



Crescent Beach Condominium Association, Inc.
May 20, 2022
Board of Directors Meeting Minutes

1. CALL TO ORDER

The meeting was called to order by Jeff Patterson at Crescent Beach Condominium Social Room at 10:00 a.m.

2. CALL OF THE ROLL

The Following Directors were in attendance:

Jeff Patterson	- President	<i>In Person</i>
Jack Hillegas	- Vice President	<i>By Phone</i>
Rick Burkhart	- Treasurer	<i>In Person</i>
Pete Brown	- Secretary	<i>In Person</i>
Dr. Lee Konecke	- Director	<i>In Person</i>

Owners in Attendance:

<i>Mr. & Mrs. Tricarico, Unit 1407</i>	<i>Mr. H. Polsky, 1206 (Zoom)</i>
<i>Ms. S. Franzese, Unit 706</i>	<i>Mr. & Mrs. Aschacher, Unit 300 (Zoom)</i>
<i>Mrs. D. Burkhart, Unit PH7</i>	<i>Mr. & Mrs. Walker, Unit 1 202 (Zoom)</i>
<i>Ms. J. Norbut, Unit 408</i>	<i>Mr. D. Schumaker, Unit 601 (Zoom)</i>
<i>Drs. J.&K. Barzun, Unit 800</i>	<i>Mr. T. Nierman, Unit 1203 (Zoom)</i>
<i>Mrs. S. Mientus, Unit 306</i>	<i>Ms. R. Johnson, Unit 107 (Zoom)</i>
<i>Mrs. A. Varsano Unit 708</i>	<i>Ms. J. Wilbanks, Unit 806 (Zoom)</i>
<i>Mr. & Mrs. McMahon, Unit 701</i>	<i>Mr. B. O'Neil, Unit 1007 (Zoom)</i>
<i>Mrs. N. Patterson, Unit 902</i>	<i>Mrs. C. Bingle, Unit 1208 (Zoom)</i>
<i>Mrs. J. Hutchinson, Unit 900</i>	<i>Mr. S. Raab, Unit 302 (Zoom)</i>
<i>Mr. & Mrs. Knapp, Unit 603</i>	

3. PROOF OF NOTICE

Four directors were present in person and one via phone as well as Mgr. Pam Carey. Jeff Patterson stated the 48-hour notice was posted on the lobby bulletin board as required by Florida Statutes.

4. APPROVE AND WAIVE READING OF MINUTES

Jeff Patterson asked for a motion to approve and waive reading of the meeting minutes from April 22, 2022.

Motion carried in favor to approve and waive reading of the April 22, 2022 minutes.

5. MANAGER'S REPORT

i. Trash Recycling System:

The Chute Cleaning machine at Wilkenson Hi-Rise is now in operation, tentatively the chute cleaning is scheduled for the first week of June. During the week of cleaning, the trash system will be shut down for the day, the room will be pressure washed and painted. This is in preparation for the new system to be installed 2-3 weeks later.

ii. Punch List:

Venture has not given CB their schedule for door adjustments, paint touch up and weather seals.

iii. Smoking Area:

The Board has designated a "Smoking area" at the S.W. corner of the south parking garage. We ordered a Concrete table with seating and it should arrive in 4-6 weeks.

iv. Landscape Update:

The 4 Royal Palms are tentatively scheduled for delivery and installation sometime in June, as O'Donnell's preferred waiting for rainy season.

v. Renovation Period:

Just a reminder that renovations have started and will be extended to October 31st, for this year only.

vi. Semi-Annual Air-Conditioning Maintenance:

Shortly, you will be receiving a Contract from Condee Cooling & Electric for your Semi-Annual Air-Conditioning Maintenance. The 1st Maintenance will start the week of July 11th and the 2nd Maintenance will be the week of December 27th. We highly recommend having this service done twice a year to prevent your AC from malfunctioning. You can have your unit serviced by any qualified AC contractor.

vii. Dryer Vent Cleaning:

The Dryer Vent Cleaning will be done the week of August 2nd and you will be billed on your 3rd Quarterly Invoice.

