

Beau Chene Homeowners Association, Inc.
Board of Directors Special Meeting
August 9, 2013
8:30 a.m.
Beau Chene Country Club

Call to Order

Acting President Paul Angelle called the meeting to order at 8:35 a.m.

Roll Call

Board members present were: Paul Angelle, Susan Bonnett, Jay Capouch, Kelly Commander, Chris Inman (non-voting member), Michael Kazmierzak, David Pesses, Lance Rase, Gareth Reardon, Chuck Turner and Jay Whealdon. Member Doug Tate was absent due to a work emergency. Staff members Scott Day (CAO), Bill Maier, and David Vinson were present also.

Ratify the Employment Agreement, Effective April 3, 2013, between the Beau Chene Homeowner Association and Michael Scott Day

Mr. Whealdon moved, seconded by Mr. Rase, to ratify the agreement. Mr. Kazmierzak asked if the agreement had been given to the Board. Mr. Angelle said it was part of the orientation packet. Mr. Whealdon said it would be part of the minutes and it had been emailed to members. Mr. Pesses asked if it had previously be voted upon. Mr. Whealdon explained the actual agreement had never been voted upon. Mr. Maier said what had been approved was to make an offer, but no motion was made to approve the actual contract. Mr. Pesses moved, seconded by Mr. Turner, to go into Executive Session to discuss the matter. Carried unanimously.

Mr. Day, Mr. Maier, and Mr. Vinson left the room. After the Executive Session, Mr. Capouch called the question on the motion by Mr. Whealdon to ratify the agreement. Carried unanimously.

Receive a report from Scott Day regarding the processes involved in the transition to a self-administered association and make any decisions necessary at the Board level, in connection therewith

Mr. Day referred to a document he had prepared regarding his authority to take action as the CAO. Mr. Whealdon said regarding the 2nd paragraph about "financial matters pertaining to the company's assets and obligations", the FC was charged with managing those functions. Mr. Day said to clarify he meant preparing financials, writing checks, etc. just to move things forward. Mr. Capouch said there was an established policy to pay bills; TEC prepares the checks and accompanying invoices, which are signed by authorized signers; Mr. Inman didn't

sign anything – it was signed by him as Treasurer, with another signature required for amounts over \$5,000; he said when Mr. Day wrote a check it needed to pass through the process; Mr. Capouch said he reconciled the checks each week as to where each went. Mr. Day said discussion was needed as to the limits of his abilities, noting Mr. Inman in past years could write a check up to a certain amount. Ms. Bonnett said as long as the item was the budget approved by her Board, she could write a check, within procedures and backing documentation; otherwise it would slow down the ability to pay bills; dual signatures were required for over \$5,000; she felt it was bad policy to require a volunteer member be available; she suggested bigger parameters. Mr. Capouch said from an auditing standpoint he or someone else from the Board should review every check. Mr. Whealdon suggested Mr. Capouch and Mr. Day get together such that Mr. Day can do what he needs and Mr. Capouch was satisfied with oversight. Mr. Capouch agreed. Mr. Angelle said big business operated by managers approving invoices which went to accounting to pay. Mr. Capouch said that was the process Ms. Bonnett said her Treasurer presented financials quarterly to the Board, and there were checks and balances. Discussion ensued about putting the check register in the minutes and also whether to email it monthly with financials to Board members and whether this was a problem since it would reveal contract rates. No final decision was made regarding this. Mr. Capouch said he was fine with Mr. Day having a cap and the check register being reviewed regularly, with backup invoices being checked as well. Ms. Bonnett suggested putting in writing the requirement for 2 signatures for amounts over \$5,000. Mr. Capouch moved, seconded by Ms. Bonnett, that Scott Day be added as an authorized signature. Unanimously carried.

