

# HIDDEN VALLEY VILLAGE OWNERS ASSOCIATION

## Board of Directors Regular Meeting

### Minutes

**Date of Meeting: Saturday, June 27, 2020**

**Time: 9:00 AM Exec Meeting Following**

**Location: Hidden Valley Common Area Room.**

**Topic: HVV Regular Meeting June 27, 2020 Zoom Meeting**

**Time: Jun 27, 2020 09:00 AM Pacific Time (US and Canada)**

**Join Zoom Meeting**

<https://us02web.zoom.us/j/87094327729?pwd=MUVoYWdDN1BDVU1tQ2R6dG02UEpmZz09>

**Meeting ID: 870 9432 7729**

**Password: 094138**

**If you have difficulty accessing the zoom meeting you may call (760) 500-0740**

**MEETING RULES:** No [audio or video recording](#) allowed by attendees. However, the secretary may record the meeting to aid in the preparation of minutes. The recording is deleted once the minutes have been prepared. As provided in the "Open Meeting Act," members may observe the meeting but do not have the right to participate in the board's deliberations or votes. Members may address issues during the open forum portion of the meeting. If attendees become disruptive, they may be expelled from the meeting.

1. Call to order by President Ruth Wheeler 9:07AM-
2. Roll call. Record Board Members, Management, owners and guests present Ruth Wheeler, Matthew Desario, Kinoka Ogsbury, Dave Natali, Steve Latshaw, Jeff Risse present. Owners: David Fox, 105. Jamie Kelley 33, Mike and Laura Tikonoff, 41, Jeffry Alger, 42.
3. Orders of the day: count of homeowners who wish to speak, time keeper, Primary meeting goals. Documents were linked to the agenda. This is not correct procedure, Correct procedure is to present documents in a board packet, and enter them into the minutes via motion. In the future documents are not to be linked to the agenda.
4. Count of homeowners who wish to speak: (2)  
Time Keeper for the meeting is Dave Natali  
Changes to order of agenda **Matthew Desario:** Request to move homeowner forum to beginning of the meeting: 4 board members agree. Homeowner forum opened.
5. **Homeowner Forum: Open Forum:**
6. Mike Tikonoff: Request to submit an argument for reversal of rule changes when the ballots are sent out

Greg Wheeler: Objected to board member Matt Desario's use of his units for short term stays by those other than his immediate family during the State, County, and Town "Stay at Home" restrictions.

Matt Desario: Noted that he was up to do maintenance on his units, was inaccurately singled out by Greg Wheeler as being the 'only Board member to come to his property. Matt also commented that Greg and his wife, President Ruth Wheeler vacationed in their unit between March-June instead of returning home, which he believed to be inconsistent..

Recusals None

7. Approval of Minutes [June 11, 2020 Special Meeting](#)
8. **Motion by Matthew Desario to approve the Minutes. Second: Steve Latshaw. Tony Motion Passes 5-1-1 (Ruth Wheeler: No. Dave Natali: Abstain)**  
**Consent Agenda**-Corrected with respect to the list of units that have lock compliant door hardware and Adopted by general Consent.

### Treasurer's Report/Financial Review by board members

Treasurers Report June 27, 2020

May 31, 2020		41.6% Into Annual Budget period	
Operating Fund	\$127,708	33.8% Operating Expense Budget Spent	\$379,454 2020 Total Operating Expense Budget
Contingency Fund	\$50,000	\$128,288 YTD Operating Expenses	
Replacement Fund	\$385,151	\$29,731 YTD Under Budget	
<b>Total Funds</b>	<b>\$562,859</b>	7.8% YTD Under/Annual Operating Budget	
6 Units Past Due for HOA Dues	\$2,563	33.6% Replacement Expense budget spent	
7 Units Pd in Advance for HOA Dues	(\$3,575)	\$171,116 2020 Replacement Expense Budget	
<i>Past Due Items of Note:</i>		\$57,471 YTD Replacement Expenses	
\$45 Dues increase effective Jan 2020		\$13,788 YTD Under Replacement Budget Spending	
		8.1% YTD Under Repl Exp/Annual Replacement Revenue	

Treasurer's Report: Kinoka Ogsbury

1. financial report: May 31<sup>st</sup>, 2020
2. 7.8% Under Operating Budget for the Year. Primarily due to savings from snow removal, \$20,590 in savings ; savings from buildings,\$7280 and savings fromf water and sewer, \$4,201 as a result of reduced usage due to Covid Restrictions.
3. Operating fund balance is \$127,708. \$0 accounts payable. 4 months of operating funds in the operating fund. Butner recommends we have 3-3.5 months. We could use surplus to replace failing electrical panels which look like they will cost about \$30k depending on if we need to replace the sheds. \$ would be transferred to the reserve fund if needed to cover this expense. As a reminder, excess operating funds will be kept in the operating fund unless otherwise decided by the board.
4. Owner's in arrears: 5 homeowners in arrears. Unit over 60 days in arrears paid in full yesterday. No other units of serious concern at this point. Cindy recommends the board wait 60 days before initiating lien process. Cost to owners is about \$1000: Treasurer recommended
5. 2019 Year End Financials were signed and returned to Butner and Associates. There have been some changes in the formatting of the returns which will delay getting the

Year End Financials out to owners. Year End Financials are supposed to go out to owners by 4/30 but due to Covid and changes in formatting they will be delayed 3-4 months.