6. TREASURER'S REPORT – RICK BURKHART

As of April 30th, out YTD operating expense is \$366,867 which is \$15,126 under budget.

Our reserve fund balance, including both cash and short-term CDs is \$1,154,619. This does not include the \$127,334 refunded from Sunmaster for our cancellation of the canopy repair project contract with them. This will be reflected in the May financial report.

Anyone wishing to be presented additional information in the Treasurer's report, please let me or Richawn know. As a reminder, any owner may obtain a monthly financial report, if desired.

7. UNFINISHED BUSINESS:

Approval of rescinding canopy contract with Sunmaster, Inc. in the amount of \$260,000.00

Jeff Patterson asked for a motion to approve rescinding the canopy contract with Sunmaster, Inc. in the amount of \$260,000.00. Motion was made by P. Brown, seconded by Rick Burkhart. Motion carried unanimously and approved by the board.

8. NEW BUSINESS

- i. Approve contract with Naples Awning to demolish, fabricate and install canopies in the amount of \$129,430.00 (Price does not include painting)

Jeff Patterson asked for a motion to approve contract with Naples Awning to demolish, fabricate and install canopies in the amount of \$129,430.00. Motion was made by P. Brown, seconded by Dr. Lee Konecke. Motion carried unanimously and approved by the board.

- ii. Approve purchase of a 2022 electric Cushman golf cart from Advantage Golf Cars in the amount of \$10,922.56

A few weeks ago, Jay informed us that the existing golf cart, which we have had for over 15 years was on its last leg. We obtained a number of quotes. However, it was our collective desire to get an electric golf cart. The golf cart we are considering purchasing is from Advantage Golf Cars. It's a 2022 electric Cushman in the amount of \$10,922.56. A hitch was added to aid in leveling and cleaning the beach sand periodically.

Jeff Patterson asked for a motion to approve purchase of a 2022 electric Cushman golf cart from Advantage Golf Cars in the amount of \$10,922.56. Motion was made by R. Burkhart, seconded by Dr. Lee Konecke. Motion carried unanimously and approved by the board.

- iii. Approve contract with O'Donnell Landscaping Inc. to install five-foot Clusia hedge from South fence to pool house (151 feet) in the amount of \$3,287.40

President Jeff Patterson (*who chairs the Landscape Committee alongside Pam*) stated that the first recommendation on the landscaping committee was to replace the four Royal palms which will be installed during the rainy season. The second recommendation that the committee had, was to install a hedge row on the Southern property line between Gulf view & CB in an attempt to stop people coming on our property to go to the beach.

Pam did research and initiated a bid with O'Donnell Landscaping to install five-foot Clusia hedge from South fence to pool house (151 feet) in the amount of \$3,287.40.

Jeff Patterson asked for a motion to contract with O'Donnell Landscaping Inc. to install five-foot Clusia hedge from South fence to pool house (151 feet) in the amount of \$3,287.40. Motion was made by Pete Brown, seconded by Rick Burkhart. Motion carried unanimously and approved by the board.

- iv. Approve contract with Traditional Tiki Co. to install 2 new umbrellas with netting and rethatch 5 umbrellas using existing netting and frames in the amount of \$9,600.00

President Jeff Patterson stated that recently, he and Pam, met with a representative from Traditional Tiki Company. The existing umbrellas are significantly deteriorated since it has been since Irma 2017 when they were last rethatched. After an inspection was performed it was determined that rethatching the existing would remedy the damaged thatched panels. This estimate includes the installation of two additional tiki huts, which will be placed near the hot tub area. This will still provide a line of sight and provide more shade to those that are using the pool.

We believe that we were given a very good price to get all this work done.

Jeff Patterson asked for a motion to contract with Traditional Tiki Co. to install 2 new umbrellas with netting and rethatch 5 umbrellas using existing netting and frames in the amount of \$9,600.00. Motion was made by Pete Brown, seconded by Rick Burkhart. Motion carried unanimously and approved by the board.

