

MOODY POINT COMMUNITY ASSOCIATION
BOARD OF DIRECTORS MEETING
July 19, 2010

The Board of Directors of the MPCA met at Pat Gardner's home, 367 Cushing Road, Newmarket, NH @ 7 p.m.

Board Members:

President/ Board member at large: Pat Gardner, present
Vice-president/Board member at large: Peter Roy, present
Board Member from The Ridge: Ken Geremia (new), present
[Welcome to Mr. Geremia!]
Board member from The Waterfront: Bill Cormier, present
Board member from The Hill: Dick Ormrod, absent
Don MacKinnon from the Meadow, present
Board Member from Lubberland Creek: Paul Pensiero, present
Secretary – position vacant, Bruce Gardner recording secretary volunteer for this meeting.

Property Manger:

Representative from Great North Management Company – Kari Ploof, present.

Treasurer: Tod Rodger, present. Joanne Johnson also present.

Committees:

Environmental Committee, Chair, Beth Marsh, absent.
Water Systems Committee Chair, Jim Fitzpatrick, present.
Community Life Committee (no report sent for this meeting).
MP4 Committee Chair - Trish Simon, present.

Meeting - Called to Order at 7 p.m. by the President, and Committee Reports given, along with the Treasurer's report, with some questions/input from the Board during the Committee and Treasurer Reports:

Before the Public Comment portion of the agenda, Board reviewed protocol for this portion of the meeting i.e. brief comment allowed, BOD will address at the end of the meeting how best to handle in executive session, as done in similar situations. Mrs. Gardner advised that Mr. Cheney wished to be heard on his opinion of the storm remediation. Mr. MacKinnon said that he and Tod Rodger had met with Mr. Cheney this week. Board was unaware of this meeting but now apprised of it by Mr. MacKinnon. Ken Geremia asked if they could direct questions to Mr. Cheney during his presentation which was affirmative. Mrs. Gardner said that it was her understanding that Mr. Cheney wanted to be a consultant to the Environmental Committee and had stated so in a letter to Beth Marsh, President of the Environmental Committee. Mr. MacKinnon said that Mr. Cheney could be an asset and that he didn't want to fight with Mr. Cheney, and that Mr. Cheney wanted to be a member of the Environmental Committee. Mrs. Gardner said that

Mr. Cheney had never been excluded from the Environmental Committee, anyone may volunteer.

Mr. Roy said that in the remediation efforts nature would take its course, as per the experts consulted by the EC. Mrs. Gardner said this was covered in detail in the prior meeting and reflected in the June meeting minutes to be approved tonight, referring in the June minutes to the EC report from Beth Marsh regarding a recommendation for remediation of Lot 4 prepared by Mr. Chagnon of UNH and the certified arborist and loggers who did the damage removal work.

Mrs. Gardner read the curriculum vitae of Mr. Chagnon from UNH. She added that Mr. Chagnon had recommended that the damaged area be left alone for the first year or two, to see what would develop and that appropriate conservation seed mix be put down now to aid in the process, which was in accord with the recommendation from the certified arborist. Board discussed that they were following the advice of the experts, namely the certified arborist and the UNH recommendation.

1. PUBLIC COMMENT from MEMBERS – 7:20 p.m.

Walter Cheney – requested to be scheduled re his opinion of storm remediation. Mrs. Gardner advised him that his comments would be limited to no greater than 15 minutes, that the Board would listen to his concerns and would then address them in executive session at a later portion of the meeting, which would be reflected in the July minutes, and that he could certainly contact his representative, Don MacKinnon if he wanted information sooner than the minutes being posted.

Mr. Cheney stated that his main reason to address the Board was to voice his concern over the removal of trees from Lot 4 damaged by the February storm and he would like to be involved in the “solution”. He would like to spend \$500 from MPCA funds to hire experts of his choosing on these matters. He said that the board should be in possession of a letter from him to the board outlining his offer to help. He asked if the letter was going to be acted on, and Mrs. Gardner replied that the discussion of the letter was in the June 2010 board meeting minutes and that those minutes would be approved at tonight’s meeting and should be posted to the MPCA web site tomorrow (Tuesday 7/20).

