



April 2012

SURFSIDE III e-NEWSLETTER

Daniel Kessner – Editor



FROM THE BOARD OF DIRECTORS

URGENT—Approval Hearing On J Street Drain Project March 27th!

On **March 27th at 2:15 PM**, the J Street Drain Final Environmental Impact Report will be presented to the Ventura County Board Of Supervisors for certification and project approval. The time scheduled for the presentation on the agenda is 1.5 hours. If you have any remaining concerns about this project, this will be your last chance to let our representatives hear your concerns before project approval. **It is always the case that an involved electorate is heard and so if you can attend this presentation, it will demonstrate the strength of our involvement.**

The Ventura County Watershed Protection District completed J Street Project Final Environmental Impact Report (FEIR) is posted on the web at www.jstreetdrain.com. You can also find directions to the hearing location on the web site which is being held at 800 S. Victoria Avenue, Ventura, CA 93009, Hall of Administration, Board Hearing Room.

Comparison of HOA Dues

At the March 2012 Board Meeting, the subject of regular Homeowner dues was discussed again. Before you read the following comparisons, it is important to note the differences in what Surfside III offers compared to the other surrounding HOAs.

At Surfside III, we offer the following amenities in addition to renovations we have completed and still intend to do.

- 1) A clubhouse that is open 6 am to 5 pm Monday and Tuesday, and 6 am to 9 pm the other 5 nights of the week. (We are planning to repaint the interior.)
- 2) an indoor heated pool
- 3) an indoor Jacuzzi
- 4) a gym (which we are planning to renovate)
- 5) a library area
- 6) a kitchen area (which we are planning to renovate)
- 7) a carwash area, recently upgraded to meet city requirements
- 8) an RV Parking area
- 9) basketball Courts
- 10) volleyball courts
- 11) swings
- 12) 3 play areas (2 children's and 1 toddler) with various equipment
- 13) direct access to the beach
- 14) two barbecue areas (we are planning to rebuild the pavilions)
- 15) open common area to walk dogs, etc., as well as a dog run
- 16) an elevator on all multistory buildings

Our Regular HOA dues are \$449/month. Our intention is to hold them at that rate next year, without any planned special assessments. Included in those dues at a cost of approximately \$110/month are your water, sewage and trash. In addition, the Board was advised at the meeting that Beachport Cottage owners also pay for exterior maintenance of their units separately. At Surfside III, this is included

in your HOA dues, as well as the plumbing and electrical in the wall, which the owner is responsible for in some HOAs, and they must carry additional insurance, or pay for clean-up of back-ups, etc.

Please consider all these items, when you compare the regular HOA dues at Surfside III, to the regular HOA dues at surrounding associations. Also consider that some of the surrounding HOAs may also be starting to experience the plumbing issues that Surfside III has already addressed.

Note: Information current as of February, 2012

Surfside I
Monthly Dues \$410
Units 201 (2/3 bedroom condos)
Amenities 2 outdoor pools; 2 Jacuzzis, CH (rental available at \$50 + deposit
Open M-F 9am-3pm-closed all other times)
Parking Carport
Water/Sewage/Trash Included in HOA dues
2 outdoor pools as of 9/2011, one pool temp is 82° and another 87°

Surfside II
Monthly Dues \$340 (recently gone up)
Units 59 (all 1 bedroom condos)
Amenities Small Clubhouse; one outdoor pool, Jacuzzi
Parking Indoor; double garage doors
Water/Sewage/Trash Included in HOA dues

Surfside III
Monthly Dues \$449 + \$166.67 (2012 special assessment)
Units 258 (condos 1/2/3 bedrooms) 51 TH – 17 Buildings including the clubhouse
Amenities CH with pool, Jacuzzi, saunas, gym, billiards, meeting room, library, kitchen
carwash, RV parking area, volleyball and basket ball courts, swings, 3 play areas, 2 BBQ areas, dog run,
direct access to the beach, elevators
Parking Carports and 2 car garages with each TH
Water/Sewage/Trash Included in HOA dues
One indoor pool Temp at 84°