6. For 2019 the HOA came in \$45,861 over the operating budgeting budget (in the hole).
7. Credit Card: there was unauthorized online use of the parent card stored at Butner's office. Card was cancelled and a new card is being issued. Disputed amount has been credited back to the HOA.
8. Followed up on homeowner concerns re Board Failure to Perform Fiduciary Duties.
9. Reclassification suggestions: Reclass ck #10272 Alpine Paint for \$108.18 from Reserve Fund-Pool Area Wood Fence to Operating Fund-Buildings. Reason: this is not a major expense and is just a small repair. Fence will still need to be replaced at some point.

Kinoka Ogsbury

HVV BOD Treasurer

**MOTION by Kinoka Ogsbury Move the HOA retain 3 months of operating reserve funds in the operating account. Second Tony Cole. Motion Passes 7-0.**

Reason: Treasurer reported that Cindy Butner recommended retaining 3-3.5 months of operating expenses.

MOTION: I, Kinoka Ogsbury move that the board vote to transfer excess operating funds in the amount of \$17k to the reserve fund.-Withdrawn.

Reasons:

- Board was made aware that there are approx 4 months of operating funds at this time.
- Moving funds to the Reserve fund at this time would put restrictions on how to spend the excess funds.
- Treasurer recommendation was to use the excess to funds for the upcoming electrical panel cost.
- We do not know what snow removal costs in Oct-Dec will be. Waiting for year end to move funds is an option.

Treasurers Discussion Items:

- Owners in arrears: Cindy recommends the Board waits 60 days before initiating the lien process, as the cost to the Owner once the process is initiated is \$1000. The process that has been working well is the following:
  - Once the Owner is more than 1 month in arrears, it shows up on the HOA's financial statements. Most often, these are cleared up by the second month as it's usually a homeowner on vacation or a lost check.
  - If it's on the second monthly financial statement, Butner will send a certified letter, and give the Owners an opportunity to pay their account in full.
- If, after the letter, the Owner is arrears on a 3rd consecutive monthly statement, the board can initiate the lien.

-Filing the lien and sending the lien notification letter is \$450, and processing the lien to remove it is about \$500.

-Credit Card: Board member asked if Treasurer had a concern with the security of the credit card.

-Treasurer stated that the credit card had to be personally guaranteed with her SSN. There was a parent card and two sub cards. One sub card and the parent card are issued in the name of Kinoka Ogsbury. Manager, Klark Tapia's name is on the other sub card. The billing address for the card is Butner's. The card with the treasurer's name was used at a Walgreens. The bank issued a refund and is sending a new credit card. The new card will be mailed to Butners, but the treasurer would like to keep the card with her name on it. Management will keep the card with Klark Tapia's name.

Follow up on challenge by homeowner of board failure to perform fiduciary duties with regard to financial decisions in 2019-2020

**MOTION: Ruth Wheeler to include the Report in the Minutes with the exception of the comments that were objectionable to some Board members. Second: Tony Cole  
PASSED: 7-0**

**MOTION: Kinoka Ogsbury: I would ask that the 3rd paragraph of Ruth's comments be removed from the report as they are inconsistent with Cindy's comments. Motion Passes 7-0.**

**Reason: Transparency with regard to financial actions performed by the board**

**MOTION by Kinoka Ogsbury: To accept the Treasurer's report. Second Matthew Desario.  
Motion Passes 7-0**

## **Business/Action/discussion Items**

1)Management Items (See [management reports and daily log](#) in consent agenda)

A) Report on Water Heater Failures and repairs for affected owners (approval of work requests if any) [Unit 41](#) Ruth Wheeler: The only unit has to be repaired, including flooring. Jeff Risse: The request is for radiant heating elements under the floor which they had installed prior to the damage. That's not dealt with in our flooring policy.