Mr. Cheney then stated that he had not received a response to a letter he had sent to the board in April of this year. He said that the submitted letter regarding a proposal for the litigation over lot 13. He asked if a response was forthcoming. Mrs. Gardner said that the letter had been forwarded to the MPCA counsel, and that she would follow up with them and the BOD on that. Mr. Cheney then spoke about the status of the Lot 13 litigation. Mrs. Gardner said that the Board wants to move towards a resolution. She said that the MPCA had asked for mediation in the matter and was willing and prepared to mediate with a free, court-approved mediator to bring the matters hopefully to a prompt conclusion without the time and costs of further litigation or trial; since both parties were

represented by counsel, any further discussion at this time would probably not be appropriate.

Mr. Cheney then asked for the Board's videotape of the storm damage so that Mr. Cheney could review it to determine if the storm remediation work was done correctly in Mr. Cheney's opinion. Mr. Roy said that there was no video tape, but that Mr. Roy had taken pictures and put them on a disc and sent them to the town as the town was kept apprised of the board's storm remediation efforts. Mr. Roy said the photos of the February storm damage were his property, that they were not commissioned or made at the request of the MPCA board. He said that Mr. Cheney had already asked him for the pictures and he considered making a copy for Mr. Cheney, that he considered Mr. Cheney a neighbor but that he did like being threatened with a lawsuit if he did not comply with Mr. Cheney's request. Mr. Roy said that at that point he deleted the pictures from his computer to conclude the matter. Mr. Cheney said he did not believe he threatened Mr. Roy and Mr. Roy then read from a communication Mr. Cheney sent him: "I can legally get the tapes", [and that Mr. Cheney] "will take any measures necessary" to obtain the videos/pictures. Mr. Roy said that he construed this to be a threat.

Mrs. Gardner asked if there were any other questions for Mr. Cheney. Mr. MacKinnon asked Mr. Cheney if he could remove the dead pine tree at the east end of Osprey Circle. Mr. Cheney said he would look at it. Mrs. Gardner also asked Mr. Cheney if he could look into complaints about an active bee hive somewhere near the fire alarm box at the west end of Osprey Circle since members had complained that they were allergic to bee stings and feared walking by that area and Mr. Cheney said he would look into it.

Mr. Cheney thanked the board for their time and left at 7:35 p.m.

2. APPROVAL OF MINUTES: Mr. MacKinnon made the motion to accept the minutes with discussed changes of two "typos" pointed out by Mr. Geremia, Mr. Roy seconded the motion, Vote called and taken, all voting "yes" on accepting of the June minutes, as amended. Paul Pensiero asked why the MPCA minutes posted on the internet were not password protected. Several members responded that this matter had been raised years before and it was decided to post the minutes. Mrs. Gardner said if it was a continued concern, that the Board could revisit the issue by way of motion from any member.

3. COMMITTEE REPORTS:

(a) Water Systems Committee Chair, Jim Fitzpatrick

Additional manhole inspections revealed that they were in good shape.

There have been problems with the irrigation system. Timers had to be re-set in order to balance the demand load on the well pumps.

The problem with the Smith's irrigation system has been fixed.

The concerned express by the Ridge regarding the issue with their and the MPCA's irrigation system was taken up. Mr. Fitzpatrick said that a memo of understanding would have to be drawn up and discussion on that matter tabled until then to consider such memorandum of understanding.

Mr. Fitzpatrick asked if another community "field trip" to view the water and sewage systems was needed. Mrs. Gardner polled the board members, and said that she agreed that another should be scheduled. Mr. Roy agreed, given the importance of these systems.

Mr. Fitzpatrick said that there were good things to share about the chlorine situation. He said that water testing results have continued to be good and that it might be possible to turn off the chlorinating system. This would only be done with State approval. Nevertheless, regular State mandated testing would continue.

(b) Environmental Committee

Trish Simon reported that issues regarding the Pond needed to be discussed by the Environmental Committee and the Water Committee. This would be arranged.

(c) Community Life Committee

No report.

4. TREASURER'S REPORT:

Scheduled to address proposed budget for next fiscal year.

There was a wide ranging discussion regarding the proposed budget for the next fiscal year, with input from the BOD and all chairs, all being present for the entire discussion and vote on the budget. Ultimately, the budget was approved for presentation to the community at the annual meeting, with the expectation that annual "dues" would not be raised, and the budget amount would not increase. After working with the budget, the increase is very small - \$6. Kari Ploof, from Great North, will make sure that Great North sends the FY09 actual numbers by August 5 to the treasurer, so that the treasurer can plug them into the budget page and return them so they can mail them out by 8/11 re the annual meeting mailing.