Surfside IV
Monthly Dues \$450 (2012)
Units 211 (condos/TH) – 18 Buildings
Amenities Three-story CH with pool, Jacuzzi, saunas, billiard room, meeting room, library
Parking Indoor
Water/Sewage/Trash Included in HOA dues
One indoor pool Temp as of 9/2011 is at 82°-83°

Beachport Cottages
Monthly Dues \$266 (\$266 + \$85 approx = \$351)
Units 30 Townhomes (PUD)
Amenities None
Parking Indoor
Water/Sewage/Trash Paid by Homeowner who reported bi-monthly is approx \$170; Homeowner pays for their own maintenance

Heritage/Hideaway
Monthly Dues \$296
Units 86 Townhomes
Amenities Outdoor pool, spa (Homeowner pays for meeting rooms)
Parking 2 car garage
Water/Sewage/Trash Paid by Homeowner

Comparison of Special Assessments

In Mandalay Bay there are 743 homes in the area, and **7.48 miles of seawall up against these homes that is starting to**

crumble. This total includes Seabridge where the owners already pay **\$10,000 or more a year in special taxes and assessments.** The homes were built in the late 1960s early 1970s. The walls were estimated to have a 40 year life cycle ... here we are. Total replacement of the walls is estimated at \$118 million, approximately \$159,000 per owner. A group of owners is advocating pre-emptive repairs at a fraction of the \$118 million. They have already spent \$642K just evaluating the problem. The city has split the cost with them. They are going back and forth now on who is responsible for the repairs, the city, the associations, or shared. This has been going on for 6 years. While our roughly \$15 million in repairs and \$24,000 in special assessments are painful to us to repair defective water lines, sewer lines, elevator enclosures, building envelope, etc., Mandalay Bay's problem is eight times larger!

Surfside III Clean-up Days

The second clean up day will be held on Saturday, April 21st from 9:00 am until Noon (Apr 28th rain alternate). We will meet in the Picnic Area behind the Club House

The building upgrades are nearing completion while the clubhouse repairs and paving are only a few months down the road. Our first Clean-Up Day in mid-February saw about 20 persons working and donating items that include the pansies in the front driveway, the flower garden by Building 3, the succulent garden in the townhome green belt, and other beautification. We also had volunteers clean elevator walls, paint hazard yellow step and walkway risk areas. With our tight budget and limited staff we have a lot of things to do and this is your opportunity to help pick up, paint up, plant flowers, and meet some neighbors.

Wear work/paint clothes and bring work gloves and trash bags if you have them.

If you have potted exterior plants that you would like to donate to our efforts, or if you would like to donate some purchased nursery stock begonias, pansies, snapdragons, geraniums or impatiens, please bring those to the picnic area behind the clubhouse early Cleanup morning.

Help us plan with your RSVP of your attendance, and any planned donations in an email to ssiibob@gmail.com or stop by the office and leave your information with Carol via phone at 488-8484, or during office hours Monday, Tuesday, Wednesday and Friday.

The event will have small teams cover our complex to:

- Pick-up paper and trash,
- Paint hazard areas red or yellow,
- Make the area dog poop free for a few hours,
- Plant some color plants in need areas,
- Your suggestions are welcome and encouraged.

FROM THE ON-SITE OFFICE

Owners are responsible to have the cleanouts in their unit available. If the cleanout is covered and we do not know where it is, then that owner will be responsible for any damage to their unit and any adjoining units damaged as a result of a backup that could have been avoided by our cleanout maintenance. It is the owner's responsibility to locate the cleanout and remove the covering (tile or other surface). After it has been uncovered we can re-schedule the cleanout of that line.

COMMITTEE BRIEFS

For more information visit: <http://www.surfsideiii.com/docs/committee/committee.htm>

Please contact the chair to volunteer.

Neighborhood Watch Committee: Val Lameka; 805-986-2855; v.lameka@yahoo.com

At the well attended March meeting, Senior Officer Bates and Delores Dyer discussed the slim crime report for February. We then threw open the floor for any and all discussion of general interest. Examples discussed ranged from problems outside our gates, to the best free APP for receiving police and fire activity (Gordon Edwards Scanner APP), to how old police uniforms are destroyed so that they cannot be used for nefarious purposes, and much more. A good time was had by all, with plenty of cookies and cake to make our learning easier. Congratulations to our residents who do not hesitate to call the police about suspicious activity. You DO make a difference!

