

**SWAINS CREEK PINES LOT OWNERS ASSOCIATION  
BOARD OF DIRECTORS MEETING  
JUNE 6, 2020**

Minutes of the Board of Directors Meeting of the Swains Creek Pines Lot Owners Association held at the Swains Creek Pines Pavilion at 10:00 a.m. on the 6<sup>th</sup> day of June 2020.

**EXECUTIVE SESSION – 9:00 a.m. MDT (Closed Meeting)  
Collections, Enforcement, Personnel and Legal Issues**

**OPEN MEETING – 10:00 a.m. MDT**

**I. CALL TO ORDER**

Chairman Dave Pugh called the meeting to order at 10:04 am.

**II. ROLL CALL OF OFFICERS**

Present: Dave Pugh (Chairman), Dan Theisen (Vice Chairman), Lauren Patt-Kirby (Treasurer), Cynthia Holland (Secretary), Mike Mumford (Board Member), Chuck Harvey (Board Member), Travis Cottam (Board Member), Trent Keenan (Board Member) and Dan Crowther (Board Member).

**III. APPROVAL OF THE MINUTES OF THE REGULAR MEETING**

January 11, 2020 Corrections to minutes that Lauren Patt-Kirby was not in attendance. Motion to approve by Dave Pugh seconded by Dan Theisen. Motion Carried

**IV. TREASURER’S REPORT**

Treasurer’s Report provided by Lauren Patt-Kirby

Currently we are on budget for the year....

As of May 31, 2020, there was \$191,418.03 in the General Account, \$5,199.66 in the Playground account, \$1,832.91 in the Pond Restoration account, \$9,122.33 in the Fire Dept account, \$1,000.00 in the Petty Cash-Debit Card account, \$500.00 in Cash on Hand and \$154,452.87 in the Reserve to Preserve account. There was \$133,695.00 in revenue, \$132,304.00 coming from dues and \$1,391.00 coming from other income. Expenses thru May were 12,132.41.

Total Aging to Date: \$14,798.00

There are 45 lots (36 lot owners) on the Aging Delinquency, 42 lots are past due for 2020 only and 3 are past due from prior years.

Reserve to Preserve:

The new tables were purchased in April at a cost of \$2,896.78. According to our reserve study, they were to be replaced in 2021. This has been noted for the next reserve study.

Motion to approve by Dan Theisen, seconded by Dan Crowther. Motion carried.

## V. COMMITTEE REPORTS

**Legal Committee** – Dave Pugh noted that there are no new updates to the ongoing lawsuit. The judge asked for everyone to come back on July 23<sup>rd</sup>.

**Facilities & Architecture** – Bob Chapman noted that we just stocked the pond and we will be stocking the pond again in one month. There have been people cutting the cattle fence in order to get their ATV's out. This is vandalism and will not be tolerated. Dave Pugh noted the fence is there to keep the cattle out and if anyone wants to put in a gate to please contact the board and work with us. If anyone sees a fence down, please report it to the barn/managers. In conclusion Bob mentioned that all guest of homeowners out fishing, must have a permit with them. They cannot just say they are your guest. There are people coming here who get a homeowner's name and think they can use that as their right to fish.

Chuck Harvey noted we have had one Arch request for a driveway and one for a shed and everything looks OK.

**Community Relations** – Mike Mumford has noted that most events for the summer have been cancelled due to the Covid 19 Pandemic. We will be postponing the Stop, Shop & Swap. To date we are keeping the spaghetti dinner on August 8, 2020. If we are going to have Camp Golden Eagle, we will need a volunteer to run it. If we do not receive a volunteer by the next monthly meeting, we will need to cancel it. We will post on social media asking for volunteers.

**Fire Counsel Committee** – Dave Pugh has noted there have been some changes to the original plans for the fire station. We have confirmed that it is going to take place and should start to be constructed before the end of the summer. This station will house a couple of fire trucks/appliances. There have been questions as to whether this will lower our fire rating. This is something that cannot be determined at this time, but we will be checking on it. Dave has also noted that we have donated money to the fire station over the years and now that it is moving forward, we will start to keep the money we raise for our community. We are planning on matching the exterior of the barn to match the fire station and will be doing the work simultaneously to keep the costs down.

