



Sierra Park Homeowners' Association



Newsletter

December 2011

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From the President

Dear Homeowner:

At the December 3, 2011 meeting of OFSRA shareholders they decided not to renew the Licensing Agreement or the Water Use Agreement with OFSHA when these agreements expire on January 10, 2012. You do not have to worry. All lot owners will continue to have access to their property and to water service. Payment for these services has to be worked out and our attorney is involved in order to protect your interests. It turns out that in making its decision OFSRA may have created significant problems for itself and for its members as discussed below.

WATER

When the lots in the subdivision were sold, water was a major concern. OFSRA ran the park and the subdivision for years until court decisions in California held that requiring membership in a religious or fraternal organization in order to own or control land was not allowed under California statutes. When these cases were decided, OFSRA created OFSHA and, on paper, gave it the responsibility to obtain water and road access for all of the lot owners. Unfortunately, OFSRA did not give up control, and for years, OFSHA existed on paper and OFSRA controlled everything within the park and within the subdivision.

However, during this time, OFSRA contracted with OFSHA and sold water to OFSHA. The water was then sold by OFSHA to its members. The recent OFSRA decision not to renew the licensing agreements changes all that, and requires OFSRA to sell water directly to the lot owners – two-thirds of whom are not OFSRA members.

In making this decision, OFSRA failed to consider the requirements of the California Public Utilities Code. This Code allows OFSRA to sell water to its own members without causing the California Public Utilities Commission to be involved. But now that OFSRA will sell to lot owners who are not OFSRA members, the law requires the California Public Utilities Commission to regulate the water system. This will cause water costs to increase; meters will likely be required, and the Commission will be able to enforce rationing during drought years. OFSHA believes that this is not in the best interests of the lot

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OSFHA Calendar

OFSHA Board meetings begin at 8:30 AM.

Board Meetings: January 7th, February 4th

Special Meeting: Canceled



Change in Monthly Meeting Procedure

In response to comments and requests by members for the ability ask questions and provide comments regarding the day's proceedings at the Regular Monthly Meetings; our attorney informs us a solution for achieving the requested result is to move the "Members before the Board" section of the meeting from the beginning of the meeting to the end of the meeting.

Beginning at the January 7th meeting, "Members before the Board" will occur at the end of the meeting, prior to the executive session if any. Speakers will be limited to 5 minutes each.

Special Meeting Canceled

The Special Meeting previously scheduled for January 7th has been canceled.

Road Conditions

Road conditions are available from the Caltrans Highway Information Network (CHIN): (800) 427-7623
www.dot.ca.gov/hq/roadinfo/hourlyPage.php

Road conditions are also available via the OFSHA website www.ofsha.org

Please remember to carry snow chains when traveling in the Sierra Mountains.

Newsletter & Website

Newsletter – Please consider receiving your Newsletter via e-mail, it saves money and will aid us in holding down the assessment. Please e-mail us to sign up.

Website – Protected documents password: **Call for PW**



From the President *(Continued from front page)*

owners.

The OFSRA attorney in the 1980's advised OFSRA to turn the water assets over to the Homeowners Association in order to protect against California Public Utilities Commission involvement. OFSHA has consulted with Barry Epstein of the Fitzgerald, Abbot and Beardsley Firm in order to obtain expert advice on water rights. The firm has provided OFSHA with a lengthy opinion letter, documenting the violations of applicable law that are inherent in OFSRA's decision to sell water directly to the lot owners, as well as the legal remedies for that unfortunate decision, should the current dispute not be resolved out of court. It's clear to OFSHA that OFSRA has not considered all of the consequences of its decision to sell water directly to lot owners, and that if OFSRA thinks this through, OFSRA may change its mind before we are all subjected to unnecessary expense and to unwanted regulations. If OFSHA owned the water system, it could sell water to the lot owners with little or no involvement from the California Public Utilities Commission since the lot owners are all members of the Homeowner's Association. This whole subject is governed by the California Public Utilities Code.

