



Odd Fellows Sierra Recreation Association Newsletter



Phone: 209-586-3098

January 2013

WWW.Recreation Association-PARKMGT.ORG

email: Recreation Association: ofsra-parkmgt@sierrapark.org

Board of Directors - 2012-2013:

President: Del Wallis

Buildings: Dick Barrett

Health and Safety: Larry Adams

Vice President: Ron Hawke

Equipment: Friedhelm Peter

Gate: Bill Ordwein

Secretary: Claire Veleyas

Roads: Larry Adams

Water: Ron Hawke

Treasurer: Bill Ordwein

PRESIDENT'S MESSAGE

We (you and I) have now paid more than \$140,000.00 to the legal profession and we can expect to pay more in the future. Since becoming President, I have addressed nine (9) plus complaints, amended complaints and legal challenges to Court decisions regarding the Park. No judgements have been made against the Park, unless you count the \$42.00 order for payment that we offered before the filing, consistent with Park policy, recommended by us to the Court and argued against by the Plaintiff. The \$213,000.00 plus judgement awarded to OFSRA against the Homeowner's Association allowed us to seize \$3,665.75, left in the Homeowner's checking account; any chance of satisfying the remaining part of the judgement is problematic. At risk if we don't respond to these complaints and legal actions, is several hundred thousand dollars worth of exposure. We will continue to protect our combined interests.

A must read for you is the enclosed Settlement Decision; it pretty much "Says It All".

The Park has snow and its fair share of cold. Be sure to turn off your water at the shut-off valve when you leave. Enjoy the Park in all its Winter splendor. It's beautiful and it's here for you to enjoy.

~Del Wallis



Rebekah's Corner

The Recreation Board has asked the Rebekah's to help with the Fish Derby this year. The Rebekah's raised \$400 for the derby at the annual Holiday dinner, we would like to Thank all of you who participated. The fishing Derby is just around the corner, Saturday June 15th. We are looking for volunteers and donations so that we can continue the tradition of a great fishing derby for all the kids in the park. All children are welcome up to 16 years of age.

We need volunteers to measure fish, sell raffle tickets, prepare food, hand out prizes, cashier and assorted other jobs, or if you would like to donate prizes, cash, or food please call Yvonne Peter at 209-586-5950.

The Rebekah's are committed to helping our community and would love your input on future projects and social events. If you have suggestions please send us a note at Dogwood Rebekah's, P. O. Box 119, Long Barn, CA 95335.

Thank You for your support, Dogwood Rebekah Lodge

**ODD FELLOWS SIERRA RECREATION ASSOCIATION BOARD OF DIRECTORS
REGULAR MONTHLY MEETING
January 19, 2013**

INTERIM MINUTES

The meeting was called to order at 8:59 AM by President Wallis. Board members present: Velayas, Ordwein, Wallis, Barrett, Adams, and Peter. Board members Cloak and Hawke excused.

INVOCATION: Given by Director Peter.

Please note that no recordings of the meeting are allowed.

HOMEOWNERS AND OTHERS PRESENT: Homeowners Mike VanGundy and Shaun Velayas.

CORRESPONDENCE: Secretary Velayas reported that there was an email from Tuolumne County Escrow regarding a property transfer. Another email was received from Ron Hague regarding a downed tree; Secretary Velayas will respond to Mr. Hague. John Steward requested information via email regarding a survey stake on his property and some concerns about people utilizing his driveway. Director Adams will investigate and report back to Mr. Steward and the Board.

MINUTES OF BOARD MEETINGS of December 2012: Velayas moved that the minutes be accepted with no corrections. Director Barrett seconded, motion carried.

CARETAKER'S REPORT: Lid for sand spreader is being constructed for installation. Snow was plowed, roads were sanded, and four major water breaks were addressed.

DIRECTOR REPORTS

WATER-HAWKE: Director Hawke provided the water report. The major water leak reported to have begun the day before the Dec 15th BOD meeting was isolated the following day, Sun the 16th. It was found to be at a property that had not been winterized. The water supply had not been turned off while the owners were out of the Park, and the freezing temperatures caused the pipe to burst. This one break resulted in the need to run Well #6 full time for the duration, about 40 hours. This resulted in the loss of more than 200,000 gallons of water. It is our understanding that the break was under the house, hence, fortunately for the owner, no known interior damage to the cabin resulted.

