presented to the Board a plan submitted by Mrs. Buono for landscaping of the area directly in front of her gate and entrance fence. He stated that the plan is consistent with previous landscaping and that he saw no problem with the plan. He recommended the plan be approved.

MOTION: It was moved, seconded and passed to approve the landscaping plan submitted by Mrs. Buono.

Mr. Gross stated that many areas do not have automatic irrigation systems. He suggested that battery operated valves be inserted into the mechanisms of the existing valves that will automate them. He stated that he can obtain the valves for \$65, and that the batteries would need to be replaced annually. He estimated the cost for automating all the existing manual valves would be under \$1,500 and offered to install them.

MOTION: It was moved, seconded and passed to authorize Marty Gross to supply the materials at cost and install free of labor cost battery operated valves, at a total cost not to exceed \$1,500 (one abstention).

Mr. Gross stated that he has discovered the automatic sprinkler system on at unscheduled times during the past week, and believes someone is tampering with the sprinkler clocks.

MOTION: It was moved, seconded and passed to accept the report of the Landscaping Committee (unanimous).

NEW BUSINESS

There was no New Business.

OLD BUSINESS

- a. Matters Arising from the Minutes - There were none.

ADJOURNMENT/SET NEXT MEETING

There being no further business before the Board, the meeting was adjourned at 9:15 p.m. The next meeting will be held on September 14th at 7:30 p.m. at the Ballena Bay Yacht Club.

Philip H. Brown
Secretary

Jim J. Kammeyer
Recorded by

BALLENA BAY TOWNHOUSE ASSOCIATION
BOARD OF DIRECTORS MEETING OF SEPTEMBER 14, 1989

MINUTES

CALL TO ORDER/AGENDA REVIEW

The meeting was called to order by President Bob Smith at 7:40 p.m.

President Smith noted the addition of "e. Landscape Committee" under item 6 Committee Reports, and deletion of "a. Insurance Report" under Old Business, as Allison Braverman was not present to give her report.

Mr. Roger requested that an item entitled "Matters Arising from the Minutes" be added to each Board agenda under Old Business. President Smith declined to add the item to the agenda, as he could find no reference to the item in Roberts' Rules of Order.

ATTENDANCE

In attendance were Bob Smith, Marty Gross, Ian Roger and Andy Hall. Homeowners present were Jim and Audrey Ehrlich, Shep and Chuck Gallup, Archie and Ida Stone, Ingrid Buono, Agnes Ringo, Jim Oliver, Joan Albin, Marcia Gerin, Phyllis McGrew, Ed and Jackie Clancy, Don and Beverly Brunette, Robert Descombe and Don Gutleben.

APPROVAL OF MINUTES

Andy Hall noted a correction to the minutes.

MOTION: It was moved, seconded and passed to accept the minutes of the August 15, 1989 Board of Directors meeting as corrected.

PRESIDENT'S REPORT

President Smith welcomed new members Jim and Audrey Ehrlich.

President Smith commended Marty Gross on installation of sprinkler timers. He also stated that many of the committees have been active and much positive work has gone forward. President Smith stated that there is a new chairman of the Maintenance Committee, Archie Stone, and commended Mr. Stone for his efforts.

President Smith reported that the final insurance policy has not been received. He stated that the insurance agent had just received billing from the underwriter, and had indicated that the policy would be mailed out within the week. President Smith stated that the initial billing on this year's insurance premium was \$20,500, and that the insurance agent had indicated to Mr. Smith that that amount was excessive and had conveyed that message to the underwriter. Mr. Smith stated that the agent had promised to renegotiate the price with the underwriter once the billing is received, and had estimated that this year's premium would be approximately \$19,000, about \$500 more than last year. President Smith stated that Allison Braverman is researching the cost and availability of earthquake insurance, and should be reporting her findings by the next Board meeting.

President Smith reported that Rich Noble of Noble Community Management has agreed to continue as property manager, at least through the upcoming election.

MOTION: It was moved, seconded and passed to accept the President's Report.

TREASURER'S REPORT

Andy Hall reported that delinquent dues are down to one at \$360 which the owner has said they are sending it in, one at \$150 which represents withholding of two of the \$75 assessment increases, and the Sierra Group. He stated that no checks had been written against the Prudential-Bache money market account and that the certificate of deposit is about half-way through its term.

Ian Roger questioned the \$5,000 item for general maintenance. Andy Hall explained that the expense represented initial payment for materials and labor for maintenance work at 421 - 435 Cola Ballena. President Smith stated that the matter would be addressed in detail in the report of the Maintenance Committee. Mr. Roger requested acceptance of the Treasurer's Report be deferred until after the report of the Maintenance Committee and his request was denied. In response to a question from Mr. Roger, Mr. Noble stated that the anticipated total cost of the work by Nicely Done will be around \$16,000.

MOTION: It was moved, seconded and passed to accept the Treasurer's Report. Ayes: Smith, Hall, Gross. Nay: Roger.

MANAGER'S REPORT

Mr. Noble reported that Nicely Done had commenced maintenance work at 421 - 435 Cola Ballena during the last week of August, and that the nature of the work is repair and replacement of the exterior surfaces which have been damaged or deteriorated due to weathering conditions. He anticipated that the work would be completed by the latter part of the week following the meeting, at which time the building would be ready for painting. Mr. Noble stated that he has requested proposals for the painting and had received two written quotes and one verbal quote. He stated that R. E. Broocker submitted a proposal of about \$1,650 per unit for the eight units and Steve Tingley Painting submitted a proposal of \$9,584 (around \$1,200 per unit). Mr. Noble stated that he is awaiting selection of the colors prior to awarding the contract. He stated that R. E. Broocker would not be able to start the project until mid-October, and low-bidder Steve Tingley Painting could start the week of September 25th.

Mr. Roger requested an estimate of the cost per hour of the work being performed by Nicely Done. Mr. Noble estimated that the cost averages out at about \$18.75 per hour. Mr. Roger requested that Mr. Noble estimate the cost for painting in the foreseeable future. Mr. Noble responded that, considering 80 homes of similar construction, and assuming that the homes are in a similar condition to the units under discussion, he estimated the cost to be approximately \$264,000 to do the same quality of work. Mr. Noble further stated that the fact that this amount exceeds the Association's current reserves should be an indication of what is needed to bring the project up to its proper condition. Mr. Roger stated that he felt the owners should be consulted if the reserves are to be used, and President Smith responded that it was apparent that the matter of inadequate reserves would need to be addressed with the owners. Mr. Stone stated that his Maintenance Committee report would contain additional details on the current project. Mr. Roger asked that approval of the Manager's Report be deferred until after the report of the Maintenance Committee.

MOTION: It was moved, seconded and passed to accept the Manager's Report. Ayes: Smith, Hall, Gross. Nay: Roger.

COMMITTEE REPORTS

1. Maintenance Committee - Archie Stone reported that Robert Descombes is serving with him on the Maintenance Committee, and that it was their goal to have a representative from each block of the development on the committee.

