

**MINUTES OF THE APRIL 14, 2011 MEETING OF THE  
BOARD OF DIRECTORS OF THE  
HOMWOOD HOMEOWNERS ASSOCIATION**

**DRAFT**

***Directors and Committee Members in Attendance at the Meeting:***

On April 14, 2011 a joint meeting of the Board of Directors of the Homewood Homeowners Association and the Association's Beach Parcel Committee was held at the law offices of Sproul Trost LLP in Roseville. The meeting commenced at 1:00 P.M. In addition to the directors, committee members and interested property owners listed below, the meeting was attended by Curtis C. Sproul who is legal counsel to the Association. The following Homewood homeowners were in attendance, at the meeting, either in person or by conference telephone, as permitted by California Corporations Code section 7211(a)(6):

**The Following Directors Attended the Meeting in Person:**

David Powell (Director) email address: jdpowell@stanford.edu

Allen Sayles (Director) email address: allen@jasarch.com

**The Following Directors Participated in the Meeting by Conference Telephone:**

Ann Bryant (Director) email address: bearsnsquirrels@sbcglobal.net

Carole Gray (Director) email address: cjgray123@comcast.net

Todd Stone (Director) email address: jtstone@raystoneinc.com

Bryan Turner (Director) email address: landpoor@sbcglobal.net

*Absent:* Ted Grebitus (Director) email address: TedGrebitus@grebitus.com

**The Following Members of the Association's Beach Parcel Committee Attended the Meeting in Person:**

Dan Higgins (Member) email address: 4homewood@sbcglobal.net  
Bill MacLaughlin (Member) email address: bmaclaughlin@macco.org  
David Powell (Member) email address: jdpowell@stanford.edu  
Jay Sayles (Member) email address: jay.sayles@gmail.com

**The Following Members of the Association's Beach Parcel Committee Participated in the Meeting by Conference Telephone:**

Mary McPherson (Member) email address: marymcp@sbcglobal.net  
Ron Scharf (Member) email address: scharf@arizoncompanies.com

*Absent:* Lee Courtright (Member) email address: llcourt@sbcglobal.net

**Other Interested Homewood Homeowners Who Attended the Meeting in Person:**

Hugh Harris email address: murielharris@sbcglobal.net  
Marilyn Kennedy email address: kennedysteve@yahoo.com

**Other Interested Homewood Homeowners Who Attended the Meeting by Conference Telephone:**

Bruce McPherson email address: marymcp@sbcglobal.net  
Sally Lagomarsino email address: sallylago@comcast.net

***Introductory Comments by Attorney Curt Sproul***

Curt Sproul was the first speaker at the meeting. Mr. Sproul briefly related his involvement in legal issues pertaining to the ownership and use of Lake Avenue in the Lakeside on Lake Tahoe subdivision commencing in 1976 when he left Morrison & Foerster in San Francisco to join Downey, Brand, Seymour and Rohrer in Sacramento. The first file that was handed

to Mr. Sproul upon his arrival at Downey Brand was the William Breuner file concerning the claims of Placer County to the ownership of Lake Avenue. Sproul then related that his representation subsequently evolved into the role of legal counsel for the Homewood Homeowners Association at the time when the Association had been expanded to include in its membership all property owners in the Homewood area, rather than being an association whose membership was comprised solely of lakefront owners.

Curt Sproul then reported on his meeting with Mark Rathe, Deputy County Counsel for Placer County to discuss the Memorandum of Understanding that had been proposed by the County for execution between the County and the Association. Mr. Rathe has been assigned to represent the County in the negotiations with the Association over public access to those portions of Lake Avenue that lie due east of the ends of the access roads in the Lakeside on Lake Tahoe subdivision (for purposes of these Minutes, those portions of Lake Avenue are referred to as the HHOA Beach Parcels).