**MOTION: Jeff Risee to research the necessity and implications of modifying the Flooring Policy to accommodate or not, radiant heat underlayment.**

**Second Tony Cole.**

**Passed: 7-0**

**Motion by Matthew Desario, Motion to approve the Unit 41 work request, and allow the Owner to repair his Unit that was damaged, through no fault of his own from a water leak above his unit with like for like flooring replacement irrespective of the current flooring policy, UNLESS 100% of the flooring needs to be replaced in which case compliance with the HVV Flooring policy and sound abatement would be required.**

**Second Tony Cole.**

**Motion passes 4-2-1 No, Dave Natali, Ruth Wheeler, Abstain Steve Latshaw**

Reasons and considerations: The existing floor had a radiant heat pad. It was damaged due to a water heater leak from unit 42. The original floor was never approved by the board. The board wanted to expedite the repair process for the homeowner. Matt noted that the newly adopted Operating Rule requiring Board approval for flooring didn't exist until 3 years after the Owner installed their flooring, and that it seemed unreasonable for the Owner to suffer additional expense changing his entire floor to restore his damaged unit.

B. Approval of Chimney Sweeping bid

**Motion: Ruth Wheeler; Accept the bid from Angelos for chimney sweeping of 81 chimneys in an amount not to exceed \$3,050.**

**Second Tony Cole.**

**Passed 7-0**

**Motion: Ruth Wheeler; Direct Management to communicate and schedule optional Pellet stove servicing, at cost to owner, not HOA for homeowners who own pellet stoves. All pellet stove owners are to be informed that the Association provided chimney sweeping service will include a clean out of the tee in their stove after the chimney sweeping and that this will require access to their unit.**

**Second Kinoka Ogsbury.**

**Passed: 7-0**

Reasons and Considerations: For Fire safety the association schedules and pays for chimney sweeping every year. Three units have removed their wood or pellet fireplaces. As a service to homeowners with pellet stoves management assists with scheduling and unit access for pellet stove servicing.

C. Summer Roofing inspections and maintenance

**Motion: Ruth Wheeler; Authorize management to solicit bids for roof inspections and maintenance and proceed with job cost not to exceed \$3000.**

**Second Kinoka Ogsbury.**

**Passed: 7-0**

Reasons and Considerations:

-Summer Roof inspections include minor repairs the inspectors will bring major issues to management

-Board member concern: chimney chases need work, chases can be considered siding so Roofers don't inspect chases and siding specialists don't inspect roofs.

-Management input: problem is with Crickets behind the chases, if too much snow builds up behind the chase/crickets this can cause roof/chase leaks

-Board member concern: There is a need for accurate cost assessment for future chase repairs which will need to be done prior to the roof repairs scheduled in the Reserve study

-Data: we have only had one chase that has failed (E building Units 39 and 40) This occurred in 2017 heavy winter. There is a need to have roofs shoveled when snow load gets too heavy.

**-Directive to Management: get cost estimates for chase repairs**

**Motion: Matthew Desario; Authorize management to solicit bids from Robert Anderson for hot water heater inspections and maintenance and proceed with job cost not to exceed \$600.**

**Second Tony Cole.**

**Passed: 5-2 No Dave Natali, Ruth Wheeler**

Reasons and Considerations:

Pro: Prevention of heater leaks and collateral damage to adjacent units. Benefit of the inspection is we can forewarn Owners and they can choose to act responsibly. Similar Safety service to the wall heater servicing that the association pays for, that protects adjoining units from damage resulting from poor maintenance. Matthew noted there have been two such leaks at Hidden Valley in the preceding 10 months that caused damage to (4) units

Con: Individual owners need to take responsibility, We can't order them to change their hot water heaters if they don't want to. The HOA should not involve itself in things that are not a common area. Can the HOA be held liable if an inspected water heater fails?

D. Fireplace replacements required by 2022:

- **Recommendation:** Management to put together a packet that includes all the requirements for Board notification, town permits and codes and MLFD requirements.

-Reason: In 2022 many fireplaces will require replacement due to compliance with town codes. Homeowners involved will need to pull town permits. Fireplace replacement work in their Units will need to comply with HVV architectural rules regarding construction. Parts of the fireplace include the common area. Management will need to supervise this.

5. Homeowner requests for management assistance:

6. -Question for Manager Klark Tapia: As a residential complex with Owners who live far away, Owners are accustomed to contacting management and making requests to turn off a heater, inspect a water-heater, turn off electricity, etc. It's something we are accustomed to and we would like those services to continue.

-Answer by Klark Tapia: It's fine in some situations but Management shouldn't be performing the responsibilities of a rental company, where Owners want us to turn their heaters on and off after each rental.

Reason: Clarification of management duties.  
Discuss shifting responsibility of newsletter from BOD to management:

**-Request: Have Karen House send out the Newsletter in July.**

-Reason: The newsletter is directed to Owners and has information germane to complex behavior. This is one less task for the board. Management has a better feel for what homeowners need to know regarding their visits to the complex.