In addition, OFSHA's attorneys believe that the current structure, in which your water and your roads are controlled by a separate association whose members must be Odd Fellows or Rebekahs, violates a number of California statutes, as interpreted by cases decided during the 1980's. Unless the control issues are re-evaluated, it is likely that a court will find the entire structure to be invalid.

The attorneys for OFSHA have also discussed with the board the need for transparency and appropriate accounting when it comes to the use of the lot owner funds. According to the Water Use Agreement, OFSRA collected \$69,350 per year from the lot owners for water. While OFSRA had a right to be compensated for providing water services and road maintenance, the lot owners had the right to know how their money was being spent, and to be able to verify that their money was not spent on expenses that benefited only OFSRA members and not the lot owners. OFSHA, working with legal counsel, has tried to obtain financial records regarding the uses to which lot owners' funds have been put, and wants all lot owners to have the right to participate in governing the community and in having a say concerning important decisions about the water system and the road maintenance.

ROADS

Without a licensing agreement for the roads, each lot owner is responsible for certain road expenses. Remember, you have an easement and cannot be kept out. California Civil Code #845 explains what obligations a person with an easement has concerning the repair and maintenance of the roads. You may be compelled to contribute to the cost of keeping the right of way in repair. This also includes the cost of snow removal. However, nonconsenting owners are not required to contribute to the cost of making major improvements in the right of way such as paving it. Should any owner disagree with the amount charged he/she can file with the Superior Court and an arbitrator will be appointed to examine the records and make a decision concerning the amount the lot owner is responsible for. Once the courts get involved, expenses will increase, and you will lose control over the roads and over how you should pay for them.

LOT OWNERS

What the OFSHA Board now has is a better understanding of your rights as a lot owner. The OFSHA Board, after being disregarded by OFSRA for twenty-five years, is here for all of the lot owners in the subdivision. It is clear that OFSRA cannot legally "pad" their expenses for water and roads in order to pay for their other costs in the subdivision such as the property taxes on their timberland and other assets as well as construction at the recently purchased Boy Scout Camp. We will work with our attorney to make sure that OFSRA does not "pad" the bills sent to you or to OFSHA and that your rights are protected.

OFSHA hopes that its disagreements with OFSRA can be worked out amicably. However, if OFSRA refuses to negotiate, all lot owners may be caught in an unnecessary and unreasonable debacle. I will keep all of you posted concerning what is taking place.

Do not worry because we will always follow legal advice in protecting your rights and interests in the subdivision.

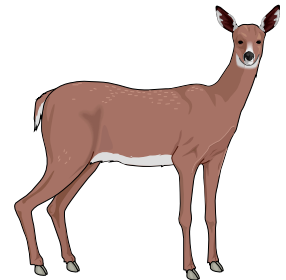


OFSHA ANNUAL MEETING

At the Annual OFSHA Meeting on May 27, 2012 several members of the OFSHA Board will come up for election. We have become aware of a move by some OFSRA board members and members of OFSRA to replace some of us with people sympathetic to the interests of the OFSRA. Their plan, should they gain control of the OFSHA Board, is to revert to the old way of doing things with the Odd Fellows and Rebekahs once again in sole control of the subdivision. Please, plan on attending the meeting in order to insure that your rights and opinions are represented. The lot owners constitute the majority in the subdivision and can be a strong voice in operating the subdivision but only if you attend the meeting and vote.

Thank you,

Fred Coleman
President
OFSHA Board of Directors



Checks Disbursed 11/10/2011 - 12/16/2011

Table with 5 columns: Date, Number, Payee, Memo, Amount. It lists various disbursements such as membership, telephone, accounting, and professional services.

Total Disbursements \$1,212.39



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December 16, 2011

Owners of Lots at Odd Fellows Park
Long Barn, CA

Re: **Odd Fellows Sierra Homeowners' Association and Odd Fellows Sierra Recreation Association**

Dear Lot Owners:

My law firm represents the Odd Fellows Sierra Homeowners' Association. The Association's Board of Directors has advised me that at its December 3 meeting, the Odd Fellows Sierra Recreation Association voted not to renew the licensing agreements under which OFSHA purchased water from OFSRA and provided the water to lot owners. OFSRA has also declined to renew the licensing agreement with respect to the private roads.