Mr. Stone explained that President Smith had asked him and Mr. Noble to inspect all the homes and determine which were in most desperate need of work, and that the group at 421 - 435 Cola Ballena was selected. He explained that the nature of the work is in preparation for painting, and includes inspection and repair or replacement of the siding and trim.

Mr. Stone stated that the cost of similar preparation of the other units in the development should be much less, as the group at 421 - 435 Cola Ballena is in by far the worst condition. He estimated that maintenance to the rest of the units in the development could take place over the next three or four years, as there are not sufficient funds to complete the work on a continuous sequence. Mr. Stone stated that the alternatives were to let the units continue to deteriorate or to speed up the process by asking the homeowners to approve a special assessment.

Mr. Stone explained that part of the painting cost includes two coats of paint due to the change in color which has been suggested by the committee.

Mr. Roger requested budget information, and Mr. Stone responded that the maintenance budget is underexpended for the current year and the current project is normal maintenance in accordance with the existing CC&Rs. Mr. Roger expressed the opinion that the work to the surfaces of the units was structural in nature, which Mr. Stone disputed.

Mr. Hall read a declaration from William Kirkland, the original architect, as follows: "It was my intention that all exterior maintenance, including replacement of siding, roofs and other major components, would be the responsibility of the homeowners association. I did not want the individual unit owners to have the freedom to conduct maintenance operations or to change the appearance of the units. Rather, I wanted the association to have control over all exterior maintenance because, in my experience, this is the only way to make sure that the needed maintenance would be done in a timely, competent fashion, and thereby to guarantee that Ballena Bay would continue to be well maintained and to have an attractive appearance. The provisions of the declaration were drafted specifically to achieve this result."

MOTION: It was moved, seconded and passed to accept the report of the Maintenance Committee. Abstain: Roger.

2. Architectural Committee

President Smith reported that the Architectural Committee had met and discussed possible color changes to the first group of eight units to be painted. He stated consensus of the committee was that most would like to see a change to more modern colors. He stated that the committee had looked at other developments and had felt the colors used at Marina Village were suitable. Mr. Smith stated that the committee has picked five main base colors and five trim colors for consideration, and that the committee recommended Plymouth Gray for the base color and Teton Blue for the trim color and white for the window trim color.

There was a 10 minute recess so that all present could view the color samples.

The session resumed, and there was discussion of the process for homeowner input into the color selection. Mr. Smith explained that the painter would paint a broad area with the proposed base and trim colors so that homeowners could have an opportunity to see how it looks. He further explained that colors have not been recommended for the entire development, and stated that he felt that should be addressed at the annual meeting. Mr. Roger expressed the opinion that none of the colors should be changed without approval of the general membership.

President Smith read a letter from David Wild, 1205 Ballena Boulevard, requesting no color change when his home is painted.

MOTION: It was moved, seconded and passed to proceed with painting of the first group of eight units in Plymouth Gray base color, Teton Blue trim and white window trim, and that prior to actual repainting, a sample be painted so that the Board, committee and homeowners can observe how the colors will look. Ayes: Smith, Hall, Gross. Nay: Roger.

3. CC&Rs Committee

Archie Stone reported that the committee has forwarded two recommended By-Laws amendments to the Board: (1) to require open Board meetings where homeowners are invited and given the right to be heard at the appropriate time, and (2) to eliminate cumulative voting from the election process.

MOTION: It was moved, seconded and passed to endorse the By-Laws amendments proposed by the CC&Rs Committee and recommend that they be presented to the membership at the annual meeting. Ayes: Smith, Hall, Gross. Nay: Roger.

MOTION: It was moved, seconded and passed to accept the report of the CC&Rs Committee.

4. Marine Structures Committee

President Smith reported that he had met with Jim Neil and the Marine Structures Committee, and that six matters were discussed.

- a. Dredging - President Smith stated that the Board had previously considered shifting some of the silt rather than obtaining a dredging permit, but that he now feels it would be best to obtain a dredging permit. He reported that the committee had learned that a lab must be hired to perform a bio-assay of the silt, and their findings will determine how many samples must be taken. Mr. Smith stated that Mr. Neil estimates that two samples will be needed, which could cost up to \$2,500, and that additional samples could bring the cost up to \$4,000 sampling. Mr. Smith reported that Mr. Neil had spoken with Les Shorter of Western Dock Enterprises, who would charge \$2,000 to contract for the sampling and coordinate the paperwork to secure the permit, and that committee member Terry Klaus offered to assist Mr. Neil with the process, thereby saving the \$2,000 fee quoted by Mr. Shorter. Mr. Smith stated that the committee will present the board with its findings regarding cost and estimates that the Association could have permits within three to four months once the process is begun. Mr. Smith reported that Mr. Neil estimates that 1,000 cubic yards would be dredged and disposed.

- b. Excess Floats - President Smith reported that Mike Edwards had offered some of the floats to the Emeryville Sea Scouts, who will come in and take some of them away, but that Mr. Neil had informed Mr. Smith that he was delaying taking further action on disposal of excess floats because Mr. Roger had threatened to sue him for disposing of Association property. Mr. Smith stated that he had assured Mr. Neil that the Board had authorized him to dispose of the floats. Mr. Roger stated that his concern was that the Board authorized a subcommittee to explore disposal and that Mike Edwards was to be part of the committee. Mr. Smith explained that Mr. Edwards had been involved in the committee, and had in fact made the contact with the Sea Scouts.
- c. Condition of Pilings - President Smith stated that, as previously reported to the Board, Mr. Neil has marked 31 of the pilings as being seriously in need of repair or replacement within the next year, and that 10 of the 31 need immediate attention. Mr. Smith stated that Mr. Neil will be obtaining cost information on the various means of repairing the pilings next week.
- d. Wave Maze Erosion - President Smith reported that there is a question as to who owns the property where the erosion exists. Mr. Roger reported that the General Manager of the marina called him to report that a sighting revealed it was on the their property, and that the General Manager proposed filling in the area at the same time they filled in the rest of the shoreline damaged in the 1986 storm. Mr. Smith stated that he would inform Mr. Neil.
- e. Other Dock Repairs - President Smith reported that Mr. Neil will make a recommendation to the Board prior to the next Board meeting itemizing areas which need immediate attention. Mr. Smith stated that the committee has prepared a questionnaire for distribution to the general membership, including a drawing of the dock in question and a statement as to what the committee feels to be done immediately and what can wait, and requesting feedback as to whether there are other items which need attention. Mr. Smith stated that he understood that the committee planned to get the questionnaire out within the next week or so.
- f. Gutleben Dock Issue - President Smith reported that the committee had discussed this matter, but he declined to go into detail at the Board meeting in light of pending litigation.

MOTION: It was moved, seconded and passed to accept the report of the Marine Structures Committee.

5. Landscape Committee

Marty Gross reported he had replaced the manual valves with battery operated timers along Ballena Boulevard, and that he would start on Cola Ballena next week. He stated that they are operating fine, that the landscaping company had rearranged the timers inadvertently, but that he has now readjusted them. Mr. Gross gave a copy of the instructions for their operation and asked that he pass them on to the landscapers. Mr. Gross gave Mr. Noble a letter from Phyllis McGrew regarding trees in front of her home which were cracked and split.

