



Electronic Recordation of Committee Meetings

DATE: September 8, 2006

FOR: United Laguna Hills Mutual Board

SUMMARY / RECOMMENDATION

The purpose of this report is to provide analysis for the Board of Directors so that they may make a decision on the personal electronic recordation of open board and committee meetings of the association. Staff recommends Alternative One: Status Quo.

BACKGROUND INFORMATION

The corporations of Laguna Woods Village are private corporations and thus may set their own rules and regulations assuming the rules and regulations comport with public policy and the policies are not detrimental to the corporation. The nature of open meetings of the board and its committees assumes openness to its constituents; however, this does not mean that a board is forbidden from making a rule that disallows electronic recording of meetings, nor is the board compelled by public policy to allow electronic recording of meetings.

It is important to note that (non-executive) committees act only in advisory capacities to the Board of Directors. It is the board of directors that is imbued with the duty and responsibility to make binding decisions on behalf of the corporation. The work of the advisory committees is important as, among other things, it speaks to the board's process of due diligence and fact-finding; however, the recommendations of the committee are not binding on the corporation.

Those who desire to have a record of the actions of the committees and boards, are fully entitled to use the minutes and reports that are kept for each meeting. It is likely that Members who desire to record such meetings have other interests in mind for the use of their recordings.

ANALYSIS / ALTERNATIVES

Other than the requirement to keep minutes (Corporations Code Section 8320), the content of the minutes is a matter of policy of the corporation. Industry standards and counsel recommendation is to produce minutes/reports that reflect that which was done and not that which was said or opined by the members. Counsel for the corporations have often expressed their concern over the fact that board meetings of all of the Village's corporations are televised. That being said, it is in the best interest of the corporation to establish a standard for the recording of both board minutes and committee reports.

Alternative One: Status Quo

The written recording of minutes is an essential function of any corporate business entity and serve as prima facie evidence of what transpired at the meeting. To Staff's knowledge, the historical written minutes and reports have served the Community's interests well for many years; and thus, there is no compelling need for personal electronic recordation of any of the

meetings of the association. Televised transmission of board meetings were initially offered for the convenience of its members, and certainly not to act as an official record of the meeting.

According to Howard J. Silldorf, Esq. in the CACM Law Journal; Fall, 2002 "board and committee minutes can and will be used by opposing counsel against the association. Since homeowners and board members are not experts, it is improper to include opinions regarding certain issues." Bill Hart, counsel for the Village's Corporations, has advised that minutes/reports should be limited to only the action taken at the meeting (as opposed to that which was said)

The meetings of the Board of Directors of United have been electronically recorded for years and are thus available to all units within the Mutual both as live broadcasts as well as reruns and by way of purchase from GRF. With this said, there should be no reason to allow individual recordings of board meetings for the same reasons noted above

Alternative Two: Allow Private Electronic Recordation of Board and Committee Meetings

Allowing electronic recordation of their meetings makes a statement to the memberships that the governance has nothing to hide in any meetings of the association. It also provides for a convenient means by which members may make their own record of the meeting.

However, videotaping is not only unnecessary but may be (and has been) used as a means by some members to harass and chill the speech of committee members, staff, and attendees. Personal videotapes of meetings have recently been used in community meetings to attempt to lampoon and misrepresent Staff and others and the matters discussed at meetings. The only purpose known to date that private recordings have served is to humiliate and demoralize those recorded; they have done nothing to advance productive debate on issues within the Community's governance.

Committee reports have served the needs of the governance and have done so without incident and to the satisfaction of the Boards. Unlike the current written record format, electronic records such as videotapes will include all dialogue, including committee member opinions; and thus, out of interest for the Corporation and individual participants, Staff recommends against this alternative.

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RESOLUTION 01-06

WHEREAS, the written recording of minutes/reports is an essential function of any corporate business entity and serve as prima facie evidence of what transpired at the meeting; and thus there is no compelling need for personal electronic recordation of any of the meetings of the association; and

WHEREAS, by way of Channel 6, the meetings of the Board of Directors of United have been electronically recorded for years and are thus available to all units within the Mutual both as live broadcasts as well as reruns and by way of purchase from GRF;

NOW THEREFORE BE IT RESOLVED, November 14, 2006 that the Board of Directors of this Corporation hereby disallows personal electronic recordation of any kind by members of the Corporation at any meeting of the association, and will continue to use Channel 6 to electronically record and broadcast meetings of the Board of Directors; and

RESOLVED FURTHER, that the officers and agents of this Corporation are hereby authorized on behalf of the Corporation to carry out the purposes of this resolution.

Staff recommends that a motion be made and seconded to accept the resolution and allow discussion to ensure that the resolution reads to the satisfaction of the Board. Staff then recommends that a Board Member table the resolution to the next available Board Meeting to comply with Civil Code §1357.130.