- v. As recommended by the Association's legal counsel, approve a motion to permit an owner to install hard surface flooring material in an adjacent dining room as an "expanded kitchen/serving area". All applications to install hard surface flooring and high-quality underlayment will be required to be approved at a board meeting in advance. Hard surface flooring is not permitted in the living room and bedrooms. On May 4th your Crescent Beach Board met in an executive session with our legal counsel to discuss issues related to owners renovation requests and the extension of hard surface flooring in the dining area. Our attorney has confirmed that an owner may request extending the kitchen area into the dining room/serving area. He also indicated the board may approve hard surface flooring in a unit owner's dining area.

Furthermore, the attorney recommends that all renovation plans should be submitted to the Board of Directors for a vote.

Therefore, I am asking, as recommended by the Association's legal counsel, to approve a motion to permit an owner to install hard surface flooring material in an adjacent dining room as an expanded kitchen serving area. All applications to install hard surface flooring and high-quality underlayment will be required to be approved at a board meeting in advance. Hard surface flooring is not permitted in the living room and bedrooms.

President Jeff Patterson voted in favor, Vice President Jack Hillegas voted not in favor, Treasurer Rick Burkhart voted in favor, Secretary Pete Brown voted in favor and Director Dr. Lee Konecke voted in favor. Motion passed 4-1.

Three letters were read at the Board Meeting: See Attachments.

Item 1: Letter from Vice President - Jack Hillegas

Item 2: Letter from Unit Owner 1101 - Frederick and Suzan Magovern

Item 3: Letter from Treasurer – Rick Burkhart

9. OWNERS QUESTIONS & COMMENTS

Questions Related to #8 ii.

Q1: Dr. J Barzun, Unit 800 – Is this a new or used golf cart?

A1: Yes, the 2022 electric Cushman golf cart from Advantage Golf Cars is new.

Q2: N. Tricarico, Unit 1407 – Is it comparable? Better than what we had in the past?

A2: The current golf cart is 36 v, the new is a 48 v. This will have more power and hold a charge longer.

Questions Related to #8 iv.

Q3: N Patterson, Unit 902 - Are you going to wait until after hurricane season to rethatch the tiki huts?

A3: Good idea! We can check to see how good these prices are until September.

Q4: A. Varsano, Unit 708: Did you say 2 new tiki's?

A4: Yes, one on either side of the hot tub.

Questions Related to #8 v.

Q5: N. Tricarico, Unit 1407 – So if we want to add hard surface flooring in the dining areas, we have to submit our renovation plans and the entire board will approve and there is no further action the association has to take?

If this is the case, I think this is very good, because this approach does not leave it up to a one board member to give preferential treatment to an owner in particular, I just wanted to clarify because it's something I am interested in doing in the future.

A5: Yes, Correct.

Q6: Dr. J. Barzun, Unit 800 - How easy is it going to be to define the dining area? If you have a little table the area would be smaller as opposed to if you have a bigger table?

A6: Each unit floor plan will have specific areas defined as the dining area. If you have questions, we could certainly walk owners through that process. Also, we are going to take a look at how we change our protocols on submitting renovations in the future, at times illegible drawings are presented for approval.

Q7: N. Tricarico, Unit 1407 - Can we have a standard form requesting the information that the board actually needs from the contractor? Any information that the board needs should be put on it such as; the type of underlayment, the type of hard surface - tile etc. This way, the board can answer each question, and if it's not all answered, the board rejects the application.

A7: That's a good point Nick. Also, our condo documents states that those requests have to come in a minimum of 30 days prior to renovation commencement.

Q8: T. Nierman, Unit 1203 - Has the board conducted an audit or is it going to conduct an audit from existing units that have been given exceptions by the boards that are outside of the rule? I keep hearing various units where the board has allowed hard surfaces in areas other than that that are clearly in violation of the rule. And yet here we are talking about restrictions on what everybody else can do. Have you guys audited that? Are you aware of those exceptions?

A8: Up until the day of a meeting with our lawyer, I don't think most of us were aware to the extent of exceptions made.

Q9: A. Varsano, Unit 708 - I think we just have to start over. A lot of owners have tile already. Can we start over and have tile where appropriate?

A9: The reason we cannot just allow this is because the condo declarations do not permit it. The lack of enforcement over the years is what is making this difficult for the board to enforce this rule.