According to David Powell, the most recent 2010/2011 activity between the County and the Association in this 115 year back-and-forth with the County over the status of Lake Avenue (public or private property) had been initiated by the Association in the context of its efforts to obtain permits from the Tahoe Regional Planning Agency (TRPA) for buoys in the waters of Lake Tahoe east of Fern and Trout Streets within the Lakeside on Lake Tahoe subdivision. In meetings with TRPA representations were made by the TRPA staff that the Association would qualify as a littoral land owner if the County cooperated in the issuance of Assessor's Parcel Numbers for those portions of Lake Avenue that abutted all of the access streets (although the Association was only interested in having APNs assigned to the portions of Lake Avenue abutting Fern, Oak, Trout and Silver Streets).

Under the TRPA ordinances, if an individual or an association is not a littoral owner, that person is not entitled to a buoy in the Lake and therefore the littoral status of the Association as to portions of Lake Avenue was of critical importance for off-the-Lake Homewood property owners who desired to have a buoy in Lake Tahoe. For that reason the Association approached the County to inquire about having Assessor's Parcel Numbers assigned in the name of the Association for those portions of Lake Avenue

lying due east of the five access streets in the subdivision. Those negotiations resulted in the County's presentation of a proposed Memorandum of Understanding which, if executed, would have the following principal effects:

1. The MOU includes an express confirmation by the County that the Association is a littoral owner in fee simple of the HHOA Beach Parcels, down to the low water line of Lake Tahoe, subject to the public's rights of access and use of the HHOA Beach Parcels between the prescribed high and low water lines of Lake Tahoe pursuant to the two *Fogerty* court rulings (applying the so-called Public Trust Doctrine to the California shoreline of Lake Tahoe).

2. The MOU includes an express confirmation by the Association of the public's rights in the Public Trust area of the Beach Parcels.

3. The MOU includes an agreement by the HHOA that the public also has the right to use other portions of the Beach Parcels for purposes of accessing the Public Trust Areas. Those portions of the Beach Parcels that lie above the high-water line of Lake Tahoe are designated in the MOU as "Extended Public Trust Areas".

4. The MOU expressly states that the public can use the Extended Public Trust Areas for recreational purposes.

5. The MOU would obligate the Association to post signs at the east ends of the access streets reading "Public Beach Access Areas".

6. The MOU also calls for recordation in the County Records of a "NOTICE OF PUBLIC ACCESS AREA". That Notice would be recorded with respect to the entirety of each of the HHOA Beach Parcels.

Mr. Sproul then referenced his earlier correspondence of April 1, 2011 in which he had recommended that the Association decline to execute the MOU because (i) the document does not give the Association much more than it already has (particularly given the fact that the County Assessor has issued Assessor's Parcel Numbers to the Association for the HHOA Beach Parcels *without exacting agreement to the MOU as a quid pro quo*) and (ii) yet the document gives the County a legal interest in favor

of the public in the HHOA Beach Parcels that the County currently does not possess. Mr. Sproul noted that the terms used in the MOU are taken from the litigation settlement agreement in the Tahoe Pines case which resulted in general public access to the beach area in that nearby subdivision. Accordingly, acquiescing in the execution of the MOU and recordation of the Public Notice document with respect to the HHOA Beach Parcels could also serve as a “camel’s nose under the tent” incremental victory for the County in its efforts to extend the concept of an Expanded Public Trust Area to other portions of Lake Avenue that are not at the ends of the access streets. The argument would be that if the Association has acknowledged to the County that by virtue of past usage the general public has recreational rights in portions of Lake Avenue, where do those rights end and you go up and down other portions of the Homewood beach?

Mr. Sproul thought it was significant, insofar as the strength or weakness of the County’s position, that after several requests that Mr. Rathe provide legal authority for the County’s position regarding public access rights, the only authority cited by Rathe was the 1970 California Supreme Court ruling in *Gion v City of Santa Cruz*, a decision involving the creation of public access rights in private property via “implied dedication” – a case that was almost immediately limited in its application by the State Legislature’s adoption (in 1971) of Civil Code section 1009. That Civil Code provision essentially states that principles of implied dedication are limited to situations involving public access to private lands along California’s Pacific Ocean shoreline.

***Approval of the Agenda:***

At this point in the meeting, director David Powell directed the participating directors and committee members to the written Agenda that he had prepared for the meeting. On motion duly made and seconded, the Agenda was adopted. A copy of that Agenda is attached for the record.

