



August 2012

SURFSIDE III e-NEWSLETTER

Daniel Kessner – Editor



FROM THE BOARD OF DIRECTORS

Next Open Board Meeting on August 4

The next open Board meeting, followed by an Executive Session, will be held on Saturday, August 4, 2012, at 9:00 am in the Surfside III Clubhouse.

Board Nominations

As you will read in the Owner's Corner, Bob Banfill will not be re-running for the Board. Each Board member contributes their own special talents to our job of running the association. I am sure you all know that Bob was behind the clean-up and beautification activities as well as parking and also assisting in the review and development of new rules.

We are very fortunate to have an owner with extensive financial experience send in their nomination. If elected, he will be a great aid to our treasurer.

Clean-up and Beautification Activities and Opportunities

On July 7th, 11 owners and tenants met to pick up litter and plant flower beds. We even had 'Regan', a 4 year old granddaughter from Oklahoma, assisting in both activities.

We had with several donations of plants and succulents from another half dozen residents.

On July 20th additional flower beds were added in the Building 1 area.

Our new approach is to assign upon request a volunteer or couple a single flower bed to maintain over the season. We currently have 5 of our 11 enhanced flower beds and areas assigned.

If you have a green thumb and an interest please contact **Carol** at the office or come to the next **Cleanup and Beautification Day**.

County of Ventura Tidal Survey Schedule

Surfside III Monument Setting (already in progress)

* Bill Meager to set survey monuments on property week of 7/16 during normal business hours

(1 day)

* Survey low Ground Water: 7/31-8/2. Three Days / Start time will be **4:00 am - 05:30 am**; 2-3 hours duration each.

* Survey high Ground Water: 8/15-8/17. Three Days / Start time will be **8:00 pm – 10:00 pm**; 2-3 hours duration each.

FROM THE ON-SITE OFFICE

Surfside 3 and Southend Dumpster Diver

In a recent report from Chief Kathleen Sheehan, Port Hueneme Police Department, Officer Ryan Bates caught the Surfside III dumpster diver on Tuesday, July 10, after a resident reported seeing him on Bluewater Way.

He was given an official trespass notice for Surfside III and can NOW be arrested for trespassing if found inside without being accompanied by a resident. He said that he “will never come back” to Surfside III. He was also given his official warning for removing recyclables from city trash containers (7243 PHMC). He will be cited for any incidents since he’s been warned.

We know that many of you were proactive in removing him from the property, and although it’s taken some time, the mission is accomplished. Thanks to all of you for caring!

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

We had a lively meeting. Our police volunteer, Delores Dyer, gave us a brief account of the June police activity (and we like it when activity is down). Senior Officer Bates caught our elusive dumpster diver. The diver was required to sign a written warning, and understands he will be arrested for trespassing if he returns. Ryan Bates was also part of a sweep, which cleared several undesired people from one of the units. He then told us that the California courts have been chipping away any limits on growing medical marijuana for personal use. So, if you have a jungle next door, the police and office would like you to report it. Having the jungle may be okay, per the courts, but it could lead to other problems.

The next Watch meeting will be Thursday, August 2, at 7 pm in the clubhouse.

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."

OWNERS' CORNER

The Owners' Corner is a place in the newsletter for owners to voice their observations and suggestions about the association operations or make announcements about any Surfside III social event or activity. While the newsletter Editor and the Board do review these submissions, the opinions and content only represent the author and not the association. We will refuse and return to the author for re-writing any material that is not factual or is in bad taste or denigrates any individual. We are not perfect and apologize in advance if you find the content of anything in this section offensive.

The Surfside III Condominium Association ("association") is not responsible for the content and accuracy of any information provided by owners or third parties. The association and its Board of Directors will not accept any liability for any direct, indirect, incidental, special or consequential damages that result from or are related to material submitted by the owners or other third parties. By submitting any material for publication in this newsletter, all individuals agree to indemnify, defend and hold the association, its officers, directors, members, representatives, managers and agents harmless to the fullest extent permitted by California Law, from any and all claims, actions, and/or lawsuits, arising out of or related in any way to their material published in this newsletter.