Q10: L. Knapp, Unit 603 - I agree with Anne, we need to start over, we need to do this correctly. We need to source a reliable flooring company to give a full and detailed acoustical study of our building. This detailed analysis will determine what the noise factor will truly be, then present this report with full information to all of us owners. Right now, we are going with what our attorney says and basically without truly knowing what the impacts will be. So, when we get this report, we can present this to the ownership again, then we will make a decision and stand by this.

A10: We do need to move on regarding this issue, and my sense is that we will convene in the early fall with another vote of the ownership.

Comments:

- i. **R. McMahon, Unit 701** - I really appreciate what you guys have done. A lot of this information we didn't know, we've been owners since the 90s. I commend you guys for bringing all this stuff to the forefront and really appreciate the work that you've done.
- ii. **N. Tricarico, Unit 1407** - I also have units in the Surf Club, and they're going to be changing the Surf Club which is a 400+ unit building over to all hard floor surfacing and Surf Club is ten years older than Crescent Beach. The technology that they have today is so much different. Owners want an easy way to clean their apartment. They want to have company and not worry about everything falling on the carpets. It's very impractical.
- iii. **S. Mientus, Unit 306** - On the May 4 vote, this really wasn't a win. It failed by three votes. A good majority of the people that voted no have already had tile exceptions which is unfair for those owners who want to have tile like they do. Can we undo those exceptions? I don't understand why are some owners so fearful of what they don't even know. They don't know it's going to be noisy. They just think it's going to be noisy.

- iv. **Jack Hillegas, Vice President** – The thing that you both (Rick Burkhart & Todd Nierman) left out from your comments was what the last words of advice were from our attorney. He said that this dining room change to allow tile needed to be voted on by the board and then by the entire ownership. The entire ownership voted down tile in the living and dining rooms about a month ago. In spite of this vote 2 board members began to approve tile in dining rooms without any vote or notice to the full board. Also, there was never a vote by our ownership.

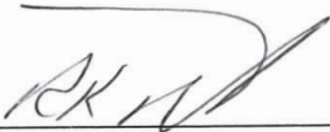
I think this happened because they depended on a partial statement made by our attorney. I hope as your board we can fix what has happened and move forward back to a peaceful CB we all know and love. I would also like to say if someone runs 54 red lights that should not be a valid reason why it would be OK for me to run 54 red lights. Let's move forward as per our documents and rules.

- v. **Jeff Patterson, President** - Well, rest assured we will find a path to move forward. What I'm about to say is it's something you all know. We live in a community. We share a building. We have diversity within our building with different religions. We speak different languages. We have different backgrounds but we all want the same thing. We want to come to Crescent Beach on Marco Island. We want to enjoy it. We want to love our living space and we want to enjoy one another. We need to get back to that so we will find the path forward. I appreciate all of your comments and thoughts today.

10. ADJOURNMENT

There being no further business brought before the Board, Jeff Patterson asked for a motion to adjourn the meeting. **Motion was made by Pete Brown, seconded by Rick Burkhart. Motion carried unanimously and approved by the board.**

Meeting was adjourned at 11:07am.



For Secretary

5/25/22
Date

Dear fellow board members and owners,

Due to the fact that i am unable to be at the meeting today I wanted to go on record with my thoughts on allowing tile in dining rooms. About a month ago the board voted to put the carpet vs tile out for a vote to all of our owners. The vote came back not to allow tile in the living and dining rooms. Since then, there has been several requests to install tile in dining rooms. These requests were approved without a full board vote. Before this was done the full board should have voted yes or no on the request. If the vote was yes, the board was obligated to go back to the full ownership to revote their choice on tiling the dining rooms. Partial board decisions on important material changes is not allowed. This issue needs to be voted as per our declarations no matter what the outcome of the vote is. The last words from our attorney on this issue was as follows, IT WOULD BE DESIRABLE IN THE FUTURE TO AMEND THE DECLARATION TO PERMIT SOLID SURFACE FLOORING IN DINING AREAS. I think we need to follow the advice of our attorney if we want to go down this road.

I would request that this letter be read at today's meeting and be entered in the minutes of the meeting exactly as written.