Property owners are reminded it is very important to shut off the water supply to their residences!

Furthermore, when leaving your residence for an extended time, it is best to turn off the water supply using the Park's valve located in the water box. This will provide the best assurance of preventing water damage to your residence and reduce the threat of water lost to all property owners. After turning off the water supply, water pipes should be drained and RV antifreeze put into the drain traps of sinks, showers, and tubs.

In addition to the above major leak, since the Dec 15th meeting, there were 3 other leaks investigated by Mark. All were found to be on the property owner's side of the water system.

Water pumped for the month of December 2012 was 1,214,300 gallons.

Owners are encouraged to keep their phone numbers and addresses up to date by sending changes to the OFSRA BOD at PO Box 116, Long Barn, CA 95335.

BUILDINGS-BARRETT: Director Barrett had nothing to report.

ROADS-ADAMS: Director Adams asked whether OFSRA was going to do any road work prior to formation of a CSD or separate corporation. It was determined that there was nothing to be done at this

time but that a list of projects should be developed and turned over to the successor group in charge of road maintenance.

EQUIPMENT-PETER: Director Peter had nothing to report.

TIMBER – WALLIS: President Wallis had nothing to report.

GATE -- ORDWEIN: Director Ordwein reported that there was \$440 in gate income for the month. The area around the gate will receive extra sand.

HEALTH AND SAFETY -- ADAMS: Director Velayas expressed concern about people sledding onto the surface of the pond. The ice is not thick enough to be safe. Signs have been produced and will be posted.

RECREATION: Nothing to report.

RECREATION FACILITIES: There is nothing to be done at this time.

FINANCE -- ORDWEIN: Director Ordwein reported that this month's bills amounted to approximately \$82,000, \$57,000 of which was for professional services. For the previous 6 months, the lawyer's office had been billing to the wrong address. Before the next meeting, Director Ordwein and President Wallis will confirm with the accountant the expenses incurred by the OFSRA and those incurred by homeowners. Bills incurred by OFSRA and not benefitting homeowners will be paid by OFSRA and not by homeowners' dues. Revenue for the month included \$2,600 plus \$440 in gate income. Currently, unpaid assessments total \$31,519.73. Anyone who has not paid their assessment is reminded that payments may be made by credit card by contacting Carlson Accounting at (209) 532-5171. Collection options including termination of services and/or legal actions are being reviewed. Director Velayas moves to pay all bills; Director Barrett seconds. Motion carries unanimously.

LEGAL ACTIONS:

SMALL CLAIMS COURT

PLAINTIFFS: Charles Varvayanis and Patricia T. Jones

DEFENDANTS: Odd Fellows Sierra Recreation Association, Inc.

COMPLAINT: Sc18553 – Claims Defendant owes them \$8,860.00.

DIPOSITION: See enclosed Settlement Decision.

PUBLIC UTILITIES COMMISSION

PLAINTIFFS: Fred Coleman, Ruth Dargitz, Steve Wallace and Larry Vaughn

DEFENDANT: Odd Fellows Sierra Recreation Association, Inc.

COMPLAINT: Odd Fellows Homeowner's Association ("OFSHA") is a non-profit mutual benefit corporation whose Director's are democratically elected by owners of all 281 lots within the Odd Fellows Sierra Park. The water for all the lot owners is supplied by Odd Fellows Sierra Recreation Association ("OFSRA"). The water system is required to be regulated by the CPUC under California Public Utility Code 2701 and 2702, but it is not. OFSRA consists only of Odd Fellows and Rebekahs; OFSRA provides no financial transparency concerning costs it incurs in providing water to lot owners.

DISPOSITION: A conference call with the Judge is scheduled for February 5, 2013.