MOTION: It was moved, seconded and passed to accept the report of the Landscape Committee.

RESIDENTS' TIME

1. Jim Oliver asked why pending litigation could not be discussed at the Board meeting, and whether the membership is aware of the potential liability should judgements come against the Association. Mr. Stone stated that the pending lawsuits have been recorded in the minutes of past meetings and are a matter of public knowledge, with the exception of the most recent lawsuit. He stated that the Association is being sued on two counts of \$.5 million each, against Directors Smith and Hall for \$.5 million each and himself for \$.5 million.

Mr. Oliver asked whether the Board has been involved or taken a position on the proposed Ballena Isle Hotel or the developer's suggestion of substituting a public park for the hotel. President Smith responded that the matter was discussed at an annual meeting two years ago, when the hotel was first proposed, and that neither the Board nor the membership took a unified stand at that time. He stated that he has been keeping informed and has recently talked with a number of homeowners and Board members, since the project has been reactivated, and he does not feel that the Board has a unanimous opinion on the matter. Mr. Roger stated that the Board had not taken a stand when the hotel was first proposed, but to leave it to the membership, and had invited the developer to the annual meeting to explain the proposal and answer questions. He stated that something would be developed on Ballena Isle, and gave a little history on the prior plans for the area. Mr. Oliver requested that the Board take a position on the planned development, and indicated that he would much prefer office/convention use to a public park.

2. Don Brunette stated that when he was on the Board and in charge of maintenance, he had set the precedent for putting up new siding when the original siding was bad, which was done in accordance with the CC&Rs. He stated that he saw no problem with the repair of the units on Ballena Boulevard. Mr. Brunette also made suggestions regarding dredging and piling repair. President Smith invited Mr. Brunette to serve on the Marine Structures Committee.


OLD BUSINESS

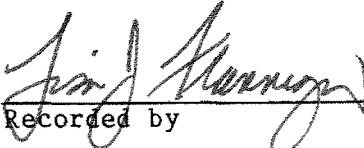
1. Recap of Legal Expenses

Mr. Hall gave a breakdown of the legal expenses and the percentage each amount represented of the total: \$6,800 (45%) on two suits related to the Gutleben dock issue; \$1,450 (10%) on the CC&R amendment; \$750 (5%) on general legal matters; and \$4,500 to defend the suit relative to the election, and \$1,450 to pay opposing counsel, for a total of \$6,000 on that matter (40%). Mr. Hall stated that the suit regarding the new election last year cost the Association \$10,700, so that over \$25,000 has been spent so far on legal fees in the last year. Mr. Roger asked why no amount was shown on the current financial statement for legal expense. President Smith stated that Mr. Hall will meet with the attorney to clear up any questions regarding the legal bills and report at the next meeting.

ADJOURNMENT

There being no further business before the Board, the meeting was adjourned at 9:50 p.m. The next meeting will be held on October 17, 1989 at 7:30 p.m.


Secretary


Recorded by

BALLENA BAY TOWNHOUSE ASSOCIATION
ANNUAL HOMEOWNERS MEETING
NOVEMBER 1, 1989

MINUTES

CALL TO ORDER

The meeting was called to order by President Bob Smith at 7:50 p.m.

President Smith welcomed members to the annual meeting and explained that the purpose of the meeting is to conduct any business before the membership and elect the Board of Directors for the coming year. He announced that this meeting marks the 20th anniversary of the association. President Smith also reported that Jim McGrew is back in the hospital condition, and called on Dr. Gallup, who provided an update on Mr. McGrew's condition. President Smith thanked Robert Partridge for coordinating a donation drive from the association members to the Red Cross and Salvation Army.

President Smith introduced property manager Rich Noble of Noble Community Management, Lisa Flannigan who prepares the minutes, and attorneys Mike Scholtes and Richard Fong.

ROLL CALL

Lisa Flannigan called the roll, recording those present and those represented by proxy. She provided President Smith with a count, and he declared a quorum was present.

APPROVAL OF MINUTES OF THE SPECIAL MEMBERSHIP MEETING OF OCTOBER 18, 1989

MOTION: It was moved, seconded and passed to approve the minutes of the October 18, 1989 special membership meeting as presented.

NOMINATION OF DIRECTORS

President Smith opened the floor for nominations. The following names were placed in nomination: Bob Smith, Andy Hall, Marty Gross, Marcia Gerin, Archie Stone, Jerry Rasco, Hal Nelson, Ian Roger, Milt Fleischer, Elwood Hopkins.

MOTION: It was moved, seconded and passed to close the nominations.

Each candidate gave a brief statement indicating their qualifications and interest in serving on the Board and answered questions posed by the members. Candidate Ian Roger withdrew from nomination.

Attorney Mike Scholtes explained the voting procedure and answered questions from the members regarding the process.

ELECTION

Ballots were issued to those present and those holding proxies. There was a recess while ballots were cast and votes counted.

Ballena Bay Townhouse Association
Annual Membership Meeting
November 1, 1989

-2-

ANNOUNCEMENT OF ELECTION RESULTS

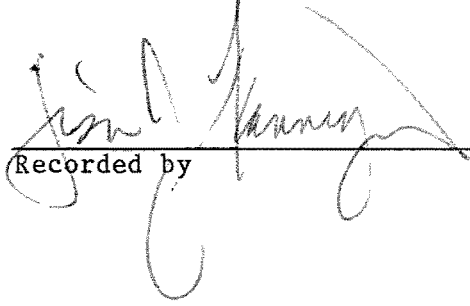
The meeting reconvened at 9:30 p.m. and attorney Mike Scholtes announced that the following candidates had been elected to the Board of Directors: Robert Smith, Andy Hall, Marty Gross, Archie Stone, and Marcia Gerin.

ADJOURNMENT

There being no further business before the membership, the meeting was adjourned at 9:40 p.m.



Secretary



Recorded by

BALLENA BAY TOWNHOUSE ASSOCIATION
MEMBERSHIP MEETING OF OCTOBER 18, 1989

MINUTES

A duly noticed meeting of the membership of the Ballena Bay Townhouse Association was called to order by President, Robert Smith at 7:50 P.M.

ATTENDANCE

After the selection and approval of an election committee made up of members: Allison Braverman, Dr. Mel Schwartz and Ruth Masonek, a roll call of those present was made.

It was determined that 47 homes were represented either in person or by proxy and since a quorum of homeowners were represented, the meeting continued.

CC&R AND BY LAW COMMITTEE REPORT

Mr. Archie Stone, Chariman, CC&R & By Law Committee, explained the proposed By Law change and accepted questions from the membership on the proposed change.

When all questions were answered, a motion was made and seconded calling for a vote on the Amendment.