Dave also mentioned Swains Creek Heights which is the community going in behind us. This is going to be 58 individual lots. We, Swains Creek have over 700 individual lots. We have met with the developer to talk about what we can do to integrate as a group for a temporary plan for now. The number one step is that they must pay for everything we do excluding the dust abatement. They will have NO vote in our counsel meetings or general meetings. They will have access to all our areas. If our fees go up as a general group, there's will as well. They will not be bound by our CCR's and we will not be bound by there's.

We did a land swap last year for the tennis courts for the meadow property. We would like to do improvements to that property so we can improve it. By allowing them into our

community this will allow us to raise money to do these things. We will send out a questionnaire for your thoughts and feedback.

## **VI. NEW BUSINESS**

We will be doing a temporary/interim recreational vehicles resolution until the lawsuit is resolved. Following are the terms of the interim resolution:

**WHEREAS**, for purposes of this Resolution, the Board defines a “Recreational Vehicle” (“RV(s)”) as: “a motor vehicle or trailer equipped with living space and amenities found in a home which may include a kitchen, bathroom, bedroom, living room, water and sewer; including, but not limited to, a camp trailer, motor home, travel trailer, fifth wheel trailer, pop up trailer, and slide-in camper”;

**WHEREAS**, the Board finds that the following provisions do not allow for placement of RV’s on lots within the Association<sup>1</sup>: Section D of the Declaration of Establishment of Protective Conditions, Covenants, Reservations and Restrictions Affecting the Real Property Known as “Swains Creek Pines Unit No. 1”, also known as “Unit 1 Amended”, recorded August 4, 1969; Section 1 of the Declarations of Establishment of Protective Conditions, Covenants, Reservations and Restrictions Affecting the Real Property Known as “Swains Creek Unit No. 1”, also known as “Blackman Hill”, recorded October 28, 1976; Section 1 of the Declaration of Establishment of Protective Conditions, Covenants, Reservations and Restrictions Affecting the Real Property Known as “Swains Creek Pines Unit No. 2”, recorded June 12, 1974; Section 1 of the Declarations of Establishment of Protective Conditions, Covenants, Reservations and Restrictions Affecting the Real Property Known as “Swains Creek Pines Unit No. 3”, recorded May 17, 1977; Section 1 of the Establishment of Protective Conditions, Covenants, Reservations and Restrictions Affecting the Real Property Known as “Harris Spring Ranches”, recorded April 17, 1978; and Section 1 of the Declarations of Establishment of Protective Conditions, Covenants, Reservations and Restrictions Affecting the Real Property Known as ”Swains Creek Pines Unit No. 1” which the property owners of the Real Property Known as “Swains Creek Pines Unit No. 4”, established by a plat recorded September 11, 1989, agreed to abide by as recorded on October 28, 1976 (referred to collectively as “CC&Rs”);

**WHEREAS**, in November 2017 a lot owner filed a lawsuit against the Association in the Sixth Judicial District Court in and for Kane County, Utah regarding recreational vehicles in Swains Creek Pines Unit No. 3 (the “Lawsuit”).

**WHEREAS**, a trial was subsequently held in January 2020, but the court has not yet rendered a decision in the Lawsuit.

**WHEREAS**, the Board finds that one or more lot owners within the Association have placed nonconforming RVs on their lots within the Association prior to the date of this Resolution and prior to the date of a similar Resolution dated October 1, 2016 (“Prior Non-conforming Lots”);

**WHEREAS**, a list of the lots within the Association designated as Prior Non-conforming Lots is attached hereto as Exhibit A.