OLD BUSINESS:

None

NEW BUSINESS:

President Wallis shared the Statement Of Decision by the Court on the suit filed by Mr. Varvayanis. The claim filed by Mr. Varvayanis was denied. President Wallis requested a motion of approval for

Doris Kilgore to merge her lots (lots 6&7 of Block 9 now known as 54PM99--APN to be published later by the County). The \$500 merger fee will be covered through proration of her assessments already paid. Future assessments will be for one lot. Director Peter moved to approve; Director Barrett seconded. Motion was carried unanimously. President Wallis requested similar motion for approval for the merger of three of Charles Varvayanis' lots (lots 6,7 and 14 of Block 9) into one lot known as APN 03-101-36 effective October 1, 2012. The primary lot has an assessment and late fees due for 2012-2013. The merged lots will have 4 months of assessment plus late fees for September 2012 applied to each partial assessment. Since Mr. Varvayanis testified in Court that two of the three lots don't have water service, the waiving of the \$500 disconnect fee is consistent with Park policy. Director Peter made motion; Director Barrett seconded. Motion carried unanimously.

THE NEXT REGULAR OFSRA BOARD MEETING WILL BE FEBRUARY 16, 2013

Executive Session was convened at 10:10 am.

No action was required as a result of Executive Session. There being no further business, President Wallis adjourned the meeting at 10:20 A.M.

Claire Velayas, Secretary

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FILED

JAN 09 2013

Superior Court of California
County of Tuolumne

By: [Signature] Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF TUOLUMNE

10	CHARLES VARVAYANIS ET AL.)	Case No.: SC18553
11	Plaintiffs)	STATEMENT OF DECISION
12	vs.)	
13	ODD FELLOWS SIERRA RECREATION)	
14	ASSOCIATION, INC (OFSRA) ET AL.)	
15	Defendants.)	

18 This matter came on for trial in Department Five (5) on September 13, 2012,
19 October 18, 2012, and November 28, 2012 at 8:30 a.m. before Commissioner Kim M.
20 Knowles. Plaintiffs Charles Varvayanis and Patricia T. Jones (hereinafter Varvayanis)
21 appeared on their own behalves through Charles Varvayanis. Defendant Odd Fellows
22 Sierra Recreation Association, Inc (hereinafter OFSRA) appeared through Delwyn
23 Wallis, President of OFSRA. Defendant Odd Fellows Home Owners Association, Inc.
24 (hereinafter OFSHA) did not appear.

25 ///

1 **CLAIM**

2 Plaintiff Varvayanis brings this claim for \$8,860.00 against Defendants OFSRA
3 and OFSHA for fraudulently billing and collecting assessments, special assessments,
4 and late fees for two parcels in I.O.O.F. Odd Fellows Sierra Camp Subdivisions No. 1
5 and 2 that Varvayanis claims did not exist because he merged those lots in accordance
6 with County regulations.

7 **DISCUSSION**

8 Varvayanis originally filed this claim naming OFSRA only but amended the claim
9 on August 16, 2012 to add OFSHA as a defendant after it was alleged by OFSRA that
10 they only collected the assessments for OFSHA. A third amended claim was filed
11 September 18, 2012 to modify the amount being sought by Varvayanis to \$6,762.00 for
12 assessments and late fees billed and collected from May 30, 2004 through May 28,
13 2011. The reduced amount reflects a payment by Varvayanis in the amount of
14 \$2,098.00 for assessments and late fees due for 2012 – 2013 for two (2) lots, which
15 Varvayanis acknowledges were owed by him.

16 The Court heard almost 2 full days of testimony on October 18, 2012 and
17 November 28, 2012 and received 21 exhibits detailing the relationship between OFSRA
18 and OFSHA and whether OFSRA had authority to bill or collect assessments,
19 documenting the merger of 2 of Varvayanis' lots into a third lot, the procedures used to
20 determine the yearly assessment, and Varvayanis' participation in OFSRA and OFSHA
21 for the years 2004 through 2011.

22 Varvayanis framed his claim as one based on fraud. During Varvayanis' rebuttal
23 testimony, Varvayanis requested to amend his third amended claim. The Court denied
24 his motion. To prevail on his claim, Varvayanis must show that fraud occurred in
25

1 OFSRA's billing and collection of annual assessment, special assessments, and late
2 fees for the years 2004 through 2011.