RESULTS OF VOTE

Ballots were issued and received by the Committee. After counting and verifying the results it was determined that the By Law Amendment passed. The results was as follows:

| | |
|-------------------------|----|
| Homes Represented: | 47 |
| Votes FOR Amendment | 47 |
| Votes AGAINST Amendment | 0 |

As the Amendment was passed by a quorum of the Association Membership, the President was instructed to distribute the results of the Balloting along with a copy of the By Law change to the entire membership.

ADJOURNMENT

There being no further business before the membership, the meeting was adjourned at 9:55 P.M.

Allison Braverman
Acting Secretary

Robert Smith
Attested by

BALLENA BAY TOWNHOUSE ASSOCIATION
BOARD OF DIRECTORS MEETING OF NOVEMBER 1, 1989

MINUTES

CALL TO ORDER/AGENDA REVIEW

The meeting was called to order by President Bob Smith at 9:50 p.m.

ATTENDANCE

Present were Bob Smith, Andy Hall, Marty Gross, Marcia Gerin and Archie Stone. Also present was Rich Noble of Noble Community Management.

ELECTION OF OFFICERS

President Smith opened the floor for nominations, and the following Directors were nominated and elected by acclamation:

Bob Smith, President
Archie Stone, Secretary
Andy Hall, Treasurer
Marty Gross, Vice President
Marcia Gerin, Member at Large

NEW BUSINESS

Archie Stone requested that Mr. Noble forward a log of communications with members on a monthly basis. He asked that the log include the date of communication, name of member, nature of issue, and resolution. Mr. Stone also suggested that each committee be chaired by a member of the Board of Directors, who will report at each meeting.

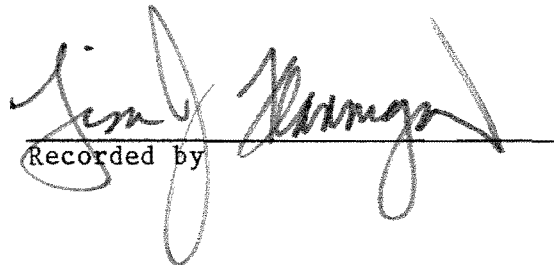
Andy Hall suggested that all Board members also serve on the Budget/Finance Committee, and there was no objection. A Budget/Finance Committee work session was scheduled for November 6th at 7:30 p.m. at Bob Smith's home.

ADJOURNMENT

There being no further business before the Board, the meeting was adjourned at 10:00 p.m.



Secretary



Recorded by

BALLENA BAY TOWNHOUSE ASSOCIATION
BOARD OF DIRECTORS MEETING OF NOVEMBER 28, 1989

MINUTES

CALL TO ORDER/AGENDA REVIEW

The meeting was called to order by President Bob Smith at 7:35 p.m.

ATTENDANCE

Present were Bob Smith, Andy Hall, Marty Gross, Marcia Gerin and Archie Stone. Also present was Rich Noble of Noble Community Management.

Homeowners present were Beverly Partridge, Robert Descombes, Ida Stone, Ray Lilliewhite, Jim and Audrey Ehrlich, Joan Albin, Shep and Charles Gallup and Melvin Schwartz.

APPROVAL OF MINUTES

Secretary Archie Stone read the minutes of the November 1, 1989 Annual Membership Meeting.

MOTION: It was moved, seconded and passed to approve the minutes of the November 1, 1989 Annual Membership Meeting (unanimous).

Secretary Archie Stone read the minutes of the November 1, 1989 Board Meeting.

MOTION: It was moved, seconded and passed to approve the minutes of the November 1, 1989 Board Meeting (unanimous).

PRESIDENT'S REPORT

President Smith stated that the regular meeting dates for the Board will be the second Thursday of each month at 7:30 p.m. at the Ballena Bay Yacht Club, and that coffee and refreshments would be available starting at 7:00 p.m. He stated that Marcia Gerin has agreed to coordinate the refreshments for the social time and would welcome any offers of assistance.

President Smith reported that Jim McNeil is recovering well from surgery to remove a large brain tumor. He reported that Jim McGrew is recuperating at home from his recent hospitalization, and although he is still in serious condition, would welcome calls from his neighbors.

President Smith announced that Beverly Partridge has agreed to prepare a new community roster. Ms. Partridge stated that the roster would be available at the meeting of December 13th and will contain an alphabetical listing of residents as well as a street address listing of owners. President Smith added that the roster would also include the names, addresses and phone numbers of the Board members and committee chairs, as well as the phone number of Manager Rich Noble.

President Smith announced that the Board has scheduled a general membership meeting for December 13th for the purpose of presenting the reserve study and making financial decisions for the Association. He encouraged those present to attend and to solicit proxies from their neighbors.

TREASURER'S REPORT

Andy Hall stated that revenue on the current financial statement is understated, as many homeowners pay their association dues at the end of the month. He reported that the final payment has been made to Steve Tingley Painting, so that the work on Cola Ballena has been paid for in full. Mr. Hall stated that the Association's six-month certificate of deposit account matures on December 17th. He reported that the Association is over budget for maintenance and legal expenses, and under budget for utilities.

MOTION: It was moved, seconded and passed to reinvest the funds into the same certificate of deposit accounts for another six months (unanimous).

The Board considered the bids for the annual audit and preparation of the Association's tax returns.

MOTION: It was moved, seconded and passed to have an audit performed by Edward Riback (unanimous).

MOTION: It was moved, seconded and passed to accept the Treasurer's Report.

MANAGER'S REPORT

Mr. Noble reported that two roof leaks had been reported after the recent storm, and that both roofs are under warranty by Central Bay. He stated that he has been in contact with Central Bay regarding these roofs, and has also requested that they provide a list of the roofs they cover under warranty. Mr. Noble stated that Tim McNeil has started his inspection of the buildings. Mr. Stone confirmed that Mr. McNeil has started with the first twelve buildings on the east side of Tideway Drive.

Beverly Partridge stated that the drains on her garage roof have no screens, and that the drains became clogged with leaves. Mr. Noble stated that he would investigate.

Mr. Stone asked Mr. Noble whether he had prepared a communications log, as requested at the November 1st Board meeting. Mr. Noble stated that he had not had an opportunity to create the log, but that the only communications from homeowners since the last Board meeting were the two reports of roof leaks. Mr. Stone stated that the log need not be typed, but could be a copy of whatever log Mr. Noble keeps for his own use.

Mel Schwartz, 453 Cola Ballena, asked whether the Association would pay for repairs of minor damage to exteriors caused by the earthquake. Mr. Stone stated that it would, and asked that any such damage be reported to Mr. Noble, who will initiate repairs as soon as possible. Dr. Schwartz stated that there had been damage at his front gate.

MOTION: It was moved, seconded and passed to approve the Manager's Report (unanimous).

