

**Mill Creek Homeowners Association  
2010 Annual Meeting  
Wednesday, January 20, 2010  
Cale Elementary School**

**Summary Minutes**

- I. **Meeting convened.** The annual meeting of the Mill Creek Homeowners Association (HOA) was convened at 7:30 p.m. The entire Board and approximately 50 homeowners were present.
- II. **Welcome and Opening Remarks.** The Board President opened the meeting and explained that, although there were several agenda items, most of the meeting would be devoted to an update and discussion of the embezzlement by the former treasurer. The President thanked all the homeowners who paid their dues early, which allowed the Association to paid its outstanding obligations and create a small surplus for future 2010 expenses.
- III. **Introduction of the Board.** The Board members introduced themselves briefly; several commended the President for his skill and persistence in the recent crisis and in reconstructing the HOA's financial records.
- IV. **Treasurer's Report for 2009.** The President-Treasurer submitted a report for 2009. (See attached report.)
  - a. All outstanding obligations have been met and there is an operating surplus for further expenses in 2010.
  - b. Approximately three-quarters of homeowners have already paid their dues. The deadline for dues is January 31; a reminder notice will be sent then to those who have not paid.
  - c. Because the HOA's bank account held only \$22 as of October 2009, the reported income to meet obligations in Fall 2009 was from dues paid early by homeowners in November and December.
  - d. Financial checks and balances have been put into place by the Board: (1) a copy of the monthly bank statement will be submitted along with the monthly Treasurer's Report at each Board meeting and will be filed with the minutes in the HOA's archives; (2) two officers' names are now officially on the HOA's bank account (the President-Treasurer's and the Vice President's); (3) two officers have access to the HOA's post office box; and (4) each month all Board members present review and initial the monthly bank statement submitted with the Treasurer's report.
- V. **Neighborhood Watch.** Barbara Mann requested that interested homeowners sign up if they have not already done so. A few homeowners had previously signed up but the email addresses had proved to be incorrect; any homeowner who signed

up previously but has not received recent messages should sign up again. Several homeowners commented on the usefulness of recent messages.

- VI. **Newsletter.** The newsletter editor (Addeane Caellegh, [asc8f@virginia.edu](mailto:asc8f@virginia.edu)) commented that the Winter issue would be distributed in 7-10 days. Although originally scheduled for December, the issue was rescheduled for after the annual meeting so that it could carry information about the meeting and the latest information about the embezzlement. Homeowners with ideas or suggestions for the newsletter were urged to contact her or any Board member.
- a. In response to a question, she confirmed a list of Board members' names and contact information would appear in every issue.
  - b. A homeowner commented that she had a full set of newsletters beginning in the 1990s and volunteered to give them to the newsletter editor and for the HOA archives.
- VII. **Updating the covenants and bylaws.** The Vice President explained that he was prepared to head a committee to examine the covenants and bylaws and asked for volunteers to serve on the committee. Board members considered that some sections of the covenants and bylaws need to be updated, as evidenced by some aspects of the recent problems with the former treasurer and by concerns about enforcement of covenants on architectural and common-grounds issues. He emphasized, however, that any review of the covenants and bylaws needed to have strong participation and support from the homeowners; it could not be an effort by the Board only. At the end of the evening, two homeowners had volunteered to serve (one of them a Board member).
- a. A homeowner commented that he thought the bylaws could be changed by the Board acting alone and that only changes to covenants needed a vote by homeowners. The Vice-President said he would study the covenants and bylaws further on this point.
  - b. A homeowner commented that when a committee tried previously to change the covenants the homeowners were suspicious of any changes, partly because they thought the changes were a prelude to raising annual dues.
  - c. A homeowner suggested that the newsletter carry a notice of proposed changes and a request for comment from homeowners. This would help maintain homeowners' interest. The President amplified this suggestion by saying that the newsletter notice could contain a précis of the proposed change and readers could be referred to the website for details.
- VIII. **Board Members' Announcements**
- a. Janet Eden (Common Grounds Committee) announced two free opportunities for homeowners to learn more about trees. Charlottesville Area Tree Stewards is a volunteer group that is offering a three-part series of free classes on selecting, planting, and caring for trees. The series will be held at the Northridge Library in Albemarle Square: March 31—Introduction and tree selection issues; April 7—Buying and planting a tree; April 14—Tree care and notable local trees. All will be taught by certified Tree Stewards. The

classes are free but pre-registration is recommended; call 434-295-5519 or send email to [treebasics@embarqmail.com](mailto:treebasics@embarqmail.com) to register. Also, there is a multi-week training course for tree stewards, who undertake projects throughout the area.