G. Notification process for rule infractions

**Request:** Board would like Management to notify the Board of rule infractions. The Board needs to be notified consistently

Matt noted that this was the 6th consecutive meeting that this request has been placed on the Agenda in 2020 by the President, despite Dave Natali's insistence that he receives the nuisance complaints without issue.

H. Pool issues:

Clarification of what the board would like in terms of pool operation with regard to COVID 19 regulations:  
**Directive to management: Pool furniture to remain out and pool temperature reduced to 78 degrees**

## 2) Board Possible Action Items

A) Process and action for vote on rules change demanded by Mike and Laura Tikunoff, Jamie and Tim Kelly, Andrew Khodaverdian, Mary Kubiscahta. [Cover Letter for 5% of Owners Demand for Rule Reversals of 2.1 and 4.5](#)

**Motion: Ruth Wheeler; Submit the ballot, cover letter and amended Rule 2.1 and Architectural rule 5.4 to Butner's to be mailed to homeowners as soon as the bylaw voting is completed. Second Tony Cole. Motion Passes 7-0**

**Motion by Kinoka Ogsbury to include the initial email sent to the Board by Mike Tikunoff and objecting owners in March to the voting packet sent out to Homeowners by Butner Association as an "Argument in favor of Overturning the rule."**

**Second Ruth Wheeler.**

**Passed 4-1-2 (No: Ruth Wheeler, Dave Natali; Abstain Steve Latshaw,)**

Reasons: There is a need to follow through on getting voting done as demanded by homeowners

Pro: The cover letter explains what the owners will be voting for or against.

Con: Adding the information to the packet is confusing because only the rule change, not the entire rule can be changed

**Motion by Ruth Wheeler: To approve the following inspectors of elections; Kevin & Julie English, Mike Tikonoff, Chalese & Doug Miller, Jamie Kelley, and Brianna Baron**

Second Tony Cole. Passed 7-0 without objection.

B) [New correction](#) from Tim Sanford for voting rules

**Motion by Ruth Wheeler Ruth to send out the changed voting rules for re-inspection by Owners with the packet for the rule reversal.**

**Second Matthew Desario.**

**Passed: 7-0**

Reason: There are two small items on the voting rules that we adopted that relate to the time frames that we have to use for elections of Board Members. The Rules must be sent out to Homeowners for inspection, and then readopted This must be done before the November elections.

C .Preliminary development of 2021 Budget

**Motion: Ruth Wheeler; Hire Cindy Butner to draft a boilerplate budget for review prior to our September meeting. Cost not to exceed \$250**

**Second Kinoka Ogsbury**

**FAIL: 4-3 No: Kinoka Ogsbury, Matt Desario, Dave Natali, Jeff Risse**

Reasons: Last year we started with a recommended dues increase of \$80-\$100. It would be good to get a professional opinion for our starting point.

Pro: A professional starting point would give us a more accurate starting point and save time creating the budget.

Con: Cost paid to the accountant and the board still needs to look at items line by line. Treasurer prefers to set up the budget and have the board go through line by line like last year. President felt that the prior years' budgets process was not good and needed to be changed. Cindy Butner informed the Treasurer that a change was not necessary and she was satisfied with the Board and Treasurer performance.

D. Preliminary work on 2021 Reserve

**Motion by Ruth Wheeler to table this item to the September 2020 meeting.**

**Second Tony Cole**

**Motion Passes 7-0.**

4. Procedure for Homeowners Delinquent with Monthly Dues

**Motion: Ruth Wheeler to table this item to the September 2020 meeting**

**Second Tony Cole.**

**Passed 7-0.**

- E. Possible Purchase of machinery for snow removal

**Motion: Ruth Wheeler to table this item to the September 2020 meeting**

**Second Tony Cole.**

**Passed 7-0.**

- F. SuddenLink negotiations (see report in Consent agenda)

**Motion: Ruth Wheeler to table this item to the September 2020 meeting.**

**Second Tony Cole.**

**Motion Passes 7-0.**

6. Board Confidentiality Policy **Moved to Executive Session**
7. Possible necessity for CC&R amendments

**Motion: Ruth Wheeler: Move to draft 4 amendments to CC&Rs and submit a ballot to owners to approve or disapprove each amendment: 1) Clarify common areas to exclude drywall in units. 2) Incorporate Operating Rule 2.1 Tenants and Guests into CC&Rs. 3) Allow 1 pet for STR tenants and 2 pets for homeowners and long term tenants. 4) Limit the number of units a person or entity can own at Hidden Valley to 2 units**

**Second Matthew Desario.**

**Failed 3-4**

Reason: Board had some feedback from owners who feel that certain things need to be changed in the CC&Rs. 1) water heater failures have brought common area definitions into question, 2) some owners have suggested that rule 2.1 is more appropriate in the CC&Rs rather than operating rules, 3) several owners feel that the pet rule is too restrictive 4) Multiple unit ownership represents business use as opposed to residential use.