3 As set forth in OFSRA's trial brief, the following five elements must be pleaded
4 and proved by Varvayanis for him to prevail:

- 5 a. "misrepresentation (false representation, concealment or nondisclosure);
- 6 b. knowledge of falsity (or 'scienter');
- 7 c. intent to defraud, i.e., to induce reliance;
- 8 d. justifiable reliance; and
- 9 e. resulting damage." (*Agricultural Ins. Co. v. Superior Court* (1999) 70
10 Cal.App.4th 385, 402.)

11 Varvayanis clearly failed to prove all five elements. It may be debatable whether
12 OFSRA made a false representation regarding their authority to bill and collect
13 assessments and late fees. However, there is insufficient evidence before this Court
14 showing that OFSRA had knowledge of the falsity (if it existed). Instead, the evidence
15 indicates that *no one* questioned OFSRA's authority to bill and collect assessments and
16 fees, and more important, that OFSRA and OFSHA, and their directors, believed
17 OFSRA had such authority. Because Varvayanis has failed to prove this element, it is
18 not necessary for this Court to address any of the remaining elements.

19 Further clouding the issue, and imposing an almost insurmountable impediment
20 to Varvayanis' fraud-based case, is the fact that during the period in question, May 30,
21 2004 through May 28, 2011, Varvayanis actively participated as a director (2005 –
22 2011), shareholder (2004 – 2011), and President of OFSRA (2006 – 2007), and was
23 also a director of OFSHA (2005 – 2011), and the President of OFSHA in 2006 – 2007.
24 Additionally, Varvayanis attended and participated in each of the annual meetings from
25 2005 through 2011 where per-lot assessments were set. Varvayanis, as director of

1 both OFSHA and OFSRA, is charged with knowledge of the contents of OFSRA's
2 Articles and by-laws, OFSHA's Articles and by-laws, and any and all versions of the
3 CC&Rs. Varvayanis, therefore, is charged with knowing that OFSHA never formally
4 "assigned" to OFSRA the role of OFSHA's billing agent for the annual assessments and
5 late fees. Varvayanis cannot now complain that OFSRA never had authority to bill or
6 collect when for six years he acquiesced in OFSRA's apparent authority by paying the
7 assessments and late fees for all lots for which he was billed. As OFSRA points out,
8 because Varvayanis was an active participant and director of both OFSRA and OFSHA
9 for the time period covered by the claim, it is as if he is accusing himself of perpetrating
10 fraud.

11 Because the Court is finding that Varvayanis has not proved fraud, it does not
12 need to address the statute of limitations issues raised by OFSRA.

13 DECISION

14 Plaintiffs, CHARLES VARVAYANIS and PATRICIA T. JONES, take nothing on
15 their claim.

16 The clerk shall return all exhibits to the proffering parties.

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18 Dated: 1-9-2013



19 Kim M. Knowles, Commissioner
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ODD FELLOWS SIERRA RECREATION
ASSOCIATION, INC
BUDGET REPORT
PERIOD ENDED DECEMBER 31, 2012