The OFSHA board members and I believe that these decisions were unfortunate, and that OFSRA may have forgotten why the licensing agreements were put into place to begin with. Therefore, OFSRA's decisions may have unintended negative consequences for the community. The purpose of this letter is to discuss these issues.

1. California Public Utility Code Issues.

In California, all water systems are governed by the California Public Utility Code. Under California Public Utility Code Sections 2701-2703, OFSRA may not sell water to persons other than its own members without being subject to regulation by the California Public Utility Commission ("CPUC"). Such regulation would likely result in higher costs; water metering; significant mandatory water rationing during drought years; and other negative consequences. While this would be unfortunate, we believe that it's what will happen if OFSRA insists upon a course of conduct that will trigger the requirements of the California Public Utilities Code.

2. Legal Issues Regarding OFSRA's Ability to Collect from Lot Owners for Road Maintenance.

As problematic as OFSRA's decision with respect to the water system is, the decision about the roads may be more so. OFSRA's governing documents give it the right to collect money from its own



members, but not from lot owners who don't belong to OFSRA. Since less than a third of the lot owners belong to OFSRA, this would present an obvious problem if lot owners don't voluntarily pay for road use.

If OFSRA contracts directly with lot owners to provide them with water, and thus comes under the jurisdiction of the CPUC, then at least OFSRA could discontinue water service to a lot owner who didn't pay for it. However, as a practical matter, lot owners have appurtenant easements to use the road; if OFSRA sends an owner a bill for road maintenance, and the owner declines to pay the bill, how is OFSRA going to collect it? OFSRA can't very well post guards on the roads to try to catch lot owners who haven't paid for the roads but who are still using them.

OFSHA has always been perfectly willing to collect assessments and pay OFSRA the reasonable cost of road maintenance; however, OFSHA has previously been frustrated in that attempt by a lack of financial transparency and OFSRA's refusal to provide OFSHA with requested documentation showing the costs of road maintenance and other services provided by OFSRA.

3. Legal Issues Regarding OFSRA's Control of Facilities Used by All Lot Owners.

Finally, to the extent that OFSRA insists upon maintaining a stranglehold over lot owners' important real property rights, including those involving water use and road access and maintenance, the courts are likely to find that OFSRA's conduct is legally invalid.

The amended Articles of Incorporation of OFSRA continue to require that to belong to OFSRA, one must be a member of an Odd Fellows Lodge or of a Rebekah Lodge. When the real property was subdivided, the original CC&Rs contained the requirement that to own property within the subdivision, one had to be an Odd Fellow or a Rebekah. However, during the mid 1980s, California Courts struck down similar covenants and held that they were void as against public policy and that they violated statutory rights of individuals. Evidently in response to these court decisions, OFSRA incorporated OFSHA pursuant to governing documents that required it to obtain water and road services for its members. OFSHA members are not required to belong to the Odd Fellows or to the Rebekahs.

However, to the extent that OFSRA tries to "neuter" OFSHA by maintaining complete control over the water system, roads, and park; determining the charges for use of these facilities; and refusing to provide the lot owners with access to books and records showing the cost of the services rendered, OFSRA will do indirectly that which the courts have held it cannot do directly, and the whole system will then be subject to what would likely be a successful challenge in Superior Court.

In *Taormina Theosophical Comm., Inc. v. Silver* (1983) 140 Cal. App. 3d 964, 968 the Court of Appeal struck down restrictive covenants restricting ownership of land to theosophists older than 50 and occupancy to theosophists who had either been in the society for three years or were approved by the board were unreasonable and thus unenforceable.

Moreover, any instrument restricting the use or occupancy of real property, based upon categories such as race or religion, is also void and unenforceable. Cal. Civ. Code 53(a). Here, only Odd Fellows and Rebekahs can belong to OFSRA, and if only OFSRA can control the water system and the roads, and determine how much to charge lot owners for their use, then this entire scheme constitutes a prohibited restriction on the use and occupancy of lots within the subdivision.