- b. Maritza Saavedra (Architectural Review Committee) reminded homeowners that if they plan changes to their homes or other structures (including painting or construction, whether remodeling, additions, or outbuildings), they must request permission from the Committee. The Committee reviews the plans to assure that they meet covenant requirements. A homeowner can begin the process by sending an email to her ([mms3u@virginia.edu](mailto:mms3u@virginia.edu)).

## IX. Ongoing Issues: Embezzlement

- a. **Total amount taken.** The President explained the difficulties of determining how much the former treasurer embezzled. The former treasurer had few records and they were very disordered. Most information about withdrawals, payments, and deposits had to be reconstructed from bank records of account activity. There were a series of bank accounts at two different banks, and the Board has been able to obtain a nearly complete record back to December 2002 (that is, as far as bank records permit). Further, the treasurer's annual financial reports are not accurate and in some cases clearly false. Some amounts were padded; others were fictitious. As an example, the annual reports contained totals for federal and state tax payments and for donations to local police and firefighters, but no tax returns were filed after 2000 and there are no records of donations.
- b. **Methods of establishing how much money is missing.** The Board has utilized two methods to try and determine how much the former treasurer owes the Association:
  - (1) One method is to determine the amount of money inappropriately removed from HOA accounts – via checks the former treasurer wrote to himself (approx. 95), ATM withdrawals (175), debit card transactions, and bank charges resulting from the former treasurer's activities. That totals approx. \$130,000. Subtracting out the deposits back to the account by the former treasurer (approx. \$37,000) yields a reasonably verifiable total of approx. \$93,000. [These figures are being double-checked.]
  - (2) The other method involves an attempt to reconstruct the HOA's income over the period in question (late 2002 through 2009) -- from annual dues, homeowner packets, interest and other miscellaneous income -- then subtract all legitimate HOA expenditures as reflected in the bank statements. The difference would be the amount embezzled. (Conceptually, this represents the funds the Association should have had absent the embezzle-ment activity.)

This has proven to be difficult for two reasons. *First*, the annual financial reports filed by the former treasurer have numerous discrepancies when compared with the expenditures that can be documented through the bank records, including some inflated numbers

(e.g., insurance) and expenditures that never occurred (e.g., State and Federal taxes). *Second*, the former treasurer has provided almost no paperwork on the basis of which a reconstruction of HOA expenditures can be undertaken. So obtaining an accurate total by this means is virtually impossible at present.

- i. A homeowner (and former Board member) commented that this work is taking too much of the President's time and that the homeowners trust him to determine a fair method and reach an appropriate total. Several other homeowners and the board members expressed their agreement.
- ii. There was considerable discussion of the methods and amounts and the need to present a verifiable amount to the Court.

X. **Status of Commonwealth's case against the former treasurer.** The President explained his understanding of the judicial process and present status of the case. The first thing to note is that the case is the Commonwealth of Virginia (not Mill Creek HOA) v. Kevin O'Connor, on charges of embezzlement. (There will likely be multiple embezzlement charges filed, possibly one for each year.)

The former treasurer waived his rights to a preliminary hearing, thereby announcing his intention to plead guilty. On the first Monday in February, the case will go to the Grand Jury, which will review the evidence to ensure there's adequate cause for taking the case forward. (It's almost a foregone conclusion that the Grand Jury will find cause for a criminal proceeding against him.) A trial date will then be set by the Circuit Court. The trial will essentially entail sentencing and establishment of an amount of restitution and a schedule for payment. The judge will make those determinations after reviewing the evidence presented by both sides.

The prison sentence will be based on the amount of embezzlement and on how the final charge is framed (how many counts of embezzlement, etc.) and the sentencing guidelines utilized by the court. The Commonwealth's Attorney will rely to a great extent on the HOA to determine the amount of embezzlement and therefore the amount of restitution. Alternatively, either the defense and prosecution agree on a restitution figure in advance, or both sides present their figures to the judge and the judge decides.

Any restitution will be paid to the Court (or possibly to the defense attorney), which will monitor payment and subsequently transfer payments to the HOA. If the former treasurer defaults on making restitution payments, he can be returned to prison.

Addendum: In a subsequent meeting with the HOA's attorney and the President and Vice President, utilizing the State's sentencing guidelines and assuming one count of embezzlement for each year, the former treasurer could be sentenced to almost four years.