<u>REVENUE</u>	SEVEN MONTHS ENDED 12/31/12	2012-2013 BUDGET	VARIANCE	% OF BUDGET EXPENDED*
MAINTENANCE INCOME	\$ 335,890	\$ 372,736	\$ (36,846)	90.11%
PROPERTY RENTAL(CARETAKER'S CABIN)	3,996	6,900	(2,904)	57.91%
GATE INCOME	3,965			
RECREATION INCOME	817	-	817	
FISH DONATIONS	1,448			
TRANSFER FEES	100			
INTEREST INCOME	144	-	144	
TIMBER INTEREST	7	-	7	
UNREALIZED GAIN/(LOSS) ON INVESTMENTS	1	-	1	
MISCELLANEOUS	28,957		28,957	
TOTAL REVENUE	375,325	379,636	(9,824)	
 <u>OPERATING EXPENSES</u>				
ACCOUNTING SERVICE	15,254	18,000	(2,746)	84.74%
BANK CHARGES	273	50	223	546.00%
CAMP CEDARBROOK LAND	* 51,172		51,172	
CREDIT CARD FEES	1,216		1,216	
CONTIGENCY		3,100	(3,100)	0.00%
EMPLOYEE BENEFITS/HEALTH INS REIM	6,547	12,000	(5,453)	54.56%
EQUIPMENT RENTAL	1,055		1,055	
EQUIPMENT RESERVES		2,000	(2,000)	0.00%
FISH DERBY	2,072	2,800	(728)	74.00%
FRANCHISE TAX	800	800	-	100.00%
FUEL	3,278	9,000	(5,722)	36.42%
GARBAGE	7,641	14,000	(6,359)	54.58%
GATE EXPENSE	2,266	3,873	(1,607)	58.51%
HEALTH AND SAFETY	1,913	4,000	(2,087)	47.83%
INSURANCE - GENERAL	7,712	17,000	(9,288)	45.36%
MAINTAIN BUILDING	15,852	11,000	4,852	144.11%
MAINTAIN BUILDING - CEDARBROOK	* 14,033		14,033	
MAINTAIN EQUIPMENT	7,118	15,000	(7,882)	47.45%
MAINTAIN LAKE		9,000	(9,000)	0.00%
MAINTAIN ROADS	35,987	35,000	987	102.82%
MAINTAIN ROADS - CEDARBROOK	* 1,255			
MAINTAIN ROADS - CEDARBROOK-CAPITAL	* 18,477			
MAINTAIN WATER	396	8,000	(7,604)	4.95%
MAINTENANCE COMMON AREA	5,000		5,000	
MAINTENANCE GENERAL	8,701	25,000	(16,299)	34.80%
MEMBER COMMUNICATION	3,399	4,500	(1,101)	75.53%
NEEDLE EXPENSE		10,000	(10,000)	0.00%
OFFICE EXPENSE - INCLUDES CLERICAL	90	1,500	(1,410)	6.00%
OUTSIDE SERVICE	1		1	
PAYROLL - LABOR	41,494	70,000	(28,506)	59.28%
PERMITS AND FEES	115	2,500	(2,385)	4.60%
PROFESSIONAL SERVICE - LEGAL	62,843	30,000	32,843	209.48%
PROFESSIONAL SERVICE - CONSULTING	48,189	25,000	23,189	192.76%
RECREATION	1,071	1,000	71	107.10%
ROAD RESERVES		2,000	(2,000)	0.00%
SUPPLIES SHOP	337	1,500	(1,163)	22.47%
SUPPLIES RECREATION HALL	304	100	204	304.00%
TAXES - PAYROLL	3,379	7,000	(3,621)	48.27%
TAXES - PROPERTY	6,879	3,300	3,579	208.45%
TAXES - PROPERTY CEDARBROOK	*	3,800	(3,800)	0.00%
TAXES AND LICENSE	43	1,500	(1,457)	2.87%
TELEPHONE	1,243	1,200	43	103.58%
TIMBER EXPENSE	**		-	
UTILITIES	7,603	14,000	(6,397)	54.31%
UTILITIES - CEDERBROOK	*		-	
WATER RESERVES		3,113	(3,113)	0.00%

ODD FELLOWS SIERRA RECREATION
ASSOCIATION, INC
BUDGET REPORT
PERIOD ENDED DECEMBER 31, 2012

	SEVEN MONTHS ENDED <u>12/31/12</u>	2012-2013 <u>BUDGET</u>	<u>VARIANCE</u>	% OF <u>BUDGET</u> <u>EXPENDED*</u>
WATER TESTING	4,304	8,000	(3,696)	53.80%
TOTAL EXPENSES BEFORE DEPRECIATION	389,312	379,636	(10,056)	
DEPRECIATION	<u>19,327</u>			
TOTAL EXPENSES	<u>408,639</u>			
NET INCOME FROM OPERATIONS	<u>(33,314)</u>			
ADD BACK CEDARBROOK EXPENSES	* 84,937			
ADD BACK TIMBER EXPENSES	**			
TOTAL INCOME FOR RESERVE FUNDS	<u>\$ 51,623</u>			

BANK ACCOUNT BALANCES

GENERAL ACCT	\$12,456
MONEY MARKET	46,163
TIMBER RESERVE	76,941
ROAD RESERVE	10,901
EQUIPMENT RESERVE	10,962
WATER RESERVE	11,027
MONEY MARKET - LAND	9,763

*Attributed to Cedarbrook expenses.
(Monies to offset Cedarbrook expenses will be transferred from the Timber/Land purchase accounts.)

** Monies to offset timber expenses will be transferred from the Timber account.

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