**WHEREAS**, on October 1, 2016, the Association adopted a policy of non-enforcement with regard to the placement of RVs on the Prior Non-conforming Lots that is in the best interest of the Association and the Members of the Association and that policy remains in effect;

**WHEREAS**, on June \_\_\_\_, 2020, a quorum of the Board of the Association met to consider adoption of this Interim Resolution regarding a temporary non-enforcement policy as to placement of RVs on the current Prior Non-conforming Lots, as well as Cabin Lots with RVs, while the Association awaits a ruling of the court in the Lawsuit;

**WHEREAS**, Utah Code §57-8a-213(1)(b) provides, in pertinent part, that an "association may not be required to take enforcement action if the board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances . . . it is not in the association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria;" and

**WHEREAS**, pursuant to Utah Code §57-8a-213(1)(b), the Board after a fair review, acting in good faith, and without conflict of interest finds that under the particular circumstances described above, and until there is a ruling by the court in the Lawsuit, it is not in the Association’s best interests to pursue enforcement action as it relates to the current placement of RVs on the Prior Non-conforming Lots or Cabin Lots with RVs based upon hardship and expense; and

**WHEREAS**, electing not to enforce the violation of the current placement of RVs on the Prior Non-conforming Lots and Cabin Lots with RVs does not govern whether there has been a waiver or abandonment of the covenants in the CC&Rs governing RVs (Utah Code §57-8a- 213(3)).

**NOW THEREFORE, BE IT RESOLVED** that, pursuant to Utah Code §57-8a-213, the Association will not pursue enforcement action as it relates to the placement<sup>2</sup> of RVs on the Prior Non-conforming Lots or Cabin Lots with RVs until such time as:

- (1) A decision by the court in the Lawsuit has been received and the Board can determine appropriate action and notification to Lot Owners.
- (2) The CC&Rs are amended to state otherwise; or
- (3) A Prior Non-conforming Lot is sold, whereupon the “Prior Non-conforming Lot” designation will be removed with regard to that specific lot and the placement of RVs with regard to that lot will no longer be allowed and any existing RVs must be immediately removed. A lot is considered sold when one or more of the following occur:
  - (a) the voluntary or involuntary conveyance, sale or transfer of a lot to an unrelated third party.
  - (b) the granting of a life estate in the lot; or
  - (c) if the lot is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity’s share, stock, membership interest, or partnership interests in a twelve (12) month period.

A lot is not considered sold when there is a transfer to an heir under a will, a beneficiary under a trust or other testamentary transfer. A transfer made during the lifetime of a lot owner to a spouse, child or next of kin is also not considered a sale. For this purpose, next of kin shall mean the lot owner’s closest living relation.

If any provision of this Resolution is determined to be null and void, all other provisions of the Resolution shall remain in full force and effect.

This Resolution does not replace the October 1, 2016 Resolution, but is an Interim Resolution dealing with enforcement under the October 1, 2016 Resolution, as well as RVs on Cabin lots, until the Board is able to respond to a court ruling in the Lawsuit.

<sup>1</sup> However, the Board finds that the Declaration of Establishment of Protective Conditions, Covenants, Reservations and Restrictions Affecting the Real Property Know as “Swains Creek Pines Unit No. 1” also known as “Unit 1 Amended”, recorded August 4, 1969, allows for permanent trailers on the Lots within that Unit, provided said trailers are over 30 feet in length.

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<sup>2</sup> This Resolution not to enforce relates only to the *placement* of RVs on the Prior Non-conforming Lots and Cabin Lots with RVs. This Resolution in no way affects the Association’s ability to enforce or pursue any other rules, regulations or remedies set forth in the governing documents of the Association as it relates to the Prior Non-conforming Lots or Cabin lots with RVs or future placements.

**Motion to approve temporary resolution made by Dan Theisen, seconded by Chuck Harvey. Motion carried.**

**Wildlife Biologist Report** – Spencer Rollo is speaking on the deer and diseases being spread. DNR (Department of Natural Resources) is taking a new approach on this. They have been very lenient. They are finding diseases in the deer. One of the biggest ways these diseases are transferred are from the deer eating out of the feed lots and then the healthy deer coming in afterwards and getting affected. It is spreading the diseases. If you go to [DWR.UTAH.GOV](http://DWR.UTAH.GOV) you can find all the information. We are pushing for people to stop feeding the deer. They are also finding the diseases in elk and moose. The deer on the mountain are not used to foraging for themselves. They need to get into other vegetation types to be able to sustain themselves during the colder months. The mortality on the highway is higher because they are not going out into the forest as they should.