***Approval of the Minutes of the January 13, 2011 Board Meeting:***

On motion duly made and seconded it was agreed that action to approve the January 13, 2011 minutes should be tabled and brought before the Board at the next regularly scheduled meeting.

***Action to Accept or to Reject the Memorandum of Understanding As Presented by the County of Placer:***

Mr. Powell noted that Curt Sproul's presentation had covered much of Agenda item No. 2, which called for a discussion of HHOA action on the proposed MOU. Following further discussion the Board voted unanimously to adopt Mr. Sproul's recommendation that the Association should decline to accept the MOU and the participating members of the Beach Parcel Committee concurred in that decision.

It was further agreed that Mr. Sproul should so inform Deputy County Counsel Rathe, since the matter had been pending without resolution for an extended period of time and as a matter of courtesy the County should be advised of the Association's decision to either accept or reject the MOU. Ron Scharf, who was participating in the meeting by conference telephone, recommended strongly that any communication to the County should be brief and to the point and phrased in a manner that would not raise the ire of the County or provoke litigation. Mr. Scharf said he was not comfortable with Sproul's suggestion that the County be informed that the Association had reached "different conclusions" regarding the merits of entering into the MOU. In Mr. Scharf's opinion, such words might appear provocative to the County and result in some sort of responsive legal action. All in attendance agreed that no barriers should be erected to block public access, as that would be a red cape in the face of the County.

***Action to Approve a Draft Resolution of the Board Concerning littoral rights for both the individual lakefront property owners and the Association (as to the HHOA Beach Parcels):***

At this point in the meeting the discussion turned to Agenda Item No. 3, namely a proposed vote on a resolution confirming the Association's unity with respect to the issue of littoral rights for both lakefront property owners and for the Association as to the HHOA Beach Parcels. The proposed Resolution reads as follows:

RESOLVED THAT:

The Board of Directors of the HHOA is in favor of TRPA and the California State Lands Commission (a) recognizing the littoral

rights of lakefront owners for the portions of Lake Avenue lying lakeward of their lots and (b) recognizing the littoral rights of the HHOA for those portions of Lake Avenue lying lakeward of Fern, Oak, Trout, and Silver Streets (Add South Street?)

The discussion of this Agenda item opened with the question of what the next course of action should be and which agency (TRPA or the California State Lands Commission) should be approached first on the issue of littoral property rights. The consensus reached at the meeting was that a meeting ought to first be scheduled with Gabby Barrett and Austin Quinn-Davidson at the Tahoe Regional Planning Agency and that the meeting should not be put off indefinitely pending resolution of the TRPA Shorezone Ordinance issue (i.e., the fact that a new Ordinance must now be drafted in the wake of the Federal District Court's rejection of the present Shorezone Ordinance).

Bruce McPherson noted that given the ever changing composition of the TRPA Board and the potential for a loss of institutional memory should Gabby Barrett vacate his present position (evidently Kenneth Kasman, whose title at TRPA is "Associate Environmental Specialist – Blue Boating" is assuming the lead on littoral property rights issues), it would behoove the Association and its counsel to schedule the meeting as promptly as reasonably possible. Mr. McPherson noted that the issue of littoral property rights is separate and distinct from the process of obtaining a buoy permit (the issuance of new buoy permits is likely to be held in abeyance by TRPA pending adoption of a new Ordinance). While being a littoral owner is very pertinent to the ability of a property owner to obtain a buoy permit, the first step in the process is to gain confirmation of an owner's littoral status. Mr. McPherson noted that at a TRPA meeting that he had attended, Homewood was singled out by the TRPA staff as presenting a "unique situation" insofar as littoral rights are concerned (a veiled reference to the County's lack of fee ownership rights in Lake Avenue).

Now that the Association has been issued Assessor's Parcel Numbers for the HHOA Beach Parcels (without the County conditioning issuance on the Association's execution of the MOU), the Association can also make a valid claim to littoral status vis-à-vis the HHOA Beach Parcels. During the meeting there was some discussion of the need to also track down the recorded version of the Quit Claim Deed that the McConnell heirs

gave to the Association for the HHOA Beach Parcels. David Powell replied that the Association has a recorded copy of the document and Curt Sproul agreed to add a reference to the recording information in these minutes. Accordingly, for the record, the Quit Claim Deed in favor of the Association was recorded in the Official Records of Placer County on August 15, 1991 as Document No. 91-049714 and a policy of title insurance for the Association's portions of Lake Avenue was issued on that date by Stewart Title.

