

#2 !!! WOODSBOROUGH UNIT OWNERS ALERT !!! #2

Voting Material/Procedure Not In Accordance with California Law

The documents' revisions voting material was mailed on July 26 with a "request" to return by August 15 (some 21 days). California law states that such must be mailed 30 days prior to the voting deadline – customarily 60-120 days for the return of a ballot. The law also requires that a voting deadline be stated. Instead, a "request" is stated as it is the intention to keep the voting period open as long as is wanted which the law was established to prevent.

It was the plan that one inspector be appointed to count the secret ballots in her unit. I proposed that the California law's alternative of 3 inspectors be appointed for this important voting, and 3 were appointed. California law states that the inspectors must count the votes at a properly noticed, open meeting of the Board, not out of sight somewhere or in such a manner as to violate the secret ballot intentions. The law requires that the ballot envelopes shall NOT be opened before the meeting to count them.

The attorney selected by the head of the Documents Committee to assist in revising our documents was hired a couple years ago with an initial retainer of \$5,000 plus additional fees over the last couple years. Shortly after the attorney was hired, the head of the Documents Committee began characterizing the attorney in open Board meetings as incompetent. At the June 2013 Board meeting, the head of the Documents Committee stated that the attorney had supplied a 3 page letter to go out with the voting materials, but that letter had been revised to 1 page by the head of the Documents Committee. I asked if the attorney had approved the revised document ? Answer: No. I next asked why the use and payment for years to an incompetent attorney ? Answer: None

(Hint: you could phone the office (408-984-3345) and request that a copy of the proposed documents be delivered to you by the watch service that evening.)

We received the voting materials on Saturday, July 27. On Monday July 29, I witnessed the first printing/copying of the proposed documents, and spent Monday reading the documents and preparing notes of my concerns which were not thoroughly researched due to the apparent time pressure for voting. Below is a list of just some of my major concerns as many would require a background to fully understand their impact. They are listed for your consideration.

Glaring Omissions

1. The term for members of the Board is unchanged at one year (By-Laws Article IV, Section 4.1 on page 5). Since the early 1980's, it has been a consensus that 2 year staggered terms of service would be more appropriate, and this was the most important thing to change. It takes

one year to become familiar with the complex and its operation, plus being effective at Board meetings. Electing all 5 Board members each year makes it possible that 5 uninformed, inexperienced “newbies” could become the new Board leading to stagnation and other mischief. It is not an easy Job.

2. I worked for most of the existence of the Association directly with the Association’s insurance broker. Proposed CC&R Article VIII requires what I consider to be excessively high levels of insurance coverage along with conditions likely to be viewed negatively by insurance companies. Insurance is already the highest cost item in the budget running up to one third of the expense budget. It is a big deal, and we all pay for it. Further, the Treasurer has transferred to N.A. Shade (the Association’s bookkeeper) the operation of our investment portfolio (some \$7 million or \$6 million after the recent driveways project). I have worked with Shade for over 20 years, and found the principals of that company to be extraordinarily qualified and ethical. However, I learned years ago that the Association’s Employee Dishonesty insurance did not cover contracted companies. Many years before Shade got the responsibility of the investment portfolio, I visited their offices to discuss their insurance coverage. Now this has become a much more important matter, but the proposed documents do not even mention that coverage of Shade should be carefully reviewed and appropriate coverage in place.

SOME THINGS NOT MENTIONED ON THE LIST SUPPLIED WITH THE VOTING MATERIALS

1. Authorization for the Association to charge fees/rents for the undeeded parking spaces (CC&R’s Section 2.5(c), page 6). We have 754 total parking spaces with 516 deeded (478 units plus 38 units with a 2nd deeded space) which leaves 238 undeeded spaces. I lost the resolution to the resulting parking problem despite 4 appeals to the City Council in 1980 when I represented the tenants during the conversion to condos. Renting out spaces is probably a violation of the rights of all owners to the common area and is unlikely to help with the basic problem with which we have been saddled.

2. Removal of the requirement that Association meetings be conducted in accordance with Roberts Rules of Order, and no replacement for such loss. Since 1876, Roberts Rules have been used to make meetings orderly, fair and understandable. It has served us well over the years.