Subject: Not running for re-election in 2012-13

To Whom It May Concern:

It has been an honor to work with the dedicated board members, committee chairs and members as well as association staff for the last two years. I hope I have contributed in some small way to the stability and improvement of Surfside III.

I do not plan to run for re-election to the Surfside III Condominium Association Board of Directors in October 2012.

If one is curious as to the reason I refer them to the late Steve Jobs quote, "If today were the last day of my life, would I want to do what I am about to do today?"

I do want to say that the other four members of the board were always totally professional and open in their dealings regarding Surfside III. I fully believe all of them work very hard to make our community a better and more valuable place to live and play.

I encourage anyone with a sense of responsibility and a willingness to work to the long term good of the community to consider running for the board. It does take dedication, individual work and at least 20 hours a month of participation, research, emails and meetings.

The deadline to nominate yourself or others for the next election is no later than 5:00 pm on Friday, August 17, 2012.

Robert Banfill

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.

Surfside III Direct Contact:

Surfside III COA
600 Sunfish Way
Port Hueneme, CA 93041
<http://www.surfsideiii.com>
manager@surfsideiii.com
Phone: 805-488-8484

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

Donalea Bauer, Vice President, community manager

Email: donaleabauer@lordonmanagement.com

Phone: 800-729-5673 x 3342

Jennifer M. Critchfield, assistant community manager

Email: jcritchfield@lordonmanagement.com

Phone: 800-729-5673 x 3380

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)



Serving California's Community Associations

July 1, 8, 15, 22, 29, 2012

BROWN ACT SUSPENDED

Concerns have been raised because the California Legislature suspended the Brown Act (claiming it will save \$96 million over the next three years). The suspension means that boards no longer need to (i) post meeting agendas, (ii) include a description of items to be discussed in closed session, and (iii) disclose what occurred in closed-session meetings.

What impact does this have on homeowner associations? None. The Brown Act applies to governmental agencies not common interest developments. HOAs are governed by the [Davis-Stirling Open Meeting Act](#), which has not been suspended. Association boards are still required to post agendas and report what occurs in [executive session](#)

meetings. Boards affected by the legislature's suspension of the Brown Act are county boards, school district boards, water boards and city councils.

COMMENT: I can think of better ways for California to balance its budget. Hiding behind closed doors is not one of them.

DIRECTORS AT COMMITTEE MEETINGS?

QUESTION: Can a majority of directors attend committee meetings without violating the Davis-Stirling Open Meeting Act?

ANSWER: This issue is not covered in the Davis-Stirling Act. Whenever Open Meeting issues are unclear, we can look to public agency rules for guidance. There are two: the Bagley-Keene Act and the (now suspended) Brown Act.

Bagley-Keene Act. The Bagley-Keene Open Meeting Act governs meetings of local governments and closely parallels the Brown Act. Bagley-Keene states that boards have three duties: (i) give adequate notice of their meetings, (ii) provide an opportunity for public comment, and (iii) conduct their meetings in open session, except where a closed session is specifically authorized. All three principals were incorporated into the Davis-Stirling Open Meeting Act.

As provided for in Bagley-Keene, not all board gatherings violate the Act. A majority of directors can gather for the following purposes provided they do not discuss board business among themselves:

- A conference or similar gathering open to the public. (Gov. Code §11122.5(c)(2))
- An open and publicized meeting organized to address a topic of state concern. (§11122.5(c)(3))
- A purely social or ceremonial occasion. (§11122.5(c)(5))
- **An open and noticed committee meeting, provided board members who are not members of the committee attend only as observers.** (§11122.5(c)(6))

Brown Act. In addition to the above, the Office of the Attorney General issued an opinion that under the Brown Act board members may attend committee meetings provided they do not ask questions or make statements. (81 Ops.Cal.Atty.Gen. 156.)