The next Watch meeting will be Thursday, April 5, at 7 pm in the Clubhouse.

Questions or reports to Valerie Lameka.

FROM THE EDITOR

Please send all newsletter submissions to me at dkessner@csun.edu. Please avoid any special formatting and use Arial 10-point font if you have it. The deadline is the 20th of each month for the following month's issue. Owners and renters should be aware that the Newsletter is always available on the website: www.surfsideiii.com. This includes back issues.

The **Owners' Corner** is a forum for all of you to voice your opinions on anything that might be of interest to everyone else. Please feel free to take advantage of this.

The City of Port Hueneme has a free electronic newsletter with information on various city-related matters and events. To sign up to receive it, visit the city website: www.ci.port-hueneme.ca.us, then in the column at the far left, click on "Sign Up for E-News."

CONTACT INFORMATION

MAINTENANCE/RESIDENT SUPPORT (PHONE NUMBERS AND E-MAILS BELOW):

Contact Lordon Management, Jennifer Critchfield; for e-mails always copy Donalea Bauer

Include your phone number(s) and/or e-mail for response before end of next business day. If you get her voice mail, but would like to speak with her directly, hit zero and talk to the operator.

If more urgent, call Donalea Bauer.

Surfside III On-site Property Manager's Office: 600 Sunfish Way, Port Hueneme, CA 93041

Phone: 805-488-8484

OFFICE OPEN:

Mondays & Fridays – 8 am-12 noon

Wednesdays – 1-5 pm

THERE WILL BE NO ON-SITE TELEPHONE SERVICE WHEN THE OFFICE IS CLOSED.

Please note that calls regarding maintenance or billing should be directed to Lordon Management.

<u>Surfside III Direct Contact:</u>	Donalea Bauer, Vice President, community manager
Surfside III COA	Email: donaleabauer@lordonmanagement.com
600 Sunfish Way	Phone: 800-729-5673 x 3342

Port Hueneme, CA 93041 http://www.surfsideiii.com manager@surfsideiii.com Phone: 805-488-8484	Jennifer M. Critchfield, assistant community manager Email: jcritchfield@lordonmanagement.com Phone: 800-729-5673 x 3380
Carol Short, On-site Property Manager Management Company: Lordon Property Management 1275 Center Court Drive Covina, CA 91724 Phone: 800-729-5673 For after-hours emergencies, dial 5 or 626-771-1075	Our Board: Bill Betts - President bill.betts@surfsideiii.com Ira Green - Vice-president ira.green@surfsidediii.com Skip Perry - Treasurer skip.perry@surfsideiii.com Michael Madrigal - Secretary michael.madrigal@surfsideiii.com Bob Banfill - Director bob.banfill@surfsideiii.com

LORDON MANAGEMENT: OTHER DEPARTMENT EXTENSIONS

All escrow matters: Nicole Castillo, ext. 3339; nicole@lordonmanagement.com
 All insurance and collections: Mia Preciado, ext. 3337; mpreciado@lordonmanagement.com
 Your account, billing address, etc: Liz Lopez, ext. 3319; llopez@lordonmanagement.com
 Liens, legal issues: Donalea Bauer (see above)



**BANKRUPTCY
VOTING RIGHTS**

QUESTION: Would taking away the voting rights of a delinquent homeowner who has filed bankruptcy be a violation of the automatic stay? This homeowner is currently in an accepted payment plan with the HOA.

ANSWER: Your question is a little unclear. If the owner is currently in [bankruptcy](#), you cannot suspend his voting rights. If the owner is out of bankruptcy but delinquent in his payment plan, the association can suspend his voting rights. Your board should run this by legal counsel before taking any action.

**HARASSMENT
OF BOARD MEMBERS**

Homeowners who volunteer to serve on their boards quickly learn they cannot please everyone. Some owners have legitimate complaints, some complain because they love to complain, and a third category turns malicious. The board of a small association in Orange County had close encounters of the third kind and fought back.