Mr. Day referred to page 2 showing the transition budget, noting some were round numbers; the total was \$30,000 for phones, copies, mailing, pc's and network, guardhouse pc's. Regarding the guardhouses, Mr. Maier said the only use for pcs was to keep phone numbers and addresses for the residents, even if these were TEC computers; they were of no value. Mr. Day said he wanted to update the pcs and get internet connections to be able to have view only access to Northstar for residents, and also for future security needs in coordination with the SC. Mr. Maier said that the heat in the guardhouses was horrible on electronics. Mr. Day said he was getting a proposal for laptops as they were now as supported as desktops; he observed he and Mr. Inman said he was filing in the blanks on the lease and he understood it would be reviewed by a Committee consisting of Mr. Angelle, Mr. Pesses, and Mr. Turner. Mr. Day said on page 3 he compared 2 sites with the TEC office, but it looked like things would work out with the latter; in response to Mr. Rase, he said 3 year leases seemed to be the industry standard. Mr. Pesses said the longer the lease, the better the rate, but there was no standard; considering the fluidity of the situation he didn't know if a longer lease was desirable. Mr. Day said Mr. Inman said "no" to selling land. Mr. Inman said what he said was he had to vacate the lot liens and replat, to have more flexibility to create an office condo – the BCHOA would not own the land but an interest in the land plus the building. Mr. Whealdon explained it was a strip of land between the sales office parking lot and the highway. Ms. Bonnett recommended no longer than 3 years, agreeing with Mr. Pesses. Mr. Pesses said the lease could be written where it transferred into a purchase. Mr. Inman said the current building was packed, especially with creating space for Mr. Day. Mr. Day said Mr. Maier reminded him the lease would be for newly renovated space as the building was being renovated; the payroll was ready except for the time clock; the Humana health plan was approved; Netchecks would provide the 401(K), a 2% match. Mr. Inman said the TEC match recently changed from 2% - 2%, to the employee providing 4%

and the employer 2%; this is said to increase participation. Ms. Bonnett said the 401(K) needed to be approved and outlined in the handbook – suggesting a 1 page outline of benefits to vote on; she recommended Mr. Day meet with her regarding her company's handbook which was extensive. Mr. Capouch said the one – time \$30,000 cost would fit in the budget. Mr. Inman said the Northstar system annual maintenance cost wasn't included. Mr. Day said it was already paid this year; the annual fee was more like \$5,000. Mr. Capouch moved, seconded by Ms. Bonnett, to accept the budget presented for the 1-time expense and accept the annual budget going forward. Unanimously carried.

After discussion, the consensus was it was premature to approve the management document until further wording between Mr. Day and Mr. Capouch was worked out, so it would be brought up at the next meeting.

Ms. Bonnett moved, seconded by Ms. Commander, to empower Mr. Day to execute the lease on behalf of the BCHOA once the lease was approved by the lease subcommittee as appointed by the chairman. Carried unanimously.

Discussion and vote upon to changes to the By-Laws, as proposed by Jay Capouch

Article X, Section 2(d) be amended to read: "Investments" which shall involve the control over investment of reserve funds and such other funds as may be deemed suitable for investing by the Board of Directors in accordance with its investment policy; and

Article V, Section 8 be amended in its third sentence to read: The term of any Director who (1) becomes more than sixty (60) days delinquent in payment of any assessments and/or carrying charges due the Association, or (2) is absent without adequate excuse, as determined by the Board, from two meetings of the Board in any one year term, or (3) has evidence a conflict of interest by filing or threatening to file a legal action against the Association or the Board, may be terminated upon a resolution of the remaining Directors, and the remaining Directors shall appoint his/her successor as provided in Section 7 of this Article.

Mr. Capouch discussed the latter amendment first. He noted Ms. Commander had hired attorney Clint Pierson to threaten litigation if this amendment passed. He asked if Ms. Commander knew who drafted the letter. Ms. Commander said Clint Pierson. Mr. Capouch moved, seconded by Mr. Turner, to table the amendment until the Board could meet with its legal counsel, who is yet to be appointed, noting it could be brought back at a later date if necessary. Carried unanimously.

Regarding the second amendment, Mr. Capouch said the reference to temporary investments was being deleted and language added that it would subject to an investment policy as adopted by the Board. He said he was sorry to see Ms. Commander's email sent out to some 7 pages of addresses suggesting that the community express their opinion. Ms. Commander said the community should be notified of the change. Mr. Capouch said he took exception to 2 things: 1 was this was a matter to be discussed by and a discussion made by the Board first, and should not be disseminated for discussion before the Board had a chance to review it; the policy has not

been adopted, the Board had not talked to investment advisors, and no proposals had been received; second, he noted the claim that the membership is not aware is false; he observed Ms. Commander was not at the Annual Meeting where he (Mr. Capouch) specifically advised the membership that the Board was considering a policy decision for investing in investments other than CDs and bank accounts; he continued, saying the membership was advised in advance, and when an email was sent out saying she believed the Board should have notified the homeowners of this proposed significant action, she was misstating significant facts; he said he felt she should apologize to the whole Board. Ms. Commander said she'll apologize, though she had to decide what level of transparency the Board was going to have; she noted many present wanted more transparency on several issues, particularly the security gates; the Board has to decide where it would involve the community and where not. Mr. Turner said previous Boards discussed that the community elected members to do business for the community; these are the people involved in making decisions; the Board does want more transparency, that being one reason the Northstar system was selected; but he said the Board members should not be telling the community what the Board is going to do before the Board does it. Ms. Commander said if people wanted to weigh in on the decision before a vote was taken, how would they do it.