Pro: We are doing work to update bylaws so continuing the process with owner votes can be streamlined. Cost and effort will not be as much as when we had to re-do all the governing documents. PResident notes Operating Rule 2.1 Notification is constantly being attacked, and the next Board could easily eliminate it. People who have purchased here as investors should be informed, by having it in the CC&Rs. Incorporating rules in the CC&Rs, protects the value and protects the rules from being changed in future. It advertises 'these are our rules, this is what we live by. If you want to come here and rent units you are controlled by the Occupancy Rule. You can't get a variance from the Town. Rules support our

community and not allow Owners to exceed Occupancies, notification requirements, and the other requirements. The rule will prohibit Owners from allowing anyone in the unit without sharing the arrival date, departure date, name & phone number.

Con: Bundling all 4 items in one motion was not acceptable to some. Cost and effort factor seemed too high. Too many unknown legal issues. Tony noted that this motion was not provided to the Board by the President in advance. Matt noted that the motion limiting Ownership drafted by the President allows the President to maintain their current multiple unit Ownership while targeting the Secretary specifically. Matt noted that for 2 years the President had vigorously defended placement of Operating Rule 2.1 in the Operating Rules, because of the excess expense. The President noted that placement of this Rule 2.1 in the CC&Rs would make it more difficult for future Board to edit the rule requiring Owners inform Managers of when they and their guests arrive and depart.

### **Violations, Warnings, and Fines**

1. Request for hearing in open session: Failure to notify manager of occupancy:
2. Unit 33, Jamie Kelly:

Owner appealed in writing and at the meeting claiming that an email was sent to the board. It was received after the guests arrived.

Recommendation from Dave Natali, Standing committee chair for TOML Quality of life Ordinance - complaints of non-compliance and nuisance: Issue a warning

Board voted to issue a warning: 4 yes-2 no-1 abstain

Reason: Homeowners are to notify management, prior to the arrival of guests. There was some confusion regarding the sending of the late email and a pet service dog form as well. The majority vote was in favor of the warning. The Owner provided a copy of the email notifying managers on the same day as their Guests arrival. A Board member stated Jamie's email notification could have been doctored. A Board member stated that if Managers report that they didn't see or receive an email notification, it means that notification was not given by the Owner. A Board member stated that email is an unreliable means to notify managers of arrival and departure. Dave Natali noted that a phone call request was made to have Managers verify if they received the email on April 9 prior to rendering judgement, but the (4) Board members voting to uphold the violation saw no need. The President noted her belief that Jamie was illegally renting, and conducted a brief interrogation of Jamie's knowledge about the breed and color of service dog, nationality of Jamie's friends, the make and model of the car driven by her friends. The President expressed her belief that Jamie was lying about the service animal, her friends, and the email notification being sent.

3. -Request from board member to double check email notification from homeowner.

I can't find motion in Matt's minutes ???

Request for hearing re: Dog off Leash

4. Unit 10; Gabby MacMillian

**MOTION by Dave Natali to deny appeal and levy \$250 fine. Second Tony Cole. Motion passes 5-0-2. (Abstain: Matthew Desario Kinoka Ogsbury)**

Reason: Dog off leash issue. The tenant offered a defense that he transmitted to the Board via email, he clearly acknowledged the dog was off leash. The dog has not been observed off leash at all since the fine. The seriousness of the dog being off leash was complicated by the fact that he jumped up on a person, this why the Board voted for a fine instead of a warning. Request for hearing re: Occupancy and parking violation by homeowner. The tenant's version of events is significantly different from the version submitted by President Wheeler in the meeting and her husband via the complaint. The tenant claimed the dog was walking off leash on the stairway down to the car and they immediately turned around and went inside when informed by President Wheeler that they were violating the rules. The tenant claims the dog never approached the President, never was within 30' of her, and never jumped at or on her. After review, the Board determined that the President's account was accurate and the version of events submitted by the tenant was inaccurate. The Board upheld the maximum fine for a first offense of \$250.

Unit 120, Kinoka Ogsbury

The request by Matt Desario did not require any change for the warning that was sent out. The issue discussed was that the notification of violation and warning was issued at least 30 days after the offence occurred.

Discussion regarding rules enforcement duties of the Board included pros and cons of rule enforcement and a general consensus that the system for notifying owners of violations should include a more timely way of notifying owners of violations as well as the action that the board has taken to enforce the rule and to correct the behavior that caused the violation.

