

Rancho Heights Association Annual Meeting Minutes

At the Mary Philips Senior Center

Temecula, CA

October 17th, 2015

Committee members present: J. Szepekouski, (Chairman) M. A. Schetter, (Treasurer) B. Lee and D. Eaton, (C. Smith not in attendance)

Property owners (or proxy holders) present C. Szepekouski, J. Kilker, S. Simmons, P. Smith, N. and R. Martin, S. and W. Plyler, L. Smith, B. Shaw, J. and M. Cates, Marc Walker, Michael Rytel, Sierra Toney (Agave Rentals) J. Chang, T. Taufer, P. Bulfinch (Dunnick), P. Rieker (Gill)

The meeting was **adjourned** at 9:05 AM by Chairman Szepekouski who gave an opening statement thanking those who attended and thanking Committee members who had worked especially hard the past year.

Elections: Mary Anne Schetter read from the section in the Road Agreement on annual election procedures. She pointed out that Jim Thomas, who had been re-elected to the Committee in 2014, chose to resign from the Committee for medical reasons and that Dr. Charles Smith had been appointed by the remaining members to take his place. Three seats, seats currently held by James Szepekouski, Brad Lee and Doug Eaton were up for election this year. Nominations were opened. John Kilker nominated Doug Eaton, Norma Martin nominated Brad Lee, and Sherry Simmons nominated James Szepekouski. No further nominations were forthcoming, so it was moved to close the nominations and allow property owners to fill out their ballots.

Brief statements were offered by all three candidates. James Szepekouski noted that he was running for his seventh two-year term and that it would be his last. He was first elected in 2003. Brad Lee stated that he would continue his work surveying culverts and doing all he could to improve the roads and personal relationships in the community. Doug Eaton noted that he had served since 2006 and that this would likely be his last term also. He indicated that while he would be attempting to sell his home in the future, he would like to carry on doing legal work for the community and help complete this years' caseload.

Culvert Report: Brad Lee reported on the state of culverts in the community, an important subject given the nature of our mountainous terrain. He requested that property owners be aware of vulnerable spots since the forecasts all point to a rainy winter due to El Nino.

Over the last year Rancho Heights culverts have been located, assessed, and, the geo-location recorded. Brad hopes to eventually map these locations in a software mapping application. All of the culverts are in pretty good condition with the inlet free from obstructions. Many have partial coverage of the outlet from the backfill of sediment following a rain. Partial coverage should not pose a concern unless they have been known to back-up in past rains. Property owners are encouraged to monitor the condition of culverts nearest their property and advise the Committee of concerns.

It was also noted that there were no culverts on Lost Horizon Rd. and that erosion had become a

problem and that mitigation measures would be assessed.

Road Report: Chairman Szepekouski delivered the road report and handed out a map to explain upcoming work that is scheduled for November. He noted a number of reflectors that had been installed on some of the steeper slopes to help drivers navigate in fog and poor weather. He asked for volunteers to help install more in the future. Lori Smith and Wendy Plyler volunteered.

The Chairman handed out a sheet of photographs showing examples where driveways are properly constructed where they meet the road and where they are not properly constructed and daily driveway use damages the road edge. He suggested that anyone who wanted to properly construct the transition from road to driveway could piggy back on upcoming work the Committee has planned with its contractor.

Chairman Szepekouski explained that a small catch basin would be built around the culvert just inside the gate due to flooding and debris problems.

Treasurer Mary Anne Schetter presented the financial report which is available upon demand to property owners and details total expenditures and revenue. Phil Bulfinch asked whether the Rancho Heights development was the same as the Rancho Heights Home Owners Association in Upland. The answer was "no."

Legal Report: Doug Eaton presented the Legal Report. He described a change in strategy adopted in late 2014 after the annual meeting. The Committee decided to pursue property owners who were not paying their assessments in Small Claims Court rather than represented by an attorney in Superior Court. While the latter strategy had worked for many years and legal costs were minimal, in recent years a few property owners were using these simple collections cases to raise unrelated issues. To date, four property owners have been taken to court with two judgments in the Committee's favor, one judgement pending, and one property owner paying assessments owed before the case went to trial.

In one of those cases in January, the Committee prevailed in Small Claims Court against a former Committee member who contested the 2013 special assessment that was conceived and sent out to property owners on a ballot by the Road Committee he was serving on at the time. He argued that the vote count on that special assessment was improper because 65% of all apportioned votes had not been cast in favor. The Committee argued that it was specified on the ballot that 65% approval of all apportioned votes was not required and that in any event the defendant's contention was a misinterpretation of the section 9f of the Road Agreement. The Small Claims Court judge found in the Committee's favor and the defendant appealed to the Superior Court, where the Committee won an important victory when the Judge wrote a concise opinion in support of the Committee's position. Here is what he wrote:

