



October 2009

SURFSIDE III NEWSLETTER

Daniel Kessner - Editor



FROM THE BOARD OF DIRECTORS

Special Assessment Repairs Update

Drain line replacement in Building 4 has begun. It will take approximately two months to complete Building 4.

Capital Repairs

Design Build Construction Management, located in Westlake Village, has been hired to manage the building envelope repairs. As a construction manager new to Surfside III, we have included one of their white papers at the end of this newsletter by way of introduction. Design Build will be on-site along with a contractor, a structural engineer, and an architect as necessary, to conduct "discovery" investigation at two of the buildings to help determine the appropriate scope of repair work for the building envelope of the balance of buildings in Surfside III. The two buildings that will serve as the prototype buildings are 7 and 12.

Rules Violations

At the September executive Board meeting, the Board imposed \$1,600 in fines on two owners for rules violations by their tenants. The Port Hueneme Police were called eight times to two units over a two-week period. In one case, there were six calls in twelve hours. The Board imposed a compounded fine of \$200 per police response.

Both of the units involved are rented to tenants under the FHA Section 8 housing program where government subsidies provide all or part of the rent payments.

Owners are held accountable for their tenants' actions. All tenants are required to obey the rules and regulations.

Water Costs

Many of you have noticed the comment about the cost of water on your monthly statements. Because the city is migrating from flat rates to measured rates for water usage, the cost for water paid by the association could dramatically rise and affect our dues. At the Board's direction, our on-site manager, Scott Walker, is working on a conservation program for our irrigation system, which is about half the water we use, so that we can control this expense. Of course owners who contact the city and obtain information and devices for conservation in their units will also help. We all pay for our water through our dues, and not separately.

Pacific Properties (Ameritek) v. Surfside III

As the membership may be aware, on June 24, 2009, Pacific Properties Restoration filed a lawsuit against the Association and set forth causes of action for breach of contract and fraud. The claims arose from Pacific Properties' work at the Association over the last couple of years. As a result of the disputes by and between Pacific and the Association as to amounts claimed by Pacific versus the amounts that the Association opined was owed, an agreement could not be reached between the parties and, as such, Pacific ultimately filed the above-referenced lawsuit. The lawsuit sought \$102,000 from the Association, plus interest and attorneys' fees.

We are very pleased to advise you that during a recent mediation on this matter, this case was settled for the sum of \$69,000. This sum settled all of Pacific Properties claims, including not only the \$102,000 lawsuit claim, plus attorneys' fees and interest, but also an additional claim raised by Pacific that they were owed approximately \$21,000 for withheld retention involving various jobs for the

Association.

The Board is pleased that this matter was able to be resolved without the need to proceed forward into protracted litigation.

THE JSDP (CANAL) COMMITTEE NEEDS YOUR HELP!

Please make as many calls as possible to the MOSQUITO ABATEMENT DISTRICT to report the excessive number of mosquitoes that have taken up residence at Surfside III.

If we don't establish the fact that we are being inundated with mosquitoes by reporting the situation to the Mosquito Abatement District Office, the Ventura County Watershed Protection District people (the folks who want to enlarge the canal) will continue to maintain that "There is no mosquito problem."

SO. PLEASE CALL AS OFTEN AS POSSIBLE TO LET THEM KNOW:
"YES, WE DO HAVE A MOSQUITO PROBLEM AT SURFSIDE III" !!!
MOSQUITO ABATEMENT: (805) 654-2816

FROM THE ON-SITE OFFICE

Patio and Balcony Etiquette

While entertaining on the patios/balconies, please keep in mind that there are neighbors who can hear any loud noises, yelling and profanity. Please be considerate of others and treat your neighbors with respect. Thank you!

COMMITTEE BRIEFS

For more committee information visit <http://www.surfsideiii.com/docs/committee/committee.htm>
Please contact the committee chair to volunteer.

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

We had a well-attended meeting, with no major problems reported. Still no cameras were operational, but we are hopeful it will not be long now. As it is getting dark earlier, we would like to ask all residents to assist in reporting lights which have burned out. The tall pole lights have numbers on the poles, and the carport lights also have numbers. Just call or e-mail the office with the street and number. The next Neighborhood Watch meeting will be Thursday, October 1, at 7:00 pm in the clubhouse. Please contact Valerie Lameka with questions or reports.

Valerie Lameka

Last Month's Riddle

From the silent response to last month's riddle I assume there is really no interest in this lightness. If I am wrong please e-mail ira.green@surfsideiii.com.

If you did look at the riddle then you will be interested in the following: There is a good chance you think he is looking at a picture of himself. If so, the good news is that you've hit upon what is probably the most common answer. The bad news is that you're wrong. In fact the man is looking at a picture of his son. If you're not convinced, substitute "me" for "my father's son," and read it through again.

For your reference, here is the original riddle. A man points at a portrait, and then says: "Brothers and sisters have I none, but that man's father is my father's son." At whose picture is the man looking?

[Editor's Note: I read it when Ira submitted it, thought about it for a moment (obviously not enough), and fell for it, as Ira suggests above, giving the common wrong answer. Very clever.]