If OFSHA were forced to file suit by OFSRA's intransigence, we expect that the Superior Court would hold that the current distribution of power between the two corporations is invalid as a matter of law.



4. CONCLUSIONS.

We hope that OFSRA will consider the serious and adverse legal consequences of OFSRA's recent decisions, and will reconsider these decisions.

The OFSHA board would like to work in the community and lot owners' best interests so that water and road rights remain undisturbed and lot owners are accorded rights to financial transparency and participation in the subdivision's governance.

The OFSHA board and I have asked to meet with OFSRA and its counsel in January to try to resolve these issues before OFSHA and/or its members pursue various regulatory and legal remedies to which they are entitled.

Very truly yours,

LAW OFFICES OF ANN RANKIN

Ann Rankin

AR:gb



**Odd Fellows Sierra Homeowners' Association
Board of Directors Regular Meeting Interim Minutes
December 10, 2011**

Called to order: 8:31 A.M. by President Fred Coleman.

Invocation by Al Orth.

Board members present: President – Fred Coleman, Secretary – Charles Varvayanis, Treasurer – Ruth Dargitz, Al Orth, Bill Ordwein, Mike Ford, John Tenbrink and Steve Wallace. Excused: Jesse Worsham.

Members before the Board:

The following members spoke before the board: Larry Vaughn, Sue Reynolds, Kirk Knudsen, Darryl Clark, Wanda Lenhardt and Richard Vaughn.

Barb Engvall: taking minutes.

President Coleman - An issue that has come up concerns the Davis-Sterling Act. Per our attorney, the claim that a large reserve is required is wrong. No particular level or dollar amount is required. The Homeowners Association does not fall under it due to the homeowners not owning common areas. The board's attorney, Ann Rankin, stated she could write a letter for our newsletter explaining Davis Sterling.

A question concerning merged lots was raised and a discussion about this issue took place. There are seven merged lots with three paying one assessments and four paying multiple assessments.

Minutes November 5, 2011: Motion by Steve Wallace, to revise minutes to include Bill Ordwein's question of why we were revisiting the budget issue. Seconded by Treasurer Dargitz, carried.

Correspondence:

The following communications were received: Demand request for 25463 Rebekah; E-mails James D. Schulke, John Brasil, Barry Epstein, Shaun Velayas, Ann Rankin, Craig Retzloff, Desi Reno, Michael & Susie Lechner, Kirk Knudsen, Frederick and Sandra Patri, Heidi Ordwein, Bill and Barbara Murphy, Roger Smith, Larry Giacomino; Recorded CC&Rs for 25463 Rebekah Road; Letter from Sue Reynolds; Transfer fee and Grant Deed for 25463 Rebekah; and Welcome package from CAI.

Committee Reports:

Gate – Secretary Varvayanis / Bill Ordwein:

1. Routine gate sales: \$60.00.
2. Damage to exit gate, someone may have struck mounting plate. Fixed by Bill Ordwein.
3. Magnetic lock failure of entry gate replacement relay. Will work unless we have high winds. Bill Ordwein to fix within a couple of weeks and to donate cost of part. He is also trying to obtain a single unit surge protector.

Recreation:

Mike Ford: understanding from talking to personal attorney regarding the annual fish derby, that he is covered; if not he cannot be involved. Both board need to know we need to have coverage.

Finance – Treasurer, Ruth Dargitz:

1. 19 lots delinquent, 6 from years past.
2. Bill Ordwein questioned attorney charge for Recreation Association Business (related to Homeowners Board request for information).
3. Total bills presented: \$967.19. Motion by Charles Varvayanis to approve as presented. Seconded, carried.