Mr. Whealdon noted that there were 2 ends of the spectrum on the FC and the Board, every board he had been on was similar, and the community likewise. Ms. Bonnett said the basic issue was between being an elected board v. a corporate board, with decisions made both ways based on the issues; but Mr. Capouch did communicate this issue at the Annual Meeting; the By-Laws change is not changing investment strategies, but changing wording so a policy can be created; the email was about a specific policy that hadn't been approved but discussed; people have an opportunity to sit on committees, to get information which they choose not to do, and then complain after-the-fact; this is just part of leadership; the Board has to be responsible about its responsibility to communicate; the community had been spoonfed in the past, and most didn't care about big issues, let alone this; receiving 30 emails out of 1,500 meant this wasn't a big issue, but having to read them and possibly respond meant this was an energy waster; the Board was being proactively responsible about the finances. Mr. Angelle noted he had received emails pro and con, and had discussed this with the Association insurance attorney, and was getting more input from him about how to reply; he noted he would not give anything to someone suing that he wasn't required to; at this point he felt it best to reply saying be patient – we'll get back to you.

Saying he was doing for the sake of transparency, Mr. Capouch read from the text he had actually used at the Annual Meeting, detailing his presentation of the matter to those present at the meeting.

Me. Pesses said the Board owed it to the community to respond but had been advised not to respond because of the issues of not having legal representation; but he suggested a generic response by email saying the Board would respond shortly about the facts about all of the alleged things so all could be put behind; in the future, there should be the ability to get fact not only through Board members, but through minutes posted, with sensitive stuff deleted if necessary so privacy is maintained; homeowners should be able to see minutes and budgets or come and inspect records. He also said all should sign the confidentiality agreement.

Mr. Angelle said the Board would have a Code of Ethics all would sign and the majority ruled; a Director can't be kicked off the Board, but there are other options; legal advice was needed; then it could be circulated to the Board. Mr. Whealdon suggested saying effective September 1, the BCHOA would be self-managed. Ms. Bonnett suggested a motion to that effect; she also suggested more effective communications from the Board and staff needs to be a priority. Mr. Day said he had not been getting all the emails the Board had, and asked if it wanted him to talk to the attorney about sending out a brief message now. Mr. Angelle said the attorney would give him verbage this afternoon. Ms. Bonnett said communication needed to be once a week. Mr. Day said he would prepare something. Mr. Turner said Northstar would help and asked how many emails the BCHOA had presently. Mr. Day said it did not have all the members' emails. Ms. Bonnett said to post on Facebook as well. Mr. Maier said it was a little over 1,000, some were multiple emails for given residents.

Mr. Capouch, seconded by Mr. Whealdon, moved to adopt the proposed amendment to Article X, Section 2(d) of the By-Laws as it read on the agenda. The motion carried 8-1, with Ms. Commander opposed.

Mr. Angelle said the attorney had advised that given the litigation to be very careful about what was communicated, so he was waiting on the attorney's advice; he felt in general communication once a month was best. Mr. Rase noted one reason people got upset last year was there was a group that didn't worry about facts; it would be easy to discount things said; he said he understands counsel's advice but if a message went out that the Board was "advised by council..." that will be upsetting to some of the membership, and if things can be said that aren't challengeable, say them.

Mr. Whealdon asked Ms. Commander why she voted against the motion. Ms. Commander said she had actually proposed fixing the By-Laws if going this direction; the word "temporary" needs to be taken out; she was for fixing anything not in line with the Articles; she said this may fix it, but she didn't have to agree with it, out of concern for the fluidity of policy, because other Boards can change it; she was in favor if it can be put in the articles. Mr. Whealdon and Ms. Commander agreed the word "temporary" was ambiguous. Ms. Commander said she apologized if it came out that way, but it was not her intention that because she said it was wrong, the community would say that; but she wanted the community to know what the Board was doing. Ms. Bonnett said a simple majority could do anything. Ms. Commander suggested the community be notified of By-Law changes. Mr. Whealdon said the Board could consider that.