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 10th 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 City of Port Hueneme now 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." Thanks to Tim McCoy for bringing this to my attention.

Several articles concerning Halaco have appeared recently in the Ventura County Star, which can be accessed via their website: www.venturacountystar.com. The big news is that the Halaco facility is scheduled to be demolished by the end of this year. The federal EPA is still working on cleaning up the slag heap and other hazardous waste, and there is not yet a timetable for the completion of that all-important task. Thanks for Terry Smith for providing that information.

Yours, Dan Kessner

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

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

Scott Walker, On-site Property Manager
Carol Short, Assistant On-site Property Manager
Management Company:
Lordon Property Management
75 Center Court Drive

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

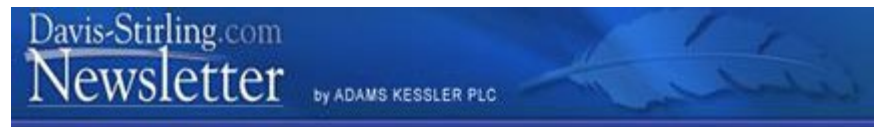
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Skip Perry - Treasurer skip.perry@surfsideiii.com
Michael Madrigal - Secretary michael.madrigal@surfsideiii.com
Inna Giler - Director inna.giler@surfsideiii.com

LORDON MANAGEMENT: OTHER DEPARTMENT EXTENSIONS

All escrow issues: Chelia, ext. 3339; crubalcava@lordonmanagement.com
All insurance, lien, and other legal matters: Patty, ext. 3337; pbarrios@lordonmanagement.com
Your account, billing address, etc: Liz, ext. 3319; llopez@lordonmanagement.com

The reprints from the Davis-Stirling newsletter and the reprint from Design Build Associates below that follow our Surfside III newsletter are attached solely to provide information about the processes that homeowners associations follow and are NOT referring to anything specifically at Surfside III.



September 20, 2009 and September 13, 2009



EMAIL RESIGNATION

QUESTION: A fellow director submitted a letter of resignation to the board by email, effective immediately, which he attempted to withdraw several weeks later. Our bylaws say a director may resign upon giving written notice to the board. Does an email meet the requirement of written notice?

ANSWER: Yes, an email satisfies the written notice requirement. As provided for in California's [Uniform Electronic Transactions Act](#), an electronic document such as an email is an enforceable writing between parties. Emails are just as legal and enforceable as traditional letters signed in ink. Under the Act, a "digital signature" is defined as an electronic identifier, created by computer, intended by the party to have the same force and effect as a manual signature. Accordingly, the director's email resignation is effective and cannot be withdrawn unless the board accepts the retraction.

BOARD ORIENTATION

QUESTION: A new board was elected on a platform of integrity and transparency. Their first action was to hold an unnoticed meeting with a majority of the board in attendance. They justified the meeting by stating that it was a board orientation and no business was conducted. Isn't this a special meeting that meets the notice requirement?

ANSWER: I agree with the board on this one. I've conducted many board orientations over the years and they are extremely effective in bringing new boards up to speed on their duties as directors. I wish more associations held them. A meeting with management and the association's attorney (i) to discuss the board's duties, (ii) to discuss legal issues, and (iii) to receive historical background

information does not violate the Open Meeting Act. The Act defines a meeting as "any congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matter that may be discussed in executive session." [Civil Code 1363.05](#). Accordingly, board orientations do not meet the definition of a meeting and no notice is required.

DRUG DEALING TENANT

QUESTION: We have a renter who continues selling drugs even though he has been incarcerated in the past for doing so. Several people have notified the property manager and we have called the police. Can the association demand that the homeowner evict this renter?

ANSWER: If he is dealing drugs on the property and/or represents a threat to the safety of residents, you can demand eviction. In addition, you can hold hearings and impose fines against the owner for any rules violations committed by the tenant. If the owner refuses to evict the tenant, your association can take legal action against the owner. Your board should consult with legal counsel on the best course of action.



VOTING ON AGENDA ITEMS

QUESTION: At a recent meeting it was emphatically mentioned that an agenda item cannot be voted on the first time it is brought up. Can you shed some light on this?

ANSWER: Agenda items can be voted on the first time they appear on the agenda, provided the agenda was published. If the matter is not on the agenda or is not reasonably related to an item on the agenda and is raised for the first time during the course of the board meeting, it cannot be voted on. It needs to be scheduled for a subsequent meeting unless it falls into one of the [exceptions](#) allowed by the Davis-Stirling Act.

OVERSPENDING THE BUDGET

QUESTION: Our directors did not seek member approval nor advise the membership when they overspent the approved budget in one area of expense by nearly 1000%. Wouldn't they be required to seek membership consent for such a dramatic increase in actual pending?

ANSWER: Overspending requires membership approval only if the board imposes a nonemergency special assessment greater than 5% of the budget. Boards may be faced with unexpected increases in insurance premiums, utility rates, legal fees, etc. which leaves them no choice but to spend more than was budgeted. When that occurs, boards may impose an emergency special assessment, borrow from reserves, or raise the dues for next year--none of which require membership approval.