- a. A homeowner knowledgeable in fraud cases commented that any time a person signs a check under false pretenses, it is considered forgery (in

addition to theft) and perhaps would be considered utterance, both of which are additional felonies.

- b. A homeowner suggested that the HOA offer him a deal, in which he makes a partial payment (for example, 50% or more of verified embezzlement) in exchange for which the HOA will not pursue a civil suit against him. There was discussion of whether or how this might conflict with court-ordered restitution.
- XI. Payment of restitution.** Homeowners discussed various aspects of restitution, including questioning whether the former treasurer has any assets to be used for repayment; how much trust to place in his repeated statements that he intends to make restitution; how a search might be conducted to identify assets he may have; the tendency of people in his situation to declare bankruptcy, and whether such bankruptcy would protect him from court-imposed restitution. The President commented that he planned to consult with the Association's lawyer about these issues and about the pros and cons of a civil suit.
- XII. Back Taxes.** The President reported that, based on the former treasurer's records and discussions with Virginia Department of Taxation and the IRS, the HOA has not filed Federal or State taxes since the 2000 tax year. The Board will meet the 15 March 2010 deadlines for filing 2009 taxes, and work toward preparing tax returns for the missing years. There was general discuss of the tax situation, which parts of HOA income are taxable (homeowner dues are not taxable), the nature of attendant interest and penalties for not filing, and the possibilities of being exempted from some of the interest and/or penalties. (The HOA is not a non-profit, but rather a non-stock corporation, and is required to file taxes every year.)
- XIII. Homeowners' issues/concerns**
- a. One homeowner suggested that individual homeowners make contributions to the local fire station and to local police now that it is known that the HOA had not been contributing each year as the former treasurer reported. These individual contributions could bridge the gap until the HOA decides whether to make contributions once the financial situation has improved.
  - b. Homeowner Mark Louisell announced that he plans to offer a service to build and install mailbox posts for the neighborhood. He emphasized that he would build everything but the mailbox itself (made with cedar and screws (rather than nails)), although he would attach the mailbox to his post. The estimated cost would be \$150. The newsletter will run an announcement with more details, and he will distribute a flyer later.
  - c. A homeowner asked whether, once the former treasurer repays the embezzled money, the annual dues might be lowered. The President replied that he was amenable to the idea, but that further discussion would have to wait until the Association's financial situation was clearer toward the end of the year.
  - d. The president commented that under new laws passed in 2008, all HOAs must carry a fidelity bond (the amount based on their reserves) and must maintain a

reserve fund for anticipated expenses (e.g., repair and/or replacement of the sidewalk on Mill Creek Dr.). The membership will need to meet these new requirements as soon as possible, must meet annual expenses, and needs to rebuild a capital reserve for future improvements. For example, some members would like to have the sidewalk repaired, resurfaced, and perhaps enlarged; such improvements would be very expensive.

- e. Two homeowners raised issues connected to the State's buying the Biscuit Run property to be a state park. (1) One suggested that the HOA consider connecting the Mill Creek Trail to whatever trails are created in the park. There was discussion of the extent of the Mill Creek property; Board members explained that Mill Creek included all the land between the Mill Creek trail and Mill Creek, including the creek itself and a fairly wide area across the creek. It was noted that connecting to the state park would require a bridge; no bridge now exists across Mill Creek. (2) A homeowner commented that a bridge would also give trail users easy access to Mill Creek, which might not be desirable. There was discussion of earlier plans to connect the proposed Biscuit Run development to the Rivanna Trail network.
  - f. There was a short discussion about the condition of the Mill Creek Trail, which has been damaged by all-terrain vehicles, especially when the ground is soft. Some members said that this problem has existed for many years but appears to be worse in the past year or two. Others commented that calling the police is not effective because they cannot devote time to the problem and because they must catch the riders while they are on the trail.
- XIV. **Election of the Board.** The President asked for volunteers to serve on the Board or to offer specific services that the Board needs.
- a. A homeowner asked for how many present members' terms were completed. The President noted that, although the bylaws spelled out terms for members, this system had not been followed for several years because too few members volunteered to serve. For example, three present members have completed three years of service but want to remain on the Board another year to complete work on recovering from the recent financial crisis. Two other members have completed one year of what would normally be a three-year terms.
  - b. Two homeowners volunteered to join the Board as at-large members: Sue Voreis and Lisa Heuchert.

- XV. **Adjournment.** The President adjourned the meeting at 9:15 p.m.

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These minutes were reviewed and corrected by the President before being posted on the Mill Creek website and put into the archives.