Approve the appointment of an attorney, on a temporary basis, to advise the Board regarding the various legal issues that involve or may involve the Association

Mr. Angelle noted Ms. Bonnett, Mr. Rase, and Mr. Day were to meet with an attorney Monday. Ms. Bonnett noted at the last meeting she was asked to make recommendations for an attorney, with Mr. Rase's help, but given limited time suggested Mr. Day vette the candidates, recommending 3 or 4 for the Board to interview; the interview Monday was with Paul Mayronne with Jones, Fussell, and the firm was well known for HOA work; she asked whether Mr. Mayronne should be engaged on the 1 issue or long-term, or should more be interviewed. Ms.

Commander asked if anyone knew him. Mr. Maier said Mr. Mayronne did a lot of work before planning and zoning commissions. After further discussion, Mr. Pesses moved, seconded by Mr. Turner to empower the (ad-hoc) committee (Ms. Bonnett, Mr. Day, Mr. Rase) to hire on a temporary basis attorney to assist with legal advice. Carried unanimously.

Concerning another matter, after discussion Mr. Pesses moved, second by Mr. Whealdon, that by mutual agreement with Chris Inman present, the Board of Directors votes to cancel the agreement with The Earnest Corporation effective 12:01 a.m. August 31, 2013, and such notice immediately be reduced to writing and signed by both parties. Unanimously carried.

Mr. Angelle referred to the letter received from attorney Clint Pierson that was drafted by attorney Craig Robichaux, and said notwithstanding Mr. Robichaux's termination (as BCHOA attorney) he had a fiduciary responsibility to the BCHOA and was in violation of that; he said at this point in time no action was being taken, but he wanted the Board to be aware of this; he guessed through his paralegal the BCHOA received this; and he noted that a letter from Mr. Robichaux dated August 1st asked that the BCHOA relieve him of all obligations, yet it was not received until August 7th by fax, and August 8th by mail; he thought that was because Mr. Robichaux realized what had happened, that the (paralegal) sent us his (Mr. Robichaux's) email to Mr. Pierson about how to draft the letter to the BCHOA; he said there are things he felt the Board might be interested in knowing, but he didn't think the BCHOA was going to pursue this; the attorneys had been advised, are aware of this, and are not happy; Mr. Angelle said if the Board was going to be transparent, that's transparent. Mr. Angelle said the Traveler's Insurance attorney was Collin Sherman out of Mobile; he, Mr. Capouch, and Mr. Whealdon had lunch with Mr. Sherman, for guidance regarding the Reich suit and Ms. Commander's threatened suit. Ms. Bonnett asked how the email was received of Mr. Robichaux drafting the letter and sending it to Mr. Pierson. Mr. Maier said he was sent an email by Mr. Pierson's legal assistant, which said if he (Mr. Maier) received it, to reply (which was done and acknowledged in return); he said the email from Mr. Robichaux was not in the email chain but in the attachment. Ms. Bonnett said she had seen it and wanted to make sure there was a documentable reason for the BCHOA to receive it. Mr. Angelle said he sent a copy to the Board of his email (letter) to Mr. Robichaux advising him to back off for the time being; he had asked for that, wanting to be relieved of any obligations towards the BCHOA, whereas by LA law he had an obligation to the BCHOA whether the BCHOA fired him or not. Ms. Bonnett said she wanted to make sure whatever the Board got was by rightful means. Mr. Capouch said in Mr. Angelle's response back he said the Board would consider this at a Board meeting at a later date.

Mr. Pesses asked if he was bound by the "non-disclosure" agreement. Mr. Angelle said not at this point in time. Mr. Turner, Mr. Capouch, and Ms. Bonnett said they had signed it last year, but none of the new Board signed it. Ms. Commander said she had only seen a copy because she asked Ms. Boudreaux about it at one time; she said she had an issue with it. Mr. Whealdon said it was in the orientation packets. Mr. Day said the old Board members didn't receive those. Mr. Turner said when first on the Board Ms. Commander had said she refused to sign it at the time. It was agreed members should sign one every year and it could be taken up at the next regular Board meeting. Mr. Day said he would put positive news out by email and Facebook.

Mr. Whealdon moved, seconded by Mr. Turner, to adjourn. Carried unanimously.

Jay Whealdon, Secretary
Bill Maier, Staff