President Wheeler continued her discussion regarding Jamie Kelley and the Board unwillingness to allow her interrogation to continue. President Wheeler pivoted to accuse Board Secretary Matthew Desario of renting illegally, lying about having friends or family in his units over Memorial Day weekend, and lying to the Town of Mammoth Lakes about collecting money so as to avoid Transient Tax enforcement. President Wheeler shared that she had researched on Facebook to determine that these were not friends and family of Mr. Desario. Matthew Desario shared his screen and showed the Board several photos of he and the 'guests in question' over Memorial Day, riding bikes, swimming in the green church hot springs, having a distanced birthday party for his 12yo. etc. Matthew Desario commented that he doesn't travel 5 hours from Los Angeles to socialize with renters, bike ride with renters, hot tub with renters. He stated he was performing allowed and permitted maintenance on his units as allowed by State, City and Town code. Matthew shared that President Wheeler and her husband vacationed in Mammoth during Covid-19 instead of returning to their legal residence. Matthew cautioned President Wheeler about her repeated habit of accusing fellow Owners of crimes and misdeeds, based on faulty and erroneous theories. Matthew suggested all Board members take care to appreciate their own fallibility.

### **Board Meeting Dates for the remainder of 2020**

September 26, 2020. 9:00AM , 318 Apolena Ave. Balboa Island (Newport Beach) Exec Meeting following, November 14, 2020, 9:00AM, Hidden Valley, Exec Meeting following. Annual Homeowners Meeting November 14, 2020 2:00 Mammoth Library.

### **8. Adjourn to executive session.**

a. Items discussed in exec session: Time management for board meeting, Confidentiality issues, Failure of complete information for STR occupancies..... This is all I can remember, when I use the link that Matt sent only the Exec minutes from the June 11 meeting show up

## 9. Meeting adjournment. 1:05PM Adjournment.

### ATTACHMENT:

#### **Report on Board Follow through to investigate possible board failure to perform fiduciary duties regarding financial oversight and treasurer performance**

The president of the board, Ruth E Wheeler received a letter from Homeowner and former board treasurer Kim Walters which expressed several items and requested that the board take action. One portion of the letter specified financial items which had possible legal issues for the association.

The president provided the letter to the board prior to a June 11, 2020 board meeting with the intent of having a committee take a look at the allegations and report back to the board at the June 27, 2020. Rather than wait for the board meeting Treasurer Kinoka Ogsbury reached out directly to the Board accountant, Cindy Butner via phone conversation. Kinoka then initiated an email conversation with Cindy and the entire board. The following condensation of the email dialog will hopefully suffice as documentation that the board took the allegations seriously, and are attempting to rectify the issues.

#### **Financial allegations portion of a letter sent by Kim Walters:**

May 18, 2020

To: Hidden Valley Village Board of Directors and Owners

From: Kim Walters HVV126 (since 2001)

Kinoka Ogsbury, HVV Treasurer, hasn't appeared to adequately and accurately communicate critical financial matters, funding options, and reporting to HVV BOD for appropriate action and approval. Financial reports and accurate information haven't been available to owners/members in a timely manner. Treasurer's inexperience regarding HOA financial matters, laws and best practices has adversely impacted BOD decisions and has cost all owners excessive dues increases plus an unjustified emergency assessment.

\$56K 2018 operating fund surplus wasn't disclosed to BOD and owners by the Treasurer as required by law.

1. \$71K Apr 2019 emergency snow removal assessment was recommended by the Treasurer, approved by the BOD based on Treasurer's recommendation, and billed entirely to owners without consideration to utilize alternative available offsets such as 2018 \$56K operating funds surplus, \$35K contingency funds, etc.
2. 2019-2020 \$65 per month average dues increase to all owners (or \$66K per year increase) was recommended by the Treasurer and approved by BOD based on Treasurer's recommendation to fund HOA operating fund expenses. Increases of this scale aren't supported by HVV financials.
3. BOD was informed of 2018 \$56K previously undisclosed operating fund surplus during Nov 2019 and the Treasurer stated that surplus was used to replenish the contingency fund to \$35K. This is not supported by HVV financials. The entire operating surplus remained evident, intact and available in 2018 year end cash balances.
4. 2018 Year End CPA Reviewed Financials pkg wasn't issued to HVV owners by 4/30/2019 as required by law. Treasurer did not communicate the legal requirements nor delay to BOD and owners. Draft financials only were made available to owners in late 2019.
5. 2019 Year End CPA Reviewed Financials pkg wasn't issued to HVV owners by 4/30/2020 as required by law.

HVV BOD needs to take immediate corrective actions as HVV owners are being negatively impacted as a result of the BOD Treasurer's errors and omissions, inflated dues, and full-time short term rental businesses violations and nuisance of Ogsbury and Desario.