3. Added that each unit owner agrees to waive homestead protections (CC&R’s Article VII (d), on page 24). I am no lawyer, but this does not seem to benefit unit owners.

4. The responsibility to see to obtaining an annual audit by a CPA is not assigned anywhere. Note that we are protected by California law that requires such an audit.

5. The requirement that all Association contracts be for no longer than 1 year (with some specific exceptions) and cancellable in 30 days with or without cause has been dropped. This

provision has helped much in negotiating favorable contracts, extracting the Association from troubled situations, and it prevented one Board from being burdened with commitments of a prior Board.

CHANGES LISTED ON THE LIST SUPPLIED WITH THE VOTING MATERIAL

1. The list states that there are no changes to the Articles of Incorporation. but there are changes. A 5 page document has been reduced to 2 pages. You can judge for yourself the significance of the omitted material. However, 2 new provisions are added. One of them, Article VI on page 3, states that in the event of liquidation of the Association, the net proceeds are to be distributed to the members “in accordance with their respective rights therein”. Respective rights are not defined. I can think of a number of ways that have some justification. This is a lawyers’ paradise for lawsuits claiming different rights schemes (particularly if our millions in cash reserves exist at that time).
2. “Cumulative voting is a voting system intended to promote more proportional representation” (per Wikipedia). Elimination of cumulative voting and proxies together with reducing quorum requirements create situations where 47 units (with 1 vote each can change everything regarding you and your unit. There is no reason stated for these drastic changes to voting rights.
3. The list states that the requirement for separate bank accounts for operating funds and reserve funds has been removed. It has not been removed. It is explicitly stated in a simple declarative sentence in By-Laws Article VII (j) on page 10 and again in By-Laws Article VIII Section 8.7 on page 14. We never followed our existing documents on this matter, and California law has dropped this requirement. The head of the Documents Committee asked the Board for direction on this topic 3 months in a row, and was directed each time to not require separate bank accounts.
4. The voting material list uses the phrase “ Clarify responsibility for damage” in reference to 4 changes. These changes all seem to shift responsibility to individual unit owners in an extreme way.
5. The \$25 limitation on unit owner fines has been removed (it was low even in 1980). However, it has not been replaced with any fine limit leaving the Association to fine any individual unit owner an unlimited amount for any single incident. This is dangerous.

SMOKING BAN

This may be based in a decade’s long crusade by a unit owner to modify others’ behavior (including a complete ban on BBQ). The fact that some apartment complexes ban smoking is

similar to the ban on pets. Woodsborough is not an apartment complex, and has sought to accommodate owners. This occasionally causes some problems that are dealt with on an individual basis, but I think that is a small price to pay for the benefit to all unit owners.

RENTAL LIMIT

A brief internet search found that FHA requires a Condominium Owner Occupancy Certificate that verifies that the owner occupancy of the condo project is 51% or greater. FHA also requires that no more than 10% of the units may have an FHA mortgage. HUD requires that 80% of the HUD insured mortgages in a condominium must be the principal residence of the owner. This is a complicated area about which I am no expert. I do know that the estimated 35% rentals is probably overstated because I was a participant in developing the estimation methodology many years ago. It has always been considered a maximum. At 35% there would be 167 units currently rented. Reduction to a 95 unit maximum would be a reduction of 72 units – unlikely to happen in my lifetime. The system described for eligibility for rental is very labor intensive requiring an increase of office staff (which we all pay for). Until the specific instances of the purported numerous mortgage denials are examined, I think any action of this type should be deferred. The effect on all unit sales prices has not even been analyzed.

FINAL COMMENT

I have tried to make Woodsborough a well run community that is fair to all unit owners for over 30 years. We are one of the few, if any, condos that have never had a special assessment. As of March 1, 2013, I vowed to not attend any more Finance Committee or Board meetings. My health limits my physical and emotional tolerance. It has developed that no one wishes to hear my advice which means that I am wasting both my own and others time. It is my hope that unit owner apathy will disappear before our community lands on hard times. Please, at least, attend Board meetings to be minimally informed. Volunteers with experience in finance, residential property management and construction are needed. Many hands could make the work burden more tolerable. The past 30 years have been a real learning experience for me, but it is time to step down. Adios amigos, but hopefully I will see you around.

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