The board suffered through years of abuse from a husband and wife. When the couple focused their attention on the president with unrelenting harassment that culminated in threats and 119 harassing telephone calls in less than two months, the president sued the couple.

The trial lasted five days. The twelve jurors were outraged by the couple's conduct and returned a unanimous verdict awarding the president \$1 million in emotional distress and punitive damages. (*Avetoom v. Fridman*, Case No. 30-2010-00345490.)

**FIDELITY BOND
REQUIREMENTS**

The [FHA](#) adjusted an element of the certification requirement for condominium associations.

Previously, management companies had to provide a separate [fidelity bond](#) insuring the association as well as themselves (creating insurance problems for management companies). The FHA is dropping the requirement for those management companies named as additional insured on the association's policy.

But, as with most governmental agencies, the right hand does not know what the left hand is doing. [Fannie Mae](#) continues to require that management companies carry their own fidelity coverage. Complying with FHA and Fannie Mae's shifting demands continues to be a drag on the housing industry.

RECOMMENDATION: Boards wanting to meet FHA and Fannie Mae requirements should talk to their association's insurance broker.

Thank you to Scott Iden of [US Approvals, LLC](#), a company specializing in FHA certifications, for this update.

DIRECTOR REVIEW OF RECORDS

QUESTION: Are records, which are not available to a homeowner such as redacted legal invoices and Architectural Committee records, available to that same homeowner if they become a board member?

ANSWER: Although [Corporations Code §8334](#) gives directors an "absolute" right to inspect all association records, California courts have limited that right. In situations where there are privacy concerns, a conflict of interest, or a potential violation of fiduciary duties, a director's rights are limited.

Director Litigation. For example, in a case where a director who had sued the corporation and then tried to exercise his "absolute" right to view the corporation's records, the court held that he had no right to access documents covered by the attorney-client privilege that were generated in defense of a suit the director had filed against the corporation. The court reasoned that a plaintiff director cannot take off his "shareholder's hat" and swap it for his "director's hat" and claim an absolute right to access all corporate documents. Doing so would advance the director's personal interests against those of the corporation. [Tritek Telecom v. Superior Court](#).

Architectural Records. Although directors have a right to review architectural records, the same privacy concerns apply. If a director wants to inspect and copy the plans of a neighbor's home security system, the board should politely decline. I can't think of a good reason why a director would need to inspect and copy his neighbor's plans. Moreover, security systems are specifically protected from disclosure by the Davis-Stirling Act. [Civ. Code §1365.2\(d\)\(1\)\(E\)\(vi\)](#).

RECOMMENDATION: If a board believes that a director's request for records is for an improper purpose, the board should consult legal counsel before releasing them. A director's rights are not absolute and must be balanced against owner privacy rights.

LEGAL ADVISER

QUESTION: Our board recently appointed a former director as a "legal" consultant because of her prior service on the board. She now attends executive sessions and advises the board on legal matters. She has no legal background whatsoever and, to be honest, is somewhat of a busybody. Is it legal to let a homeowner be privy to privileged legal matters?

ANSWER: Disclosing privileged information to a homeowner is not "illegal." In other words, directors cannot be prosecuted and sent to jail for making her a legal consultant. The arrangement is, however, incredibly risky and exhibits poor judgment that may expose the association to legal liability and put directors at personal risk. There are two serious problems with the arrangement.

Business Judgment Rule. The first problem is that seeking legal advice from a non-lawyer violates the Business Judgment Rule. The BJR protects directors from personal liability if they act (i) in good faith, (ii) in a manner which directors believe to be in the best interests of the association, and (iii) with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. [Corp. Code §7231\(c\)](#). It's the third prong that gets the board in trouble. Would an ordinarily prudent person seek legal advice from a non-lawyer? I don't believe a judge or jury would think so. If the board relied on the "legal advice" of a homeowner that resulted in damage to a third party, directors could be personally liable.