Unfinished (Old) Business:



1. File cabinet. Using two-drawer cabinet donated by Karen Schultz, Al Orth to donate four-drawer cabinet. Motion by Steve Wallace to allow Charles Varvayanis spend up to \$50.00, for file rack and folders. Seconded, carried.
2. Assessment fees from merged lots – President Coleman to draft a letter for the recreation board regarding past years' collection.
3. OFSHA budget – Committee members Steve Wallace, Fred Coleman and Charles Varvayanis met. Jesse Worsham was not available. Budget presented. Discussion. Motion by Mike Ford to review it more, add Bill Ordwein to the committee and bring it back next meeting. Seconded, carried.
4. CC&Rs and introduction of them to membership – Tabled.
5. Ditch cleaning – Per attorney, due to recreation association owning them we would need their permission. Discussion of cleaning procedure, no action taken due to recreation board already contacted.
6. Attorney advises that with OFSRA failing to provide access to the properly requested information, a complaint and a motion would probably be enforced by a court. No action taken.
7. OFSRA response to OFSHA payment offer – OFSRA not interested in OFSHA's offer to pay Garbage, Pine Needle Removal, and Porta-Potties and other items not listed.
8. General liability insurance – Two companies willing to generate a quote, none received yet. President Coleman and Charles Varvayanis to check on what is needed and inquire regarding the fish derby.

New Business:

1. Discussion of numerous requests to add a camera to the website – None to be installed at this time, Caltrans road condition phone number and reminder to carry chains to be added to the newsletter. *Caltrans Highway Information Network (CHIN) (800) 427-7623. Remember to carry chains.*
2. John Brasil's request for gate code – Gate codes are not given to individuals.
3. Desi Reno's comments: OFSHA lack of responsibility and releasing money to OFSRA - points to be addressed in the "From the President" section of the newsletter.
4. Frederick and Sandra Patri's complaint regarding animals at 25350 Esther Road. Four dogs running loose. There are rabbits, ducks, geese and a goat at a residence on Ester – We do not have CC&Rs so we cannot address it. County animal control jurisdiction. President Coleman to advise them of who to call.
5. Sue Reynolds and Heidi Ordwein's letters, comments and questions – The relevant matter to be addressed in this month's and the previous newsletters.
6. Bill & Barbara Murphy's request for OFSHA board's recommendation on Boy Scout property issue – Discussion, no recommendation – Not a board issue.
7. OFSRA lot (Caretakers cabin) not in accounting database hence not sent assessment due notice – Will be added to database and an invoice sent.
8. OFSRA lot (Caretakers cabin) not in Record of Members - To be added to record and sent all communications.

Other Business:

1. CAI papers, Managing Conflict in Community Associations – Recommended reading.
2. Discussed temporary meeting change, meeting twice a month. No changes at this time.

Motion by Steve Wallace to adjourn to Executive Session. Seconded, carried.

Adjourned to executive session: 12:54 P.M.

Adjourned to regular session: 1:50 P.M.

Report and activity resulting from the Executive Session:

1. Charles Varvayanis tendered his resignation as Director to avoid a potential conflict of interests.
2. Board accepted resignation of Director Varvayanis.
3. The Special Meeting previously scheduled for January 7th has been canceled. Due to the resignation of Director Varvayanis, the one and only agenda item has become invalid.
4. Larry Vaughan being the next runner up has been installed as Director.
5. Motion by Steve Wallace to hire Charles Varvayanis to perform clerical and administrative functions in support of OFSHA. Seconded by Al Orth, Carried (Mike Ford abstained).
6. Motion by Al Orth to pay for clerical and administrative functions at a rate of \$250.00 per month. Seconded by John Tenbrink, Carried (Mike Ford against).



7. Credit Card to be assigned for clerical and administrative functions with a limit of \$500.00. All expenses practical to be charged to card for ease of tracking.
8. Board Members to contribute \$15.00 each for gift card to the Seven Sisters Restaurant to be presented to Barbara Engvall in recognition of her assistance with the minutes each month. Thank you Barbara!

The next regular meeting is on Saturday January 7, 2011 at 8:30 A.M.

Meeting adjourned: 2:08 P.M.

Respectfully submitted,
Barbara Engvall (edited by Fred Coleman)



Merry Christmas!



Odd Fellows Sierra Homeowner's Association
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Long Barn, CA 95335-0116

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