The Conundrum of Deferred Maintenance

By: Dennis E. Brooks, Design Build Associates, Inc.

(Article printed in Channels of Communication, Third Quarter 2006)

The term “deferred” means to put something off until a later time, while the word “maintenance” is defined as work that is done regularly to keep a building, or piece of equipment in good condition and working order. This begs the question, how does someone put something off until a later time while doing it regularly?

At a recent homeowner association meeting where extensive deferred maintenance issues were being discussed, we had invited a local real estate appraiser to address the membership concerning several different renovation options (and therefore costs) associated with the much needed repairs. In his opening remarks to the membership he bluntly stated, “The problem with homeowner associations is that the members have an ownership interest with an apartment mentality.” At the time I thought that statement was pretty harsh, but looking back over the past 23 years of consulting for homeowner associations I believe he has a point. Although I understand that this is quite a generalization, there are many aspects of his statement that ring true.

If someone owns a single family home and the roof leaks, who but the owner is going to fix it? Yet somehow, when it comes to homeowner association property there is a strong tendency to think that all one ever needs to do is pay his monthly dues and one is “home free”. In a perfect world that might work. However, the reality is that the monthly fees would most likely be much higher in order to have the funds on hand when the time comes to make major repairs. In many situations, reserve studies are relied upon rather than physical inspections of various building components. How many associations have reserves that are fully funded, and how accurate are those reserve studies?

As we all know a very high percentage of homeowners do not get involved in the affairs of their associations. In their hectic day to day lives filled with a myriad of activities and responsibilities, there is a tendency to believe that someone else (the board or the property manager) is taking care of all the important details concerning the management and oversight of their association. Yet for many of these homeowners this is their largest single investment. The board members, though usually quite dedicated to the association and its membership, are only volunteers and only have so much time to devote to the affairs of the association. In reality, most individual property managers are responsible for numerous associations and have very little time to be thorough in their individual review of needed property assessments. In most situations, the property manager is not really qualified to assess the physical conditions and make recommendations as to proper repairs, nor should he/she be the one expected to make these assessments. In this area of responsibility their duties are more similar to a first responder when problems arise.

Another cause of deferred maintenance is often the politics associated with neighbors assessing neighbors. Some boards, not wanting to be seen as unpopular with their neighbors or perceived as the board that causes everyone to dig into their pockets to cover what may be a much needed assessment, just refuse to take the necessary steps in that direction. There may even be a board member that learns of some large and expensive issue, which would like to just keep the costs down long enough for them to sell their unit and get out before a large expense is incurred. We have seen so many cases where a board will vote to put a “band aid” on a specific problem and leave the real core issue to be addressed by some future board. These tendencies are generally the very kind of activities that lead to severe deferred maintenance and to extreme financial hardship for some later board and the association as a whole to deal with. The longer the situation is allowed to exist, the greater the potential damage to the association’s property and the bigger and more expensive the fix to the problem becomes.

This tendency to look the other way is true not only for some boards and some property managers, but also for some of the individual homeowners. When the day comes to actually address the problem and collect the needed funds to make the repairs, many homeowners, regardless of what they are told, will choose to bury their heads in the sand and vote against, or even rally other homeowners to overthrow the current board, all in an effort to avoid the increased costs necessary to take care of the much needed repairs. What they may see as a victory in defeating a board proposed assessment to make the necessary repairs, actually is a detriment to their own property values and their investment.

In an industry where litigation and threats of litigation abound, it is extremely important that board members understand that taking care of problems quickly today could save the association very large sums of money in the future.

We have seen insurance funds from the likes of the Northridge earthquake as well as funds received from construction defect litigation, go toward making many of these much needed repairs. However, for most homeowner associations today those sources of funds are either not an option or they have already been received and spent. Now the homeowners are left to dig into their own pockets to maintain and/or improve their property in an effort of preserving their property values.

When a homeowner association finds itself staring at a long list of repairs and the associated costs necessary to make deferred maintenance repairs, they need to do a little soul searching as to what is truly in the best interest of the property. Do they just slap on

another band aid and hope for the best? This in reality usually just perpetuates the problems and exacerbates the condition. Or, do they consider the property, it's value and work to make sure that they optimize that value for all the homeowners over the next 5, 10 and 20 years? How the board addresses this crossroad moment can make a huge difference in the value and desirability of the property for many years to come.

A thorough assessment of all relevant conditions, by a community association construction expert, should be requested and recommendations and priorities should be established, first on the basis of life safety, then water/pest intrusion and any other elements that lead to property damage, and finally, to the over all aesthetics of the property. Many times these issues and conditions can be addressed simultaneously. Other times hard decisions will need to be made on where to draw the line due to the escalating costs associated with the priority items higher on the list.

The degree to which a property is well maintained will play a major role in determining the acceleration of the property value in the future. Properties that appreciate in value are generally sought-after properties. This is always a plus for those that own them.

So how do you define "conundrum"? The dictionary defines it as something puzzling, confusing, or mysterious. I guess I would define it as deferred maintenance.

Dennis Brooks is Founder & President of Design Build Associates, Inc. a Construction Management firm. Design Build has specialized in Community Association construction management and consulting for over 23 years.