COMMITTEE REPORTS

President Smith reported that the Board has decided that a Board member should chair each committee, although volunteers are solicited to take part in the committee work. He reported that the committees have been restructured as follows:

Home Maintenance and Architecture - Archie Stone, Chair
Land Side Maintenance - Marty Gross, Chair
Neighborhood Communications - Marcia Gerin, Chair
Waterside Maintenance - Bob Smith, Chair
Finance, Insurance and Legal - Andy Hall, Chair

1. Home Maintenance and Architecture - Archie Stone reported that it cost \$32,000 for the work to return the homes at Cola Ballena to good repair, or almost \$4,000 per house. He explained that the change of color accounted for only \$300 of the total cost. Mr. Stone stated that it is estimated that it will cost approximately \$3,000 to \$3,400 per home to bring the rest of the homes up to the same standard of repair. He explained that Tim McNeil is conducting an inspection of every home in the development, noting all work to be done, along with all materials and labor needed to accomplish the repairs. Mr. Stone stated that this detailed estimate should be completed within two weeks, and that it will be presented at the Annual Financial Meeting on December 13th. He explained that all the data will be available and the Board will be asking for a special assessment in order to accomplish the repairs.

In response to a question, Mr. Stone explained that the CC&R's are clear that the Association is responsible for maintaining all roofs in the development, but that previous Boards had interpreted the CC&R's such that it was the homeowners' responsibility. He stated that the result had been that many homeowners had replaced their own roofs, and it would be a tricky situation for the Association to now replace other homeowners' roofs. Mr. Stone stated that the best solution would be to approve a CC&R amendment to remove the responsibility for roof replacement from the Association. He stated that the Board will perform maintenance, such as fixing leaks, but that repairs should be coordinated through Manager Rich Noble, and that repairs to bonded roofs would be referred to the bonding company. Mr. Stone suggested that homeowners with roofs in need of replacement try to coordinate with their neighbors so that the work can be done in the most effective manner. He stated that eleven homeowners who have refused to sign the petition for the CC&R amendment are actively considering seceding from the Association, and that if they do, only six more signatures will be needed to pass the amendment.

2. Land Side Maintenance - Marty Gross reported that he had received a letter from Mr. and Mrs. Lilliewhite and Mr. and Mrs. Vickery requesting replacement of the trampled plants in the area between 1227 and 1229 Ballena Boulevard. Mr. Stone stated that he has agreed to remove the old plants, and Mr. Gross stated that he would install the new plants.

MOTION: It was moved, seconded and passed to approve the request of the Lilliewhites and the Vickerys for replacement of vegetation between 1227 and 1229 Ballena Boulevard (unanimous).

3. Neighborhood Communications - Marcia Gerin reported that the new community roster will be distributed at the Annual Financial Meeting on December 13th. She stated that she and Phil Braverman will work together to produce and distribute the newsletter, which is planned for distribution the third week of each month (the week following the monthly Board meeting). Ms. Gerin stated that she had sent a get well card to Jim McGrew, and that the committee will also be happy to send get well cards to residents on behalf of the Association if they are provided the information. She stated that Shep Gallup and Joan Albin had volunteered to serve on the committee, and solicited additional volunteers.

4. Water Side Maintenance - President Smith reported that Jim McNeil, last year's chair of the Dock Maintenance Committee, will serve on the Water Side Maintenance this year. He stated that there is much work to do, and that they would appreciate the participation of as many members as possible.

MOTION: It was moved, seconded and passed to accept the committee reports as submitted (unanimous).

RESIDENTS' TIME

In response to a question from Robert Descombes, Mr. Stone explained that the complete outline of the Board's plan for construction improvements and their financing would be presented at the Annual Financial Meeting on December 13th. He stated that a full package of financial data will be mailed out on December 1st, including a reserve schedule and detailed replacement plan for the year. Mr. Stone explained that the Annual Financial Meeting should normally be held 45 days prior to the beginning of the fiscal year (on November 15th). He further explained that it is the new Board which makes the financial plans for the upcoming year, and that the late election this year postponed the Annual Financial Meeting by one month.

In response to a question from Ray Lilliewhite, Mr. Stone stated that all homeowners would receive advance notice of the upcoming home inspections. In response to a question from Charles Gallup, President Smith explained that the inspection prior to the work at Cola Ballena was very cursory, for the purpose of determining which area was in the worst condition and in need of attention first.

In response to a question from Mel Schwartz, Mr. Stone stated that the total estimated cost to repair the remaining homes was around \$230,000. He stated that a more accurate estimate would be available once the detailed inspection has been completed.

NEW BUSINESS


1. Approval of 1990 Budget

Andy Hall stated that the 1988 figures had been used to project the 1990 budget. He stated that budget reflects a 20% increase in Association dues, the maximum amount the Board can increase the dues in any year. Mr. Hall stated the budget balances exactly in that the net excess of income over expenses is zero.

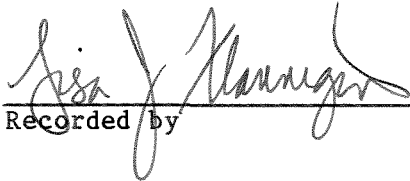
MOTION: It was moved, seconded and passed to adopt the 1990 Budget as presented, including a 20% increase in Association dues to \$136.50 per month (unanimous).

ADJOURNMENT

There being no further business before the Board, the meeting was adjourned at 9:00 p.m. The next Board meeting will be held on December 13th, following the Annual Financial Meeting.



Secretary



Recorded by

BALLENA BAY TOWNHOME ASSOCIATION
BOARD MEETING OF DECEMBER 13, 1989

MINUTES

CALL TO ORDER

The meeting was called to order by President Smith at 10:20 p.m.

ATTENDANCE

Present were Bob Smith, Andy Hall, Marty Gross, Marcia Gerin and Archie Stone. Also present were Royce Schultz, Rich Noble of Noble Community Management and Mike Scholtes of Chatzky, Fong and Fong.

MINUTES

The minutes of the previous meeting were not available for review.

ORAL COMMUNICATION

Royce Schultz requested and was granted the privilege of the floor. He proposed that the Board authorize a special election by written ballot of the membership, pursuant to California Corporations Code Section 7513, which permits elections on written ballot without a meeting. He stated that the election would be to authorize the Board to negotiate with the Tideway homeowners in good faith the terms of their secession from the Ballena Bay Townhome Association. Mr. Royce provided the Board with five copies of a proposed written ballot that he is requesting the Board to send to all members of the Association. He stated that Code Section requires that the Association's Secretary post the ballots and sign an affidavit of their mailing to the membership pursuant to an list attached to the affidavit. Mr. Schultz asked that the Association provide an up to date list of homeowners so that he can address the envelopes, and stated that he is authorized by the eleven Tideway homeowners to reimburse the Association for the cost of postage and provide ballots and envelopes.

Mr. Schultz stated that he proposed the Board send a letter in advance of posting of the ballot explaining the issue and stating a position of non-opposition in the matter, and stated that he had given a copy of a draft of such a letter to the Association's attorney for his review. He stated that it is understood that certain points are still to be negotiated, such as ongoing maintenance of the common street, and felt there would be no problem in working through those issues with the Association in good faith if 75 percent of the membership votes in favor of the secession. In response to a question, Mr. Schultz stated that the Tideway homeowners who wish to secede from the Ballena Bay Townhome Association have no involvement in the issue raised by the developer of the homes against the Association, as the issue predates their ownership.