BOD actions taken on issues presented since Nov 2019 should be available in meeting minutes from Nov 2019 to date. Please reference meeting minutes which evidence any HVV BOD action taken on topics in the six months since initial communications and please provide a list of BOD next steps to be included in future meeting agendas and minutes. HVV BOD needs to take immediate corrective actions as HVV owners are being negatively impacted as a result of the BOD Treasurer's errors and omissions, inflated dues...

**Actions and Communications between Board *Treasurer, President and Accountant* Comments by participants are color coded**

**Condensed request for information by Treasurer Kinoka Ogbury to Cindy Butner:** Per our phone conversation on Monday, please find attached a list of financial concerns from one HVV homeowner. I made a few notes in red below but feel free to add anything you think is relevant. **Condensed request for information by Ruth Wheeler to Cindy Butner:** I have still have a couple concerns regarding the homeowner letter. What I am worried about are items a-d. Let me know if there is anything that you see jumps out at you as a legal liability. I'm concerned about D & O insurance, as it relates to the owners information that the treasurer and secretary own 5 units. My comments are in blue:

a. \$56K 2018 operating fund surplus wasn't disclosed to BOD and owners by the Treasurer as required by law- As, stated there were delays due to the death of your CPA. Operating Fund overages were disclosed at the 2019 annual meeting once I had the final 2018 YE draft financials.

Despite the late 2018-YE draft, shouldn't the board have picked up on the huge cash balance that we were carrying in our operating fund? None of us caught it, but we raised dues 20 that year, can we be liable for the big oversight?

**Just because you have a surplus in the previous year, it doesn't mean that you can't raise fees. The monthly financial report shows the cash in the operating fund each month (EXH A) and (EXH C) shows the year to date surplus or (deficit) so it should not have been a surprise that the association had a surplus in 2018. Based on the monthly September 2018 report, the association had about 5 months of operating capital. We typically advise associations to keep about 3 months if possible. So, yes there was a surplus, but then again you were heading into winter. I don't see how the board could be considered liable in this situation and the \$20 increase was not excessive. Most expenses increase every year. We have some boards that increase their fees every year 2 to 3% just to cover inflation; regardless of how much operating capital they have.**

b. \$71K Apr 2019 emergency snow removal assessment was recommended by the Treasurer, approved by the BOD based on Treasurer's recommendation, and billed entirely to owners without consideration to utilize alternative available offsets such as 2018 \$56K operating funds surplus, \$35K contingency funds, etc. **Total snow removal costs for 2019 were \$114,246. The board had budgeted \$40k for snow removal for the year and the special assessment was for \$70,600 or a total of \$110,600 which did not even fully cover the cost of snow removal. The board elected to keep the contingency fund intact as we have failing electrical panels to replace which are not budgeted for as well as increased management fees of approx \$4k per month for 6 months which were not budgeted for in 2019. Association had an operating deficit of \$45,861 in 2019 even with the special assessment.**

This one makes me nervous: At the time of the assessment (April) The board was not aware of the surplus from 2018, We were aware of the impending management problems, however there is no record of the electric panel expense in the minutes I'm not sure if the board was aware of that expense. To my recollection, I can't remember if we explored any alternate ways to reduce the cost to owners.....Two questions from me here: 1) We did (Just barely) spend the entire amount of the assessment for snow removal, but we did not use a dime of our contingency fund in 2019 is this good enough to justify not reducing the amount of the assessment to save costs for homeowners? 2) Is there anything in terms of "document and disclosure" that we should do to be sure we have all our "ducks in a row" to explain the board's actions?

**1) I don't believe you were required to use the contingency fund, unless the board made a very specific resolution that once the snow removal budget was exceeded, they would use the contingency fund first and then levy an emergency assessment for the balance.**

**When you overrun the snow budget and need to levy an emergency snow assessment in the spring with a December year end, you also have to estimate snow expenses for the next winter (Oct-Dec). Of course, that's a guess. If you had come up short, the contingency fund could have made up the difference at that time. Also, when we have a huge snow year, it's not just the snow removal costs that impact the finances; there are invariably other damages to the buildings and grounds and those problems are not discovered until the snow melts. Having the contingency fund available for those unanticipated expenses and/or an insurance deductible is helpful as well.**

**2)I can't think of anything other than the usual documentation that you include in the minutes.**

c. 2019-2020 \$65 per month average dues increase to all owners (or \$66K per year increase) was recommended by the Treasurer and approved by BOD based on Treasurer's recommendation to fund HOA operating fund expenses. Increases of this scale aren't supported by HVV financials. **Not sure what the homeowner is talking about here as the board only increased dues by approximately \$45 effective January 1, 2020. This was disclosed to owners at the annual meeting and voted on by the board at a public meeting. Dues increases barely cover the increased cost of management fees with the new management company.**