Attorney-Client Privilege. The second problem involves the breach of the attorney-client privilege. Communications between the board and their attorney (the kind that went to law school and passed the Bar) are privileged and cannot be discovered in litigation unless a waiver has occurred. The purpose of the privilege is to encourage full and frank communications between the board and legal counsel. If the board is sharing their communications with a former director (busybody or not), the privilege could be waived and the association's litigation strategy disclosed to the other side during discovery. I don't think a court would consider that prudent behavior by directors.

RECOMMENDATION: Your board should thank the former director for her service and quietly dismiss her as "legal adviser" to the board. Your board should not invite former directors to executive sessions and not share privileged communications with them. It should be noted that inviting a managing agent to executive session and involving them in attorney-client communications [is allowed](#).

TERM LIMITS

QUESTION: How long can a board member continue to serve?

ANSWER: Unless your bylaws provide otherwise, board members can serve until the end of time--if the membership keeps electing them and they live that long.

Term Limits. You can, however, amend your bylaws to impose term limits. If done properly, they can be useful. Term limits should be written to take effect only if there are people willing to run for the board. If not, incumbents should be allowed to serve additional terms until such time as others are willing to serve on the board.

ELECTRIC CHARGING STATION UPDATE

Last year the Legislature rushed through SB 209 and Governor Brown signed it knowing the bill had a number of serious flaws. The legislation allowed the taking of common areas for a homeowner's private use in violation of California's Constitution and the Davis-Stirling Act (which requires approval of 2/3 of the membership before an owner can exclusively use common areas).

Clean-Up Legislation. With the assistance of [CAI-CLAC](#) in the drafting of clean-up legislation, SB 880 addresses most of the problems created by SB 209. The bill went through the Legislature on a priority basis, was signed into law on February 29, and took effect immediately.

Utility Lines & Meters. The revised statute gives boards of directors' authority to grant exclusive use of common areas to members who run utility lines and install meters in the common areas for charging stations in an owner's garage or parking space. The bill resolves the "taking" of common areas by requiring associations to enter into a license agreements with owners who install charging stations in the common areas.

Common Area Station. The revised statute gives associations and owners authority to install a charging station in the common area for the use of all members. It gives authority to associations to develop rules for the use of "public" charging stations and allows associations to create new parking spaces where none previously existed to facilitate their installation.

Private Stations. The revised statute authorizes "private" charging stations in the common areas but only if installing it in an owner's exclusive use common area is impossible or unreasonably expensive. The revised statutes can be viewed at [Civil Code §1353.9](#) and [Civil Code §1363.07](#).

RECOMMENDATION: Associations still face legal and practical problems when it comes to implementing the new requirements. Boards should work with legal counsel to establish policies, procedures and legal safeguards related to electric charging stations. If your association does not have legal counsel, [contact us](#).

RECYCLING LAW

California disposes of more than 40 million tons of solid waste each year, 8% of which comes from multifamily residential housing (apartments and condos). To channel a portion of that 8% into recycling, [AB 341](#) requires multifamily residential dwellings of 5 units or more to arrange for recycling services by July 1, 2012.

Budget Line Item. The bill requires local jurisdictions to oversee the recycling programs and to recover their costs from solid waste generators. Costs, like solid waste, roll downhill. As a result, condominium associations can expect higher waste collection fees.

Implementation. Implementing recycling will be quite challenging for many associations since they have little or no space available for setting up recycling collection points in their developments. How recycling will be implemented in those developments is a mystery.

RECOMMENDATION: Associations should check with their local waste haulers to find out if the new requirements indeed apply to them. If so, what costs, if any, will be associated with the recycling? Since this will occur mid-budget for most associations, let's hope the costs are minimal.

SUSPEND RENTER PRIVILEGES

QUESTION: If a homeowner has leased his unit on a long term lease and he is very delinquent on his dues, can the board prohibit the RENTER from using the common area facilities?

ANSWER: Yes, a renter/tenant's [common area privileges](#) can be suspended. When owners lease out their units, they transfer their common area privileges to their tenants. If the owner's privileges are suspended, the loss flows to the tenant. Before suspending a tenant's privileges, the board needs to hold a [hearing](#) with the owner.