Marcia Gerin stated that she had a concern relating to boundaries which resulted from building of one of the homes on Tideway Drive. Mr. Schultz asked her to provide him with information regarding the issue, and he would present it to the Tideway owners and inform her of their reaction.

It was agreed that the issues to be negotiated are maintenance of the common road, utilities, waterways and relinquishment of any investment the Tideway homeowners have in the Ballena Bay Townhome Association.

MOTION: It was moved, seconded and passed that the Secretary be empowered to prepare the affidavit and mailing of the ballot and a letter of non-opposition to transmit with the ballot.

Mr. Stone stated that he would transmit the materials to Mr. Noble for mailing by December 18th, and Mr. Noble will mail them and bill Mr. Schultz for the postage.

OLD BUSINESS

1. Claim by Great Sierra Group

Mr. Hall summarized that the Great Sierra Group, developer of the homes on Tideway Drive, claims they were overcharged \$15,000 in insurance, \$3,500 in dues, and \$1,500 in utilities, for a total of \$21,000.

Mr. Scholtes stated that he had spoken with Barry Sgarrella of the Great Sierra Group, who is willing to negotiate in order to settle the matter by the end of 1989, but was not sure whether Mr. Sgarrella has the standing to sign off on a settlement agreement. Mr. Scholtes stated that, while the numbers are debatable, the basis of the claim is legitimate. Mr. Scholtes stated that he disputed Mr. Sgarrella's claim that the Association should reimburse Great Sierra the cost of construction insurance, and felt that any settlement on the insurance issue should be for the cost of the amount of insurance coverage the Association would normally and should have provided. Mr. Stone suggested that the Association offer Great Sierra the amount it would have cost to provide the level of insurance the Association carried at that time, the amount of dues overcharged, and half the amount of utility costs Mr. Sgarrella is claiming. Mr. Hall stated that he would get information on the cost of the insurance the Association should have provided, arrange a meeting with Mr. Sgarrella regarding a tentative offer, and report back to the Board for action.

MOTION: It was moved, seconded and passed to authorize Andy Hall to proceed with preparation of a tentative settlement proposal for presentation to Mr. Sgarrella and final action by the Board.

Mr. Scholtes asked Mr. Hall to contact him before meeting with Mr. Sgarrella so that they can exchange information.

2. Don Gutleben Suit

Mr. Scholtes stated that he had received a call from Steven Weil (an attorney who had represented Ian Roger), who stated that he had been approached by Mr. Gutleben to represent him in his suit against the Association. Mr. Scholtes stated that Mr. Weil had asked his appraisal of the situation and possibility of settlement. Mr. Scholtes stated that he informed Mr. Weil that the way to settle the matter would be for Mr. Gutleben to acknowledge that his plan is a dead issue and to pay the Association the cost to repair the dock. Mr. Scholtes stated that Mr. Weil described a new plan for the dock configuration being considered by Mr. Gutleben, to which Mr. Scholtes had responded that the current matter must be settled before Mr. Gutleben submits a new proposal. Mr. Scholtes stated that Mr. Weil seemed reluctant to represent Mr. Gutleben, and that he felt hopeful that the matter could be resolved relatively soon.

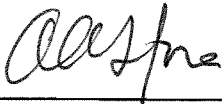
Mr. Stone suggested that the matter be pushed to a trial date, and Mr. Scholtes stated that he had hoped to settle it without additional expense, as he was not convinced the CC&Rs permits the Association to recover its attorney fees in this type of case. Mr. Scholtes stated that he had received not response from the Association's insurance carrier to written requests that they indemnify the Association.

In response to a question, Mr. Scholtes stated that he did not believe the Association could escalate foreclosure proceedings against Mr. Gutleben for reimbursement of repair costs as long as the basic claim is in litigation. He explained that, until the merits of the underlying claim were undecided, Mr. Gutleben would have a reasonable chance of obtaining a restraining order against the foreclosure. Mr. Scholtes stated that the Association could send a notice of default, then record a lien against Mr. Gutleben's property, which would leave open the option after ninety days of declaring Mr. Gutleben's ability to reinstate the obligation foreclosed, and 41 days after that to publish a notice of sale. No action was taken.

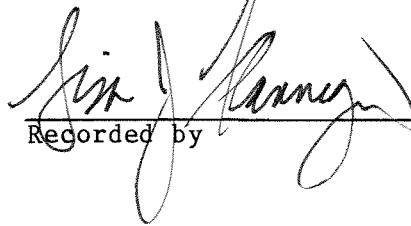
Mr. Scholtes stated that Mr. Weil stated he would write to Mr. Gutleben asking whether he would agree to pay the Association its repair costs if the Association in turn dismisses its action against him and agree to waive its attorney fees. Mr. Scholtes was asked to learn Mr. Gutleben's response to the proposal from Mr. Weil and report back to the Board.

ADJOURNMENT

There being no further business before the Board, the meeting was adjourned at 11:15 p.m. The next meeting will be held on January 11, 1989 at 7:30 p.m.



Secretary



Recorded by

BALLENA BAY TOWNHOME ASSOCIATION
ANNUAL FINANCE MEETING OF DECEMBER 13, 1989

MINUTES

CALL TO ORDER

The meeting was called to order by President Bob Smith at 7:40 p.m.

ATTENDANCE

Present were Bob Smith, Andy Hall, Marty Gross, Marcia Gerin and Archie Stone. Also present were Rich Noble of Noble Community Management and Mike Scholtes of Chatzky, Fong and Fong.

PURPOSE OF MEETING

President Smith thanked the homeowners present for their attendance and explained that the purpose of the meeting was to discuss the financial condition of the Association and consider a method for bringing the replacement reserves up to adequate funding and for funding of the replacement plan. He then asked attorney Mike Scholtes to comment on the documents sent to homeowners in preparation for the meeting.

Mr. Scholtes stated that the Association is a corporation controlled by the portion of the California Corporation Code called the Nonprofit Mutual Benefit Division, which provides for the notice of a special meeting of the members given a minimum of 10 days notice of the meeting. He stated that therefore the annual Financial Meeting is a legitimate meeting, as the notice was mailed out more than 10 days in advance of the meeting to all members. Mr. Scholtes further stated that the notice does state exactly what is planned to take place at the meeting, therefore, if there is a quorum, the ballot with regard to a special assessment can proceed, and the vote of the majority present will be binding upon all the members.

ROLL CALL

Lisa Flannigan called the roll of homeowners. When she called the name of Royce Schultz, Mr. Schultz asked if a quorum had been reached. Mr. Noble responded that it had not, and Mr. Schultz asked for a recess to confer with the Board. The meeting was recessed.