I can see where this owner could challenge the mistake of increasing dues \$20/month in 2018. However the \$45/month can easily be justified by increased management fees as Kinoka states. Owner may be referring to the original \$80-\$100 increase recommended at the beginning of our budgeting process in Oct. of 2019, The board caught the miscalculations in the huge recommended assessment so It seems to me we are ok on this one. **OK. Again, raising fees \$20 is not excessive and I don't think it could even be considered a mistake.**

d. BOD was informed of the 2018 \$56K previously undisclosed operating fund surplus during Nov 2019 and the Treasurer stated that surplus was used to replenish the contingency fund to \$35K. This is not supported by HVV financials. The entire operating surplus remained evident, intact and available in 2018 year end cash balances. **I see listed on the 2018 YE financials the transfer of \$17,937 to replenish the contingency fund. Board voted at a public meeting to approve this transfer. Again, not sure what the homeowner is talking about here.**

**Not worried about this I think Homeowner is referring to cash balances. Contingency funds represent cash on hand. Seems like this is just a matter of where the cash surplus was placed in the budget**

e. 2018 Year End CPA Reviewed Financials pkg wasn't issued to HVV owners by 4/30/2019 as required by law. Treasurer did not communicate the legal requirements nor delay to BOD and owners. Draft financials only were made available to owners in late 2019. **Per our conversation you did communicate to the board that there would be delays. They were probably longer than anyone expected but such is life--- Yes, the sudden unexpected death of John Tomasch greatly impacted our ability to assist boards with their yearend statements. Just a little more history on this for the board – When John passed away we worked with his family and developed a plan to find a new CPA. We reached out to several CPA firms in the community, including the Bishop area and the CPAs were either too busy or did not have the proper credentials to prepare reviews. This process took several months and in the end we eventually reconnected with Lydia Jensen, CPA. She worked with John and I decades ago and I thought this would be good a solution as she was somewhat familiar with our processes here. It took several more months to get everything in order and for her to work through the backlog so yes, the 2018 year end financials were significantly late. They are however complete and available to any owner. I've attached a final copy if you would like to forward to the owner.**

f. 2019 Year End CPA Reviewed Financials pkg wasn't issued to HVV owners by 4/30/2020 as required by law. **Please clarify legal requirements here but as I understand it, there is no penalty or legal ramifications for not issuing YE financials by 4/30.---**In regards to the 2019 financials, they were completed on April 30<sup>th</sup> by Lydia. We sent a draft out to you and you returned the representation letter on May 19<sup>th</sup>. We were shorthanded here due to the stay at home orders, but have reinstated regular office hours for the staff last week and were prepared to get the financials out, but then discovered that new accounting standards had been instituted for all year end statements beginning with the December

31, 2019 financials. The CPA agreed today that we could include a draft of the 2019 statements for the owner with a note that they will be reformatted to comply with the new requirements. The civil code requires the financial statements to be distributed to the owners annually within 120 days of the year end. As far as we know there is no penalty for being late. As to the actual legal risk, an attorney would need to weigh in on that, but I've not heard of any issues. The "normal" process is that once the representation letter is signed, the statements are usually distributed to the owners by my office.

Hi Kinoka – Yes, the sudden unexpected death of John Tomasch greatly impacted our ability to assist boards with their yearend statements. Just a little more history on this for the board – When John passed away we worked with his family and developed a plan to find a new CPA. We reached out to several CPA firms in the community, including the Bishop area and the CPAs were either too busy or did not have the proper credentials to prepare reviews. This process took several months and in the end we eventually reconnected with Lydia Jensen, CPA. She worked with John and I decades ago and I thought this would be good a solution as she was somewhat familiar with our processes here. It took several more months to get everything in order and for her to work through the backlog so yes, the 2018 year end financials were significantly late. They are however complete and available to any owner. I've attached a final copy if you would like to forward to the owner. In regards to the 2019 financials, they were completed on April 30<sup>th</sup> by Lydia. We sent a draft out to you and you returned the representation letter on May 19<sup>th</sup>. We were shorthanded here due to the stay at home orders, but have reinstated regular office hours for the staff last week and were prepared to get the financials out, but then discovered that new accounting standards had been instituted for all year end statements beginning with the December 31, 2019 financials. The CPA agreed today that we could include a draft of the 2019 statements for the owner with a note that they will be reformatted to comply with the new requirements. The civil code requires the financial statements to be distributed to the owners annually within 120 days of the year end. As far as we know there is no penalty for being late. As to the actual legal risk, an attorney would need to weigh in on that, but I've not heard of any issues. The "normal" process is that once the representation letter is signed, the statements are usually distributed to the owners by my office.

### **Conclusion by Accountant**

Bottom line, I don't see anything wrong with the board's actions on the increases and snow assessment.  
Take care –Cindy