Thank you,

Jack Hillegas

MR and MRS. FREDERICK J. MAGOVERN
100 N. COLLIER BOULEVARD
CB 1101
MARCO ISLAND, FLORIDA 34145

May 19, 2022

Dear Members of the Board of Directors:

We are original Crescent Beach unit owners. We have dutifully complied with the rules of our association over the years in the belief that our board was fulfilling its fiduciary obligations to all unit owners. We are writing out of our sense of disappointment and concern for the direction that our association is taking.

The board recently called for a vote to amend the association's governing documents to permit hard surface flooring (hereinafter "tiling") in place of carpeting except for the bedrooms. The requisite number of unit owners did not approve the proposed change to the declaration of condominium. We were left with the belief that the *status quo* would continue. Namely, that carpeting was required throughout the units except for the kitchen, the breakfast bar, the foyer, washer/dryer closet, and bathrooms.

We now understand that the board, as per the amended Notice of Board of Directors Work Session, intends to get around the prohibition against tiling and go against the clear vote of membership not to change the governing document, and approve tiling in the dining/living room area of any unit. The board intends to justify this violation of the governing document by the use of semantics. That is, the board's counsel has apparently advised that by simply renaming a unit's dining/living room area an "expanded kitchen/serving area." Your dining room is now your kitchen so that a unit owner can install the otherwise prohibited tile. This is pure artifice and a violation of the association's governing documents that is the source of the board's authority to act.

We take no assurance from the Board's proposed motion that "All applications to install hard surface flooring and high-quality underlayment will be required to be approved at a board meeting in advance." What high quality underlayment did the board adopt, and when was it adopted and circulated to ownership as the acceptable standard? It would make far more sense for the board to fund a current independent engineering study to determine whether hard flooring in lieu of carpeting will adversely affect the quality of life of the adjoining unit owners and what mitigation measures are the gold standard for the industry? The results could be presented to the ownership and another vote taken if the evidence supports it. The board would then be in a position to impose a uniform standard for noise suppressing underflooring that would apply to all units. Without a recognized standard, the board is simply relying on the representations of the flooring installer or owner without any means of verification of the accuracy of the representations.

cont'd

Item 2: Letter from Unit Owner 1101 - Fredrick and Suzan Magovern
Board of Directors Meeting Minutes Attachments
May 20, 2022

We urge the board not to proceed in this fashion which will adversely affect the cohesiveness of our community. Unit owners whose opinion differ from those of the board members should be entitled to and accorded respect, not ostracism. We all want what is best for our association.

Thank you.

Sincerely,

FRED and SUSAN MAGOVERN

20 May 2022

I write this letter to the members of our Association in response to a letter sent to the Board of Directors on April 21st and three additional letters received on April 25th submitted by three owners who shall be referred to as the complainant(s). The complainants disagree with recent Board decisions regarding unit remodels and hard surface flooring. I would like to ensure all owners are aware of how and why these Board decisions were reached.

A unit owner submitted a remodel request that included extending the kitchen into the dining area and tiling the newly expanded “eat-in” kitchen in its entirety. Although many previous remodels have included enlarging the kitchen into the dining area and enlarging the tile footprint, none have expanded the kitchen to the extent that this owner requested to do. However, many units have comparable areas of tile in the dining area as this owner requested. Exercising due diligence, the Board sought counsel from the Association’s attorney for guidance.

Our attorney provided his response in writing to the Board advising that neither our condo docs nor the Florida Statutes prohibits this kitchen configuration change. Many significant unit configuration changes have been conducted in the past, including a unit which moved the kitchen into the living room area adjacent to the lanai sliders. Concerning tiling, our attorney advised that it is reasonable and permissible to allow tiling the dining area of an expanded kitchen or an existing kitchen since they are both food service areas and the condo docs do not specify what encompasses the kitchen. This information was presented to owners at the March 11th BOD meeting and are included in the minutes from that meeting.