When the meeting was reconvened, Royce Schultz requested an opportunity to address the membership. He stated that he held proxies for eleven homeowners on Tideway Drive and explained that they wished to secede from the Association and form their own association. Mr. Schultz explained that, if the Association had properly assessed members, maintained the units as they should have been, and maintained adequate reserves, there would be no conflict. He stated that he was therefore reluctant to create a quorum with the proxies he held, but would do so, after discussing the matter with one of the Tideway homeowners, because he felt the members of the Association are entitled to vote for what they wish to do for their homes. Mr. Schultz asked, in turn, that the members of the Ballena Bay Townhome Association treat the Tideway homeowner fairly when they ask Ballena Bay homeowners to vote in favor of their secession.

The roll call resumed. Upon completion of the roll call, President Smith declared quorum of 53 homeowners represented.

PRESENTATION OF FINANCIAL STATUS

President Smith asked Secretary Archie Stone to outline the issue at hand. Mr. Stone explained that state law requires the Board of Directors to report annually to the Association on various financial matters, providing a pro forma operating budget not less than 45 days nor more than 60 days before the beginning of the Association's fiscal year. He stated that the materials had been distributed only 30 days before the beginning of the fiscal year, but that this was the first year in which the Board had distributed all the information that is required. Mr. Stone stated that the budget should include estimated revenue and expenses on an accrual basis for the coming year, the identification of the total cash reserves currently set aside, the identification and the estimated remaining life of and the source of funding to defray the future repair, replacement and additions to those major components which the Association is obligated to maintain, and a general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repairs, replacement or additions to those major components which the Association is obligated to maintain. He stated that the packet mailed to all homeowners on December 1, 1989 contains all those items mentioned above, including the Operations Budget for 1990, an Analysis of Replacement Reserves as of January 1, 1990, and the Board's Replacement Plan for the year 1990. Mr. Stone stated that the only item the Board had not done is something which can only be decided at this meeting, which is to indicate the methods of funding which will be used to defray the future repair, replacement or additions to those major components which the Association is obligated to maintain.

Mr. Stone stated that the Association does not have the funds to defray the costs, and will not have them unless the membership votes them. He stated that the Board is limited to a 20% increase in the dues annually, and that it would take a decade to fully fund the reserves at that rate. Mr. Stone estimated there should currently be \$738,000 in the reserves, and that \$49,000 should be contributed to the reserve fund annually through dues to maintain the fund at the level required. He stated that the reserves at the beginning of the year will be around \$87,000 (or a little over 10% of what is required) and that the cost of the work anticipated in the Replacement Plan for 1990 far exceeds the funds currently in reserves. Mr. Stone stated that the main issue before the membership at this meeting is consideration of a special assessment of at least \$1,800 per home to fund the replacement work, but ideally to adopt a special assessment of \$7,200 per home to fund both the replacement work and bring the reserves up to full funding.

Mr. Stone asked Mr. Scholtes to explain current legal requirements for homeowner association reserve funds. Mr. Scholtes stated that there is not statutory law requiring homeowner associations to be fully funded, but that he felt it would be extremely imprudent for an association not to try to be as near to fully funded as it can manage to be. He stated that the California Legislature has considered in the last legislative year and will continue to consider during the coming legislative session a proposed law which would require all homeowner associations to establish full funding of reserves. Mr. Scholtes stated that it is anyone's guess whether a law will be enacted, but that several versions of this bill had been introduced in the past year because there is a perception by the legislature that homeowner association boards of directors are not taking good enough care of the properties they are supposed to be managing. He stated that, in his experience in representing 25 associations, Ballena Bay Townhome Association has historically underassessed itself substantially.

Ballena Bay Townhome Association
Annual Financial Meeting
December 13, 1989

-5-

MOTION: It was moved, seconded and passed to cut off debate.

ELECTION

Ballots were issued and the meeting was recessed while ballots were cast.

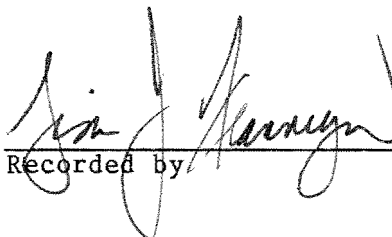
The meeting reconvened and President Smith announced that 34 ballots were cast in favor of the motion and 17 opposed, therefore the motion passed.

ADJOURNMENT

There being no further business before the membership, the meeting was adjourned at 10:12 p.m.



Secretary



Recorded by

RESIDENTS' TIME

Dr. Gallup asked whether the Association or the homeowner would bear the cost of repairs resulting from earthquake damage. Mr. Noble stated that the Association would have to repair any damage to common areas, but the homeowner would pay for repairs to his home.

Jean Maynard asked whether the special assessment should be paid monthly or quarterly. Mr. Hall explained that the special assessment is due monthly. After discussion, it was suggested that a bill would be sent quarterly explaining when the dues and special assessment are due. Mr. Noble stated that he would check with Kathy.

Marcia Gerin asked whether the assessment must be paid by the owner of a home before the home is sold. She was told that the debt is transferable, but must be disclosed when the home is put up for sale.

Jim Ehrlich asked whether city rules regarding cars parked in driveways apply in Ballena Bay. Mr. Stone stated that the city parking rules do not apply, but that the CC&Rs contain a similar provision which has not been enforced in the past. There was discussion regarding the problem of resident cars parking in the visitor parking, in driveways and on the street. Mr. Noble suggested that a survey be undertaken to determine how many visitor parking spaces exist, decide how to enforce the rules, then give residents time to prepare for enforcement (by cleaning out their garages to make room for their vehicles, etc.). It was decided to place a notice in the newsletter reminding residents that guest and street parking spaces are for guests only, and the Board consider specific measures for addressing the parking problem, including posting areas and towing violators, at its next meeting.

WRITTEN CORRESPONDENCE

1. Jack Coker, 445 Cola Ballena, Regarding Reimbursement for Roof Replacement

Mr. Gross read Mr. Coker's letter into the record. It was decided that Board Secretary Archie Stone would write to Mr. Coker acknowledging receipt of his letter and explaining that, if the Association were to reimburse all homeowners who had had work done on their roofs, it would have to assess all members of the Association, including Mr. Coker, to recover the costs.

Mr. Stone stated that he felt the only long-term solution to the problem of roof repairs would be to pass the proposed CC&R amendment. He stated that he felt positive that, once the 11 homes on Tideway are successful in seceding from the Association, it will be possible to get enough signatures on the petition to pass the amendment.

2. Patricia Hayes, 1215 Ballena Boulevard, Regarding Tree Root Damage

Mr. Gross read Ms. Hayes' letter into the record. Mr. Gross stated that he would address the issue of the trees in his report on the Landside Maintenance Committee.

COMMITTEE REPORTS

1. Home Maintenance and Architecture - Archie Stone reported that Tim McNeil of Nicely Done has inspected all but two of the homes (Roger, Rasco) to estimate the

cost of repairs. He explained that the original estimate had been too high, and that he and Mr. Noble had met with Mr. McNeil to go over the estimate. Mr. Stone stated that Mr. McNeil had in many instances quoted the cost to replace items that the Association felt could be repaired instead, and that Mr. McNeil has agreed to rework the estimate in accordance with the Association's philosophy that: anything which is structurally sound shall be repaired rather than replaced. Mr. Stone stated that the estimates are now in the range that he had originally envisioned, and that a priority list has been developed for the sequence of homes to be refurbished. He explained that the sequence begins with those homes which are in the most desperate need of repair, and moves through the development on a need basis. There was discussion regarding the sequence contained in the rehabilitation schedule.