Budget issues included costs to conclude the court determination of the ownership and use of Lot 13. Mr. Geremia asked about the Lot 13 litigation as he was new to the board and discussion ensued addressing that, with a request to meet with other board members after the meeting to come "up to speed" on this or any other board matters. Discussion regarding Doucet survey to set boundary line between Lot 13 and adjacent lots as workers refused to continue work on phase four of the storm remediation until a survey of the lot line was made, articulating a concern that they would be sued if they went on Lot 13; workers looked for lot line markers and were concerned that they appeared to be moved. BOD reiterated then, the setting of the Lot lines by the surveyor to settle the issue was a good resolution. Board had approved by email vote prior to the meeting to conclude the matter by having a survey made and lot markers firmly placed. There was a discussion of the current state of the collections of the Special Assessment for the clean

up of Lot 4. Treasurer wanted to make sure the property manager had a current list of all unit owners and vacant parcel owners as some people had advised they had not received a bill for the special assessment – this would be done. President, Treasurer and Property manager would work together to finalize a proper list, making sure everyone was billed. It was noted that Mr. Cheney was disputing that he should not be required to pay any special assessment on his “developer’s lots”. This contest was under review.

There was a discussion regarding expenses for the Lot 4 hard assets and if they had all been accounted for. Mrs. Simon said that money allocated for next year would have to address damage to the screen house caused by the storm. A figure had been given to the Insurance Company and they were verifying that number with the involved vendors.

Discussion regarding monies allocated for the Water System. Paul Pensiero asked if back up contingencies were accounted for. Mr. Fitzpatrick responded that there were redundancies built into the various systems but that some needs could only be addressed on an as needed basis. Mrs. Gardner asked if Mr. Fitzpatrick was comfortable with the budget with respect to the Water Systems. He said yes, that because of periodic maintenance programs, economies have been achieved. There was a discussion regarding the possible implementation of a UV water purifying system. Mr. Fitzpatrick said that the system could only be considered once planned work had been completed but that the option to install a UV system was always existent. Mr. Rodger said that the current condition of the water can pass state mandates, but that UV must be addressed in the near future. Mrs. Gardner said that it would be an item for discussion at the annual meeting.

The capital reserve budget was reviewed for next year.

Mr. Roy moved, Mrs. Gardner seconded and the Board unanimously approved the budget for submission to the membership at the annual meeting.

RESERVES: Mr. MacKinnon made a motion to transfer \$33,550 from the operating cash account to the capital reserve account to reconcile the account by the end of July. Mr. Roy seconded, motion approved by a unanimous vote in favor. In accord with the above discussion, Mr. MacKinnon made a motion to give Mr. Rodger authority to temporarily “borrow” up to \$30,000 from the capital reserve account to fund the operating account for first quarter expenses in the new fiscal year. The amount “borrowed” to be repaid by 11/15/10 from collections of the annual dues. Mr. Roy seconded the motion and vote was unanimous approval.

4. BOARD OF DIRECTOR’S MEETING:

Board thanked the Committee Chairs and treasurer/assistant for their efforts and they and the property manager left. Board met in executive session to address concerns raised by Mr. Cheney and also to discuss Lot 13 litigation.

Board discussed mediation and Lot 13 to bring this to conclusion. This is a declaratory relief action where the board asked the court to determine who owns Lot 13, and that

regardless of ownership, that the land be left as open space and not be developed. The litigation is between the MPCA and the developer, Mr. Cheney/Moody Point Company. Mrs. Gardner asked Mr. MacKinnon to recuse himself from votes on Lot 13 litigation as he was appointed by the developer to represent the developer on the MPCA board, expressing that she believed this to be a conflict of interest. This is an unusual situation, with a developer still asserting control over one of the homeowner's associations, and if the board has sued the developer to determine ownership and use of Lot 13 then the developer's representative should not be included in deciding what happens to the law suit. Mr. Geremia said he thought that if Mr. MacKinnon had an opinion on the matter he could express it, but agreed he should probably not be on the vote regarding Lot 13. Mrs. Gardner advised that while all Board members are entitled to their point of view, if there is a conflict of interest with a member, at some point the member with the conflict should remove him or herself from the discussion and at the point of vote let the members who do not have a conflict finalize their positions and vote on the matter. Mr. MacKinnon said that his only concern was that the "mess" with Mr. Cheney be settled and not to run up fees as the only winners are the lawyers. Mrs. Gardner said she agreed with Mr. MacKinnon on that point, and agreed that they all need to work as hard as they could to bring the matter to a conclusion and she had volunteered her time to do so, and appear at mediation for the MPCA board. Mr. Cormier agreed that it is expensive to litigate against Mr. Cheney and it would probably be better to try and find a way to placate him than fight with him. Mrs. Gardner stated that the current litigation is on a path to resolution if not just the Board, but Mr. Cheney as well, work together to resolve the matter.