Ron Scharf commented that the recent activity between the Association and the County culminating in the proposed Memorandum of Understanding had all come about due to the desire of both the lakefront and off-Lake property owners to get TRPA to issue permits for buoys. Mr. Scharf was of the view that somehow that focus on obtaining buoy permits had now morphed into a focus on the legal issue of littoral status and ownership. Mr. Scharf stated that in his view this was a bramble bush that the Association should avoid. He noted that neither TRPA nor the State Lands Commission have the legal authority to issue a decree or ruling regarding littoral status. Dan Higgins argued that it was appropriate to focus on littoral rights, since the issue of littoral status affected more than buoys – it also is germane to the right to erect structures that go into the Lake.

Following these comments a lengthy discussion ensued regarding the agency authority and practices of both TRPA and State Lands with respect to making determinations of the littoral status of property owners. It was noted that when a property owner applies to State Lands for a lease (State Lands having ownership of the bottom of the California side of Lake Tahoe), the questionnaire that the owner must complete simply asks whether or not the applicant is a littoral owner. If you answer "YES" then you proceed through the rest of the application. Similarly, TRPA has the authority to make an administrative determination that a particular property owner's facts and circumstances meet the Agency's definition of who qualifies as a littoral owner. In the context of buoys, State Lands wants to see a TRPA permit before it will issue a lease for buoys in the waters of Lake Tahoe.

A discussion then ensued regarding the parenthetical reference at the end of the draft Resolution regarding South Street. The reason why

that street was being singled out for possible exclusion from the Resolution was that South Street is the site of the boat launch activity for Obexer's Boat Company and Marina and therefore receives a considerable amount of public traffic related to the Marina's operations. A motion was made and seconded to table further action regarding South Street as an asset of the Association, pending further negotiations with the Obexers' owners regarding parking issues experienced with increasing frequency along that street in the summer months. Among other issues raised in these discussions was that relinquishment of Association rights should not necessarily be offered to Obexer's Boat Company without any quid pro quo regarding the parking problems, or perhaps monetary compensation.

With the reference to South Street removed from the draft resolution, on motion duly made and seconded the Association Board voted unanimously to approve the resolution as presented.

***Discussion of Agenda Item No. 4: Adoption of an additional Resolution stating that "No Board member is aware of any member of the Association who is opposed to the contents of the Resolution concerning the recognition of littoral rights for both the Association and the lakefront property owners.***

When this item came up for discussion Ron Scharf stated that he could not support the additional resolution. Due to his opposition, the supplemental Resolution was abandoned.

***Future Course of Action:***

At the conclusion of the meeting it was agreed that Mr. Sproul should contact Gabby Barrett and Austin Quinn-Davidson at the Tahoe Regional Planning Agency and arrange a meeting as soon as reasonably possible, understanding that some delay may be occasioned by the unsettled status of the TRPA shore zone ordinance and the pending moratorium on the issuance of new buoy permits by TRPA. Upon motion duly made and seconded it was unanimously agreed that the meeting, when scheduled, should be attended by a group comprised of two members of the Board of Directors, two members of the Beach Parcel Committee, attorney Sproul and one additional representative of the Homewood community selected by the Board.

***Adjournment of the Meeting:***

There being no further business to transact, upon motion duly made and seconded the meeting was adjourned.

**CERTIFICATE OF THE SECRETARY**

The undersigned Secretary of the Homewood Homeowners Association, a California mutual benefit corporation, hereby certifies that the foregoing minutes of the regular meeting of the Board of Directors of the Association held on April 14, 2011, were duly approved by action of the Board at its next regular meeting held on \_\_\_\_\_, 2011, and that the foregoing Minutes remain in full force and effect.

DATED: \_\_\_\_\_, 2011

**HOMEWOOD HOMEOWNERS ASSOCIATION**

By: \_\_\_\_\_  
Secretary