MOTION: It was moved, seconded and passed to adopt the Home Rehabilitation Schedule in Priority Order as presented by the Home Maintenance and Architecture committee.

2. Waterside Maintenance - Jim Neil stated that he was reporting in the absence of Chair Bob Smith, who was out of town on business. He stated that the contractor has indicated who had bid in October for the piling work will not honor the bid. Mr. Neil stated that he and Mr. Stone performed a float survey revealing that 29 floats need repair, 27 surplus need to be removed, and 10 need to be replaced (approximately 800 square feet). He stated that he and Mr. Stone had spoken with the Harbormaster, and estimated a cost of about \$20.00 per square foot for repairs plus about \$10,000 for new floats. Mr. Neil stated that he hopes to obtain several bids for float replacement. Mr. Stone stated that Terry Klaus has been talking to BCDC informally regarding dredging, and hoping to get them to agree that the project is not really dredging, but moving silt from under the piers.

Mr. Stone stated that Mr. Noble will be taking bids within the next week or so for the driving of 29 piles, and expects that they will have been driven within the next two or three months. He stated that most of the landings are structurally sound, but that many have problems where the ramps hook onto the landing, and that Nicely Done will start inspecting and repairing landings within the next week. Mr. Neil stated that a new ramp will be installed at Ms. Gerin's residence next week, as well as a cable float at the end by the breakwater. He stated that in their last conversation the Harbormaster had insisted that the soil erosion problem was caused by the wave maze, and that the Association would be responsible for correcting the situation.

3. Finance, Insurance and Legal - Andy Hall relayed the information Allison Braverman had obtained regarding earthquake insurance. He stated that, for \$8,064,000 in coverage, the premium would be \$22,120 per year (approximately \$246 per home), which is approximately more than all the other insurance carried by the Association. Mr. Hall stated that the premium for \$5,000,000 in coverage would be \$12,120 per year, which comes to around \$135 per home. He explained that the 5% deductible can be figured in one of two ways: (1) on a per building basis (e.g., \$400,000 building = \$20,000 deductible; or (2) on the total value of the insured property (\$8,000,000 in coverage = \$400,000 deductible). Mr. Hall further explained that fixtures, installations, cabinets, refrigeration, and all installed appliances would be covered, and that attached rugs, drapes, etc., would be covered only to actual current value, not replacement value. He stated that the docks would not be covered by such a policy. He stated that, in his opinion, the

coverage was very expensive for the potential benefit it would provide, and Mr. Noble stated that none of the associations he knows who have earthquake insurance have collecting anything on it. Mr. Hall stated that he is still gather information, and Mr. Stone asked that Mr. Hall publish the information he compiles on earthquake insurance in the newsletter.

Mr. Neil suggested that, if the Association follows through on a previous suggestion to obtain a boat to perform dredging, that it also explore the possibility of fitting it up for use as a fire boat. Mr. Stone stated that the Association would almost certainly obtain the services of an expert to perform the dredging, but that the idea of obtaining a fire boat had merit.

4. Neighborhood Communications - Marcia Gerin stated that the neighborhood directory has been printed and distributed, and that she will print corrections, additions and changes in the newsletter. She asked that everyone assist her by letting her know of any corrections, additions or changes which need to be made. Mr. Neil asked for clarification regarding the use of the directory, and Ms. Gerin confirmed it is for internal use only and cannot be supplied to or used by outside parties for the purposes of marketing to homeowners.

Ms. Gerin stated that she sent a sympathy notice to Mrs. McGrew on behalf of the Association. She stated that it was her intention to publish the newsletter one week following each Board meeting summarizing what took place.

5. Landside Maintenance - Marty Gross stated that the committee will move forward with the landscaping work which has been budgeted. He reported that there had been an incident where someone had driven over the lawn at the corner near the bridge, and stated that a roller will probably be brought in to roll out the tire grooves and the area will then be reseeded.

Mr. Gross stated that the tree work will be started this month, which will include removal of some trees and pruning of others. He stated that some of the trees along the side of Patricia Hayes' home will probably need to be removed, and that there is a large group of trees around Terry Klaus' home, some pines near Mr. Thruston's home, and some near Nola DeMuse's home which will probably need to be removed as well. Mr. Gross explained that he would be consulting with a tree expert as to which trees to remove, as some of the trees have been girdled such that they will probably die anyway. Regarding the root damage to sidewalks, he stated that his plan of action would be to lift up the slab, cut out the root, and drop the slab back into place. He stated that he foresees no tree work for Tideway except for those causing an immediate hazard.

He stated that he has directed Sundance Landscaping to return to dirt the areas where several types of groundcover are failing, and that he would later do minor replanting with appropriate groundcover. Mr. Gross stated that he would be contacting homeowners along Cola Ballena, as two landscaping experts cannot decide what should be kept and what should be removed in that area.

Mr. Gross stated that it was the consensus of the Board that the container at the corner of Cola Ballena and Ballena Boulevard should be removed, and that it would cost \$50.00 to have it hauled away. There was discussion regarding the potential value of the container and its contents. It was decided that Archie Stone, Jim Neil and Marty Gross will go through the contents and make a recommendation at the

next Board meeting regarding what is worth keeping, and the disposition of the remaining contents. Mr. Gross stated that the container could have a value and suggested that a container company will be asked to come out and look at it to estimate its value.

It was pointed out that there has been too much water in the front yard at 465 Cola Ballena, and Mr. Gross stated that he would investigate.

OLD BUSINESS

1. Selection of Paint Colors

In response to a question, Mr. Stone explained that five color combinations were selected by last year's Architectural Committee, and approved by the Board of Directors at its meeting of September 14, 1989, with the idea that each of the groups would be painted one of those combinations. He stated that it had not yet been determined how the choice of a particular combination would be made for each group. Mr. Stone stated that he planned to have a representative from each of the blocks serve on the Home Maintenance and Architectural Committee, and that this representative should poll its "constituency" as to the choice of color scheme. He expected the decision would need to be made within the next six months.

2. Point Ballena Secession

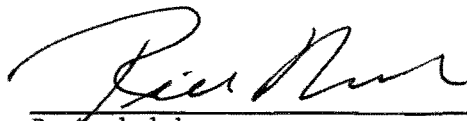
In response to a question, Mr. Stone stated that 35 votes have been cast to date, and they are overwhelmingly in favor of the proposed secession. He stated that there will probably not be a 75% vote in favor, but that 50% seems possible, in which case they may be able to petition the court for approval.

ADJOURNMENT

There being no further business before the Board, the meeting was adjourned at 9:45 p.m. The next meeting will be held on February 8, 1990 at 7:30 p.m.



Secretary



Recorded by