Mr. MacKinnon stated that he felt Mr. Cheney could be placated if the Board would reach out to him in regards to his membership on the Environmental Committee. Mrs. Gardner discussed that the EC is open to volunteer membership to all, and that Mr. Cheney was already advised of this, that after Mr. Cheney had expressed interest in joining the EC, the EC had sent out an email "blast" requesting volunteer time to rake the trails on Lot 4 and that Mr. Cheney did not appear at that project. However, he does not have to appear at this or any other project, and can certainly volunteers his time as he deems appropriate, and that has not be denied to him or any other member. Mrs. Gardner asked Mr. MacKinnon if he was aware if Mr. Cheney was a certified arborist or possessed any degrees in forestry to be actively involved in storm remediation. No one had information on that. Mr. MacKinnon said that the board must use savvy when dealing with Mr. Cheney to avoid problems in the future. Mr. MacKinnon again suggested that a letter be sent to Mr. Cheney by the Board formally inviting him to be a member of the Environmental Committee. Mrs. Gardner reiterated that a communication was sent to Mr. Cheney advising he or any other member can in fact join the Environmental Committee. Whether or not a new letter would be drafted was left open.

Mr. Geremia, who was new to the board, asked for a description of the Lot 4 clean up. Mrs. Gardner described the extent of the communication from the board to the community throughout the process. Mr. Roy stated that all measures were taken to address State and local mandates, that only certified arborists and loggers were used, that the town of Newmarket through its code enforcement officer was kept apprised of all

developments and that Mr. Vincent personally met on site with various BOD members to inspect the area, and that through him the DES was kept apprised. Further, the EC had met with an experienced person from UNH to address this as well, as reflected in the June minutes. Mr. Roy had sent a photo disc to the town of this. Mrs. Gardner believes the Board exercised good judgment in meeting this very difficult storm situation, as did the volunteers and other committee members involved.

Request for money to do work on Lot 4 are normally handled through the EC, subject to Board approval which would subsume Mr. Cheney's request for \$500 to hire an expert of his choosing to review the work done on Lot 4. Mrs. Gardner said she is unaware of anyone, other than Mr. Cheney, who has come to the Board with complaints on the storm remediation work. Mrs. Gardner volunteered to walk Lot 4 with Mr. Cheney and Board member Cormier for Mr. Cheney to point out his areas of concern before further addressing the issue. [After the meeting, this was scheduled for next Wednesday at 8 a.m.].

ADDITIONAL: Mr. MacKinnon said he would like to address the issue of bidding out the property management contract as it was expiring this year and he had sent out an email on this. Members discussed that this was already taken up in April and agreed that the current president and treasurer and past president would put together an RFP. Mr. MacKinnon said the treasurer would like to see the matter resolved before he goes to Florida for the winter. Mrs. Gardner moved to formalize these discussions, which was a motion to: (1) Finalize the RFP as prepared by the current president, past president and treasurer, (2) present the RFP to the board for approval at the next meeting, (3) Board members Gardner and Roy would additionally interview the two managers that other associations were satisfied with (Evergreen and True North) and include the treasurer with respect to the interviews on the financial end, and would present recommendations to the board for approval on this issue. Great North can bid as well. If the Board is not satisfied with any of the prior three choices (Great North, True North or Evergreen), the Board will expand the scope of their search and consideration. Bill Cormier seconded the motion. Vote called and taken; motion passed with all unanimously in favor.

ADJOURN: Motion called to adjourn by Mr. Roy, seconded by Mr. MacKinnon. Motion was approved by a unanimous vote in favor.

The meeting schedule is the third Monday of each month @ 7 p.m, except for the first Monday in December, due to the holidays.

Respectfully submitted,

***Bruce Gardner** (volunteering to take minutes for this meeting until a new secretary is appointed).*