

CELEBRATION CAPE  
HOMEOWNERS ASSOCIATION, INC.  
**SPECIAL BOARD OF DIRECTORS MEETING**  
*A Corporation Not-for-Profit*

Tuesday October 11, 2016 at 6:30 pm

Held at: Celebration Cape Pavilion (203 Destiny Circle, Cape Coral, FL 33990)

**1. CERTIFY A QUORUM AND CALL TO ORDER:**

Jim Arnold, Board President, called the meeting to order at 6:30 pm. A Board quorum was established with Jim Arnold, Susan Dyszel present and Linda Foreman via phone. (Tropical Isles Management did not have a representative present at this meeting.)

**2. PROOF OF NOTICE OF MEETING:**

Notice in accordance with Section 8.3 and Section 8.5 of the Association's By-laws of a Special Board of Directors meeting was posted at the Pavilion signboard in accordance with Florida Statutes, Chapter 720 and the Association By-Laws, and emailed to all Homeowners.

**3. PRIOR MINUTES:**

Since this was a Special Meeting of the Board of Directors, no prior meeting minutes were approved.

**4. NEW BUSINESS:**

**A. Termination Notice to Pinnacle Landscapes, Inc.**

- i. President Jim Arnold shared that a letter to discontinue our contract had been sent by the Board through Tropical Isles Management and that Pinnacle's response that they were holding the Association to the provisions of the March 11, 2014 contract (the date of the contract that Pinnacle recognizes as valid) which calls for a specific list of deficiencies, a 30-day period to cure those deficiencies and then 60 days after receipt of a certified letter of cancellation. If we did not rescind our letter to cancel, they threatened to sue for the balance of their contract (until March 2017).
- ii. Jim Arnold then explained that the Association has no intention of entering litigation and that we will rescind the cancellation letter and comply with the steps outlined in the 2014 Pinnacle contract. To that end, a detailed list of deficiencies already noted has been prepared and will be sent to Pinnacle to effectively start the 90-day clock. The new letter to Pinnacle should go out next week. It is possible that the process could take until March to conclude.
- iii. In the meantime, we will expect that Pinnacle renders all the services that they are paid to provide. Any new deficiencies noted should be reported to both Tropical Isles preferably via email with a copy to the Board.
- iv. The Board has no intention of renewing the contract with Pinnacle Landscaping beyond March 2017.

**B. Approval to seek Legal Opinion on remaining contracts**

- i. The previous HOA Board entered into a two (2) year agreement for Professional Management with Tropical Isles Management Services, Inc.
- ii. In previous contracts with Tropical Isles, Paragraph 13. Termination under A. states "**By the Association:** "Failure by the Manager to substantially perform its duties and obligations under this Agreement for a continuous period of fifteen (15) days after written notice of default

specifying the default complained of, shall be grounds for the Association's cancellation of this Agreement, and may also justify bringing an action against the Management firm for damages.

- iii. Paragraph 13, (C), "**By either Party: states that "This contract may be terminated without penalty by either party, with or without cause, upon thirty (30) days written notice".**
  - iv. The Current Tropical isles contract signed on January 6, 2016 by the previous Board President and Mark Rudland is suddenly silent on termination. Paragraph 13 (A). **By the Association:** states "This Agreement is subject to an initial two (2) year term and **may not** be cancelled for any reason by the Association".
  - v. Tropical isles however, can terminate based on interference from the Association.
  - vi. As our Professional Manager, the primary service to be supplied by Tropical Isles is guidance to the Board to comply with the Association declaration and by-laws as provided under Paragraph (K), **Compliance with Laws, Covenants and Rules: Assist the board in complying with the declaration and Articles of Incorporation, and By Laws**
  - vii. Article XVI, Section 10 of the CC&R's (Agreement for Professional Management") of the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Celebration Cape Community states: "Any agreement for professional management or any other contract providing for services of the Declarant (Celebration Cape) may not exceed three (3) years. Any such agreement **MUST PROVIDE** for the termination by either party without cause and payment of a termination fee on sixty (60) days **or less** written notice.
- C. Request for Authority to spend Association funds to engage counsel for legal opinion
- i. Per Jim Arnold: "I am looking for authorization to expend Association funds to engage legal counsel to provide a legal opinion on whether or not the contract is valid. I have spoken with two local attorneys whose primary practice is related to HOA and Condo Association Law. Based on a summary of events and? the contents of Section 10. of the CC&R's and pertinent sections of the contracts, it appears on the face that there may **I emphasize may be** a conflict and possible violation of Responsibility."
  - ii. "Based on conversations with the law firms I believe costs will be in the \$800 to \$1200 range."
  - iii. There is no animus against the previous board. Larry Wright stated that the previous Board's intention was to save money by having a two-year contract to protect against rising costs.
  - iv. In a discussion with Jim Arnold and Dick Dyszel, Mark Rudland stated that he believed the Tropical Isles did have a valid contract.
  - v. It is the current Board's concern that Tropical Isles/Mark Rudland did not adequately advise the Board that the omission of the ability of the Board to cancel contracts was in direct contradiction of the CC&R's.
  - vi. Once we have a legal opinion on the contracts, the Board will have a better basis to proceed for future contracts. If the Tropical Isles contract is deemed to be valid, we will have to live with it until January 2018.

**D. Motion to authorize funds of no more than \$1200 for obtaining legal opinion on legality of contracts was made by Linda Foreman and seconded by Susan Dyszel. The vote was two to one to approve with Susan Dyszel casting the dissenting vote.**

## **5. OTHER BUSINESS:**

### **A. Gate Closure**

- i. Jim Arnold is coordinating with the Post Office, Waste Pro, UPS and FedEx to ensure that they will have appropriate access to the community once the gates are closed. When this has been accomplished, a notice will be provided to the community that on a specific date (10 or 14 days after the notice), the gates will be closed.
- ii. In the meantime, please ensure that your household has the gate openers and keys for the pedestrian gate. Openers and keys are available through Tropical Isles. A maximum of three openers per household is permitted.

- iii. For the Garage Sale on October 14<sup>th</sup> and 15<sup>th</sup>, Main Gate will be requested to close the gate at 4 PM on Friday, October 14, 2016 and delay opening until 7 AM on Saturday, October 15, 2016.
- B. A reminder to all – take time to read the CC&R's. They are the restrictions that everyone agreed to when they signed into our “deed restricted” community. You can find a copy on our community website –[www.CelebrationCape.org](http://www.CelebrationCape.org)
  - i. Of note, at this time, Chapter IX, Section 8 of the CC&R's indicate that only emergency repairs to vehicles may be made on the street. Any other maintenance must be done in the garage of the home.
  - ii. A vehicle that is incapable of operating under its own power (boats) can be on the street for no more than twenty-four (24) hours.
  - iii. Pets must observe the city leash laws and owners are responsible for cleaning up pet waste.
- C. The Treasurer stated that a review of the Association's insurance needs will be undertaken prior to the renewal at the end of the year to better align our insurance coverage with our needs.

**6. ADJOURNMENT:**

There being no further business, the meeting was adjourned at 7:24 pm.

Respectfully submitted,

Susan Dyszel  
For Linda Foreman  
Secretary, Board of Directors  
Celebration Cape Association

***(The preceding minutes were approved by the Board of Directors on Thursday, November 3, 2016.)***