[The term] "*Voting Power*" is used twice in the Agreement. In section 9(f) as specified above ("*approval of membership exercising 65% of the voting power*") and in section 9(g). Section 9(g) states in pertinent part: "*All funds collected . . . shall be used for no purpose other than road maintenance . . . without prior approval of the membership entitled to exercise a majority of the voting power.*" (Emphasis added.) The difference in the terminology between the two provisions is significant as it shows the drafter of the Agreement had a different intent as to each phrase. The phrase "*membership entitled to exercise*" in section 9(g) clearly shows the drafters of the Agreement intended the vote per that section to be determined by the total number of possible votes (i.e. all those *entitled* to be cast, whether or not cast), whereas the phrase "*membership exercising*" in 9(f) discloses the drafters intended a different interpretation,

*the vote to be determined by those actually **exercising** their vote, i.e. actually casting votes. If the drafters of the Agreement wanted section 9(f) to be interpreted as the Defendant asserts, they clearly knew how to word such a provision, as they did in 9(g), however they chose different language with a different meaning.*

Plaintiffs interpretation of 9(f) is correct, the vote is to be determined by votes actually cast, and over 65% of the votes cast were in favor of the assessment therefore it is valid.

The opinion means that any vote to increase assessments or approve a special assessment will only need approval of 65% of votes cast. Eaton also cited the Committee's belief that for any vote to be valid a quorum of one-third of all apportioned votes would be required. The one-third requirement is found in Title 3, Section 18330 of the California Corporations Code that deals with unincorporated associations and states: "(d) One-third the voting power of the association constitutes a quorum."

Eaton also noted that two small claims trials were scheduled for the end of November. The last remaining Superior Court trial is scheduled for November 20th.

Website Update: Chairman Szepkouski explained that the Community's website administrator, Paul Polena, a resident who had offered his services for free, had recently sold his property and moved to another state. The Committee needed to hire a company to administer the site since no one in the Community seemed to have the skills or the time to do the job. Initial costs to change over the service will be moderate but after that is accomplished the annual costs will be minimal.

Agenda Item: Long-time property owner Seymour Honeycutt, although not in attendance, had requested by mail that an item be put on the agenda. He proposed a discussion on how the Community might recover legal costs from those property owners who seemed intent on driving up the costs of litigation to the Community. Chairman Szepkouski explained that new policies in effect to use the Small Claims Court should help reduce legal costs in the future. Eaton stated that a final trial in Superior Court was scheduled for November 20th and it was hoped the Community would recover legal costs since the Road Agreement states "the successful party or parties in such litigation shall be entitled to their reasonable attorney's fees in an amount to be determined by the court."

Open Discussion The floor was opened for discussion. Steve Plyler wondered if, given the judge's opinion on requirements to increase assessments, we might not attempt to pass another special assessment this year. It was explained by Chairman Szepkouski that it might be too late, that quite a bit of work would be required to plan and execute a vote on a proposal, and that the billing for the coming year's annual assessments would go out soon. But it was also stated that it might be possible to propose an additional assessment early next year to increase revenue in order to perform more road maintenance.

Brad Lee said he was open to the consideration for an increase in assessments or another special assessment, but that any increase in the regular assessments should take local economic factors into consideration (i.e. CPI, county property tax rates, property values).

Other subjects discussed were changes to apportionment of votes. Eaton noted that one property owner in the room had 12 votes because he owned a large parcel but that Eaton only had one vote because he owned a small parcel--- this despite the fact that the Eaton parcel had a home on it that represented an investment that might equal or exceed what the owner of a large parcel might have paid for his

undeveloped parcel. In 2009, the Committee, recognizing that the County had for all practical purposes ended all subdivision of parcels in Rancho Heights, sent out a ballot for a vote that proposed that benefit-units and votes be apportioned this way: an undeveloped parcel, regardless of size, would be assessed one benefit-unit and awarded one vote. A developed parcel would be assessed for two benefit-units and be awarded two votes. Eaton said another option might be to peg votes to the current benefit-unit schedule, which is based on four property sizes:









1. 0-17 acres, 1 b.-u. equals one vote
2. 17-30 acres, 2 b.-u. equals two votes
3. 30-45 acres, 3 b.-u. equals three votes
4. over 45 acres, 4 b.-u. equals four votes
5. If any of the above are developed, add one b.-u. and one vote

Several property owners attending favored either an increase in assessments or a vote on a proposal for a special assessment.

Election results: The votes were counted and Szepekouski, Lee and Eaton were re-elected.

The meeting was adjourned at 11:30.

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-  = 5% to 10% AC patching and then seal coat needed
-  = AC overlay needed
-  = Remove and replace (new AC)
-  = Existing dirt roads
-  = Proposed new AC paving over existing dirt
-  = pot holes needing repair
-  = New curbs needed to control flow of water
-  = Flow line work needed / add rip-rap

mapquest

2000ft
500m

Proposed new AC paving

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assessment date 10/4/14