Having no prohibition nor compelling reason to deny the owner's request, it was approved, as were several others subsequently received, including mine. These decisions prompted the complainants to submit their letters to the Board for consideration

On April 21st, the day prior to the April 22nd Board meeting, a letter from the 3 complainants was emailed to each board member. Additionally, that evening one complainant delivered a copy of the letter and supporting documentation to my door. The letter stated “...the 1989 Declarations, Section 11.3(c) provides: All units shall always have the floors covered in wall-to-wall carpeting installed over high quality padding except carpeting is not required in kitchen, foyer or bathrooms.” The 1989 declaration did not contain the referenced section and contained no such statement. In fact, the 1989 Declaration did not address flooring at all. However, the complainants submitted justification of this false statement in the form of an altered document presented to me as an excerpt from the 1989 Declaration of Condominium.

In one letter submitted on April 25th, the complainants stated that the Condo Declarations Committee Chair is “... required to recuse himself from participating in any deliberations regarding requests of unit owners to make tiling changes to units. The chair of the committee has admitted that his unit is one of the units that is pursuing tiling changes.” Our counsel advises that the Committee Chair is not obligated to recuse himself from discussions regarding the correct interpretation and application of the language in our Declaration regarding hard surface flooring. The Board’s interpretation and application of such language applies to all owners wishing to install hard surface flooring in their unit. Therefore, I will not unnecessarily recuse myself from doing the job I was elected to do.

In a second letter, the complainants referred to Section 11.4 of the Declaration and the need for the Board to approve alterations to units. As at least two of the complainants know, given their long service on the Board, historically Boards at Crescent Beach have not approved alterations to units at Board meetings. Rather, alterations have been reviewed by a board member and our manager and a determination is made to approve or disapprove. In fact, the Board has located in the Association's file one instance in which one complainant signed off on alterations to their own unit. This same complainant has tile extending approximately 10 feet from the breakfast bar and a tile pathway through the master bedroom into the bathroom. The current Board is in no position to selectively enforce Section 11.4 of the Declaration with respect to applications received after the 2022 annual meeting, given past laxity regarding Section 11.4. Going forward, the Board intends to address the past lack of enforcement of Section 11.4, by formally considering applications for unit alterations at Board meetings and strictly defining what comprises the dining area.

In a third letter, the complainants shared their concerns about the Board allowing owners to install hard flooring in a unit's dining area as defined by the Board. This is another area in which prior Boards have not enforced the Declaration of Condominium. There are 54 known instances in Crescent Beach in which owners have installed tile in areas other than kitchens, foyers and bathrooms and also beyond the 4' area from the breakfast bar, whether in a curved pattern, as most 3 bedroom units have done, or in the dining area. 9 units have tile in the entire dining/living area with several of those 9 also having tiled bedrooms. One complainant has a tiled area in the living room adjacent to the lanai sliders. As recently as Jan 2022, an additional unit owner was granted permission to tile their entire unit which is clearly not allowed by the Declaration and was granted without authority or legal counsel. Given the widespread tiling in units throughout our building, the current Board is hard pressed to deny owners permission to install tile in a dining area that essentially operates as an eat-in kitchen, which our counsel has advised is consistent with Section 11.3(C) of the Declaration.

I found the timing of the submission of the 3 letters on April 25th to be very inappropriate and insensitive. As at least one complainant was aware, a Board member was to undergo significant surgery the following day and should have been afforded the courtesy to be in the proper mindset to promote the most successful surgical and recovery outcomes. The timing of the letters' submission was not critical and could have been done days earlier or later.

I am striving to preserve owner's rights to do what is permitted by our governing documents, both explicitly and by reasonable legal interpretation provided by our Association's counsel. The pursuit of rationale to deny owner's of these rights is contrary to the fiduciary duty of board members to always act in the best interest of the condo ownership majority. Unfortunately, significant Association funds were utilized for legal fees to have our attorney reverify that the board is on solid legal ground and the complainants issues are unsupported by any legal, statutory or historical precedent

I have received many comments from owners expressing appreciation for the transparency and effective communication from this board, this letter is a continuation of my dedication to those endeavors. I appreciate all owners' concerns for the welfare of our community and value the input, but must respectfully disagree with the conclusions in the complainants' letters.

Respectfully,

Rick Burkhart