CONCLUSION: In my opinion, if homeowner associations follow state guidelines, a majority of directors can attend committee meetings provided (i) the committee meeting is open to the membership, (ii) notice has been given (the same as [board meeting notices](#)), and (iii) directors who are not members of the committee do not participate in committee discussions (otherwise it becomes a board meeting and should have been noticed as such).

Kudos to board member Anne Seifert for bringing this to my attention. For more information, see [Guide To Bagley-Keene Open Meeting Act](#).

EXECUTIVE SESSION VOTING

QUESTION: Can the president of the board of directors vote at an executive session other than to break a tie??

ANSWER: The president can vote on all issues in all meetings of the board ([Robert's Rules](#), 11th ed., pp. 487-488.), whether open or executive, provided he/she does not have a [conflict of interest](#).

ADA POOL COMPLIANCE

QUESTION: We are a gated community of private detached homes. If we allow rental of our community park (including the pool) for weddings, parties and fundraisers where non-residents attend is the HOA subject to the new ADA pool requirements?

ANSWER: This question keeps popping up. You are referring to the new ADA "public accommodation" pool requirements under Title III that go into effect January 1, 2013. The new regulations state that swimming pools open to the public must have at least two accessible means of entry. "Accessible" is defined as swimming pool lifts, sloped entries, transfer walls, transfer systems and pool stairs. Such requirements do not apply to private organizations such as homeowners associations. However, there are exceptions.

Renting to the Public. Renting your pool facilities to the public is one of the exceptions. If you are renting to the general public and the "weddings, parties and fundraisers" you referred to involves swimming, you will need handicap access at least for the duration of the events. That can be accomplished with a portable chair lift. If guests accidentally swim in the pool (somebody falls or is pushed into the pool)--you don't need to provide handicap access. However, other facilities, such as bathrooms, may need to be modified for handicap access under other provisions of Title III.

Renting to Members. If your association rents its facilities to members only, ADA requirements do not apply. If your members invite guests who are not members, ADA rules might apply but it is unclear. I can tell you from experience that handicap advocates tend to be aggressive and look for excuses to chase associations and businesses through the courts. That does not mean they would prevail but the association would have to endure the expense and uncertainty of a lawsuit.

RECOMMENDATION: Even if not required, boards should plan on making all facilities ADA compliant. This not only benefits handicapped members of the association, it avoids potential litigation. In the long run, it's cheaper to upgrade your facilities than to litigate over them. In the meantime, when it comes to renting out your facilities, boards should talk to legal counsel about how best to reduce their risk.

Unruly Homeowners Thank you for another interesting newsletter. I appreciate your comments on free speech and that there are limits, especially in meetings and other formal, organized events. At City Hall, the council here allows attendees three minutes at the beginning of the meeting. Anybody who fills out an index card with their name and topic is called to the podium in turn. It works because every speaker is timed and respectfully asked to sit down when the light comes on at the end of their three minutes. Nobody gets extra time and nobody is prevented from speaking. Everyone feels heard and occasionally the council learns something that matters. HOAs should have a similar process that is consistently used so that nobody appears to get favor and nobody feels treated unfairly. Residents who feel they have legitimate gripes, recommendations or compliments can also write to directors just as we write city council members and legislators. -Al P.

Signature Cards. Your piece on bank signatures is important. As a former Sr. VP and CFO of a nationally chartered bank, I can tell you that banks stopped matching signatures at least 40 years ago. Signing the check is a minor ministerial duty at the end of the control process. There are a number of other "pre-signing" risk management processes that should be in place as the work is authorized, completed and approved for payment. -Don H.

RESERVE ACCOUNTS

QUESTION: I am informed that reserve funds must be deposited in a "Two Signature Required" account. I am unable to find a bank that still offers this type of account. Are there any that you know of??