Feeding the deer corn is not good. Deer cannot digest corn like we can. It bloats the deer. Chipmunks and birds are ok to eat corn. There are no diseases being transferred between them.

**Fire Fuel Reduction** – Spencer Rollo is also speaking on this. Gina Chapman is doing a fantastic job. There are a lot of things happening with the Fire Counsel for the Greater Duck Creek area. There is a lot of “work in kind” stuff. In kind hours are hours you have worked cleaning up your lots, but you are not getting paid for it. The State of Utah uses all the work we do on our lots and gather that information and we go after grant money so we can do large-scale projects. One project is in the Swains Creek Heights subdivision. We are bringing that down to the community. We are going to connect that project which gives us a fuel break, which in turn gives us a fighting chance in preventing a wildfire.

**Fire Wise** - is another link that gives you an abundance of information. We would like to become a nationally recognized fire wise community and we are already on track to do so. To be recognized allows us as a community to get grant money for your home. It is better for our community and shows we care about our community.

Gina Chapman has noted that this is our third season. We have received about \$32K in Swains Creek in the first year. Last year was \$60K. The road coming in from the 14 to our sign is a health hazard and Gina asked if there was any way we can use a grant for that. Spencer Rollo said no, not for that road. For the fire wise, yes, but not for those roads. That is federally owned land so it cannot be used for that. That road is terrible and will be a tougher battle. The road at Strawberry that was paved was a fluke.

We need to get with the county to put in Culverts as some properties are getting flooded. The county needs to assist to help stop this.

Gina Chapman spoke on the condition of the vegetation. We had a mild winter, but right now it is green up here, however we are seeing that the green grass is dry this year, and there is not a whole lot of moisture. It is becoming hard to maintain this moisture since

the winter was so mild Lightning strikes could be bad. Beginning the end of June/beginning of July we really need to watch. Fires are going large and quick. Fuel conditions are dry. The outlook for June/July and August is not looking good. We normally have monsoons in July. We will probably see an increase in dry lighting.

Cedar Mountain Fire just hired the first wildlife fire crew. Spencer Rollo is a part of that crew and he noted the state owns him from now until August. Spencer has noted that we are in pretty good shape with our resources and that they are all here and their phones are always on. However, in the event of a fire, please call 911, not Spencer directly...

## **VII. OPEN FORUM:**

Chris – 3175 Spruce – couple of comments. Do not know what was in the budget. Noticed we transferred money into reserve. Used to be a treasurer, historically all the excess money should go into the reserve account. I would suggest as a board go back and look at transferring all excess money into reserves. I was treasurer during last reserve study. The concrete in the pavilion is bad. Being that we are not doing as many events this year, the Reserve account has enough funds except for when you get to about 2035. For example, Barn repairs, Dredging of pond again etc. The more money we put into the reserve earlier the better and I suggest looking at that going into the future. More money in the reserve the better. The earlier the better. Reserve study is just an estimate of when things need to be done.

Beth – 571A - Mailboxes in duck creek have been moved to color country. There is not a light in there at this point. If you want a mailbox, they just moved it.

Dinah Hood – Lot# - Where are the lots going to be for the Swains Creek Heights. Dave responded with – Minimum lot size two acres maximum 10 acres.

420 N. Grassy Trail – Lauren Patt-Kirby, on the 15 they are watering, 17<sup>th</sup> and 18<sup>th</sup> they are putting down Mag Chloride. If you don't have to drive on the road, DON'T.

**Motion to adjourn made by Dave Pugh, Dan Theisen 2<sup>nd</sup>. Meeting adjourned at 11:07a.m.**