ANSWER: The Davis-Stirling Act does not require two signature bank accounts but, rather, two-signatures (a small but important distinction):

The signatures of at least two persons, who shall be members of the association's board of directors, or one officer who is not a member of the board of directors and a member of the board of directors, shall be required for the withdrawal of moneys from the association's reserve accounts. [Civil Code §1365.5\(b\)](#).

In the old days (10-20 years ago), banks helped boards comply with the statute, i.e., a bank employee compared signatures against a signature card before processing a check. Because all banks now use bulk filing, inclearings and automated processing, two-signature accounts are no longer feasible.

Inclearings & Automation. Unlike over-the-counter checks, which are deposited at the same bank they are drawn against, "inclearing" checks are deposited at other financial institutions and processed by those institutions through a clearing house such as the Federal Reserve before returning the check to the bank of origin. Once checks enter the

system, they are scanned and processed in bulk using high-speed automation instead of being processed one check at a time by a live person. It saves banks time and money and speeds the transfer of money. It also means banks can no longer compare checks against signature cards.

Banks Held Harmless. Banks can still place an alert on accounts if so requested. Arguably, it means a lone board member cannot walk into a branch and clean out a two-signature account. Even so, language in the signature card and bank disclosure documents hold the bank harmless if a one-signature check is honored by the bank. That means an association cannot go after the bank if a board member empties the reserve account and absconds with the money. Instead, the HOA must go after the director.

RECOMMENDATION. Because the two-signature rule applies to associations not banks, boards cannot rely on banks to monitor checks for them. Instead, boards must adopt [internal controls](#) and carefully [monitor](#) their reserve accounts for any unusual activity.

Thank you to [Jolen Zeroski](#), Vice President/Senior Relationship Manager of [Union Bank](#) and [Jan Hickenbottom](#), Vice President/Association Bank Services for [First Bank](#) for their assistance with this question.

BORROWING FROM RESERVES

QUESTION: I went to a recent board meeting where it was discussed that instead of charging residents a special assessment to pay for an insurance deductible, they would suspend reserve deposits for three months. Is that legal and if so do they need homeowners' approval to suspend reserve deposits?

ANSWER: Without a vote of the membership, boards are allowed to borrow from reserves to meet short-term cash-flow problems or other expenses. [Civil Code §1365.5\(c\)\(2\)](#). Suspending reserve deposits, in my opinion, qualifies as borrowing from reserves. Monies allocated to the reserve account are pledged in the reserve funding plan annually published to the membership, as well as the pro forma budget mailed to all members prior to the start of the fiscal year. Those funds are then collected from the membership for that purpose. Intercepting reserve monies before they are deposited into the reserve account or waiting until after they are deposited is a distinction without meaning. The result is the same--reserve monies are being used for non-reserve expenses. Such actions are allowed if done properly.

Notice of Intent to Borrow. Boards who plan to use reserve funds for non-reserve expenses must give notice to the membership of their intent. The notice must include the reasons why reserve monies are needed, the options for repayment, and whether a special assessment may be considered. Discussions by the board must take place in an open, noticed meeting of the board.

Notice of Decision. If directors authorize the borrowing of reserve funds, the board must issue a written finding, which is recorded in the minutes, explaining the reasons for the borrowing and describing when and how the money will be repaid. [Civil Code §1365.5\(c\)\(2\)](#).

Repayment Obligation. The borrowed money must be repaid to the reserve fund within one year of the date of the initial transfer, except that the board may, after giving the same notice required for considering a transfer, and, upon making a finding supported by documentation that a temporary delay would be in the best interests of the association, temporarily delay the repayment. [Civil Code §1365.5\(c\)\(2\)](#).

RECOMMENDATION: Reserve funds are important to the financial health of an association. Accordingly, boards must make every effort to build and preserve the association's reserves. Failure to do so will inevitably result in deferred maintenance, deteriorating facilities, damage to common areas and owner's units, painful special assessments, and potential litigation.