

A meeting of the general membership, held on April 18, 2020, and conducted over Zoom, was called to order at 2:03 PM by SLPPOA Board President Paul Lisko.

Besides Mr. Lisko, other board members present were Vice President Cindy Hines, Treasurer Jeremy Oepping, Director of the Architectural Committee Josh Toennis, and Water Compliance Director Tamara Weary. General members of the Association in attendance included Scott Allen, Caroline Corn, Harold Corn, John Fredlund, Marsha Gaillour, Judy Kilburg, Lissa Moore, MJ(?) Moore, Sandra Partridge, Paul Rightley, Sabine Shurter, Suzanne Star, and Kevin Stephens.

Mr. Lisko welcomed the attendees and made a brief introduction. He stated that the original intent of this meeting of the general membership was to discuss and vote upon ballot initiatives, mailed to members in March, which outlined proposed amendments to the Association bylaws. The board ultimately decided instead to repurpose this meeting as one which would only provide information to members on proposed bylaw amendments and not be subject to any final vote on the ballot initiatives at this time. Mr. Lisko stated his role would be that of the meeting's moderator. Rules of order and agenda, sent earlier via email to all attendees, were then briefly reviewed and confirmed without objection.

The first of seven proposed bylaw amendments, which was read aloud by Mr. Lisko and then presented for discussion, is to change the address of the corporation as it is currently listed in Article I. Mr. Lisko stated that even though this may be a minor issue, the board cannot change bylaws without a vote of the general membership. He further reiterated that no vote would be taken at this meeting on any of the ballot initiatives, just discussion. Comments were requested from membership regarding this first of the proposed bylaw amendments. None were offered.

Mr. Lisko stated that presentation of the proposed special assessment was likely to create much discussion, so it was moved further down on the agenda relative from its position on the ballot.

The second of seven proposed bylaw amendments was then read aloud by Mr. Lisko. This amendment pertains to removing any reference to the "base" annual assessment as outlined in Article X, Section 3, of the bylaws. The reason given for the change was that the "base" was set more than 40 years ago and any reference to it is no longer valid. Mr. Lisko then opened the floor to membership for discussion. Members made no comments to this proposed amendment.

The third of seven proposed bylaw amendments was then read aloud by Mr. Lisko. This amendment pertains to nonpayment of annual assessments and an applicable remedy for collection of late fees. The reason given for this change was the current language in the bylaws has been misinterpreted by previous boards and management companies, particularly with respect to assessment of applicable late fees. Mr. Lisko then opened the floor for discussion.

Sabine Shurter asked if the Association had a specific due date.

Mr. Lisko referred to an email he had sent to Suzanne Star, about a month ago, in which she asked the same question. He then went on to reference and read aloud Article X, Section 7, on due dates. He stated that the initial due date for payment of fees for any property would first be assessed and prorated reflective of the calendar year remaining from the date of purchase. For

all subsequent annual assessments, the legal due date would then be the date at the start of any given calendar year, which would therefore make it as January 1. He then asked Ms. Shurter if his response had adequately addressed her inquiry.

Ms. Shurter answered in the negative. She then stated that the confusion with this bylaw has been going on for years and asked if the language in the bylaw might be better if it would simply state that the legal due date as being either January 1 or April 1 or whatever due date may be acceptable, thereby avoiding this confusion.

Mr. Lisko concurred that simplifying verbiage in this bylaw is the intention of this amendment. He stated he would go back and review the wording more closely to make it as simple as possible to avoid any further confusion and attempt to revise it as Ms. Shurter had suggested. He then opened the floor to any further discussion of the proposed amendment. None took place.

The fourth of seven proposed bylaw amendments was read aloud by Mr. Lisko. This amendment pertains to complete removal of Article X, Section 9, which allows an assessment for the water lawsuit. The reason behind proposed removal of this bylaw is that the water lawsuit ended many years ago, which makes this section unnecessary. Mr. Lisko then opened the floor for members to share comments, questions or concerns about this proposed amendment. None were offered.

The fifth of seven proposed bylaw amendments was read aloud by Mr. Lisko. This amendment pertains to the division of Lot 16 in Unit 2. This lot was divided into 16A and 16B, with the latter being assigned as a public service department under the control of the La Cueva Volunteer Fire Department. The reason for the proposed amendment is when Lot 16 was divided, an error was made at Sandoval County, confusing 16B which contains the fire station, with 16A which does not. Attempts to rectify this incorrect designation within county records have been unsuccessful over many years. The amendment proposes to correct the designation within Association bylaws to coincide with county records. Mr. Lisko then opened the floor for discussion of this proposal.

Scott Allen commented that the fire station is under the control of Sandoval County Fire Rescue, not the La Cueva Volunteer Fire Department. He also asked if the designation is changed from 16B to 16A as proposed, will that have an effect on the water surcharge and the annual dues?

Mr. Lisko replied that he did not foresee there would be any change with respect to the water surcharge or annual dues by changing the designation from Lot 16B to Lot 16A. He also stated he had sent this specific proposed amendment for review to Fire Chief Lee Taylor who made no suggestions for revising it. But in light of specifics to the proposed amendment now having been brought to the board's attention, Mr. Lisko stated the verbiage would be revised per Mr. Allen's recommendation and mention would be made that no change in the water surcharge or annual dues would be affected by the change being proposed for designation of the aforementioned lots. When asked, Mr. Allen stated that he was amenable to this revision of the proposed amendment.

The sixth of seven proposed bylaw amendments was read aloud by Mr. Lisko. This amendment pertains to inclusion of a new article, designated as Article XIV and entitled "Attorney Fees and Costs," which details award of legal fees and court costs to the Association should it prevail in a civil action with a property owner. The reason given for adoption of this bylaw is the Association

currently has no recourse for recuperating such costs resulting from litigation. Mr. Lisko then opened the floor to the membership for discussion.

Suzanne Star asked if the board would be prepared to pay attorney fees for both the Association and for the resident, should the resident be the one who prevails in any particular lawsuit.

Mr. Lisko stated others have asked this same question. He has told them that this bylaw, if enacted, by its intent, would be viewed as reciprocal and he has been so advised by legal counsel.

Ms. Star further elaborated on her initial question by asking whether or not each party should consider paying their own fees as a result of litigation. She referred to this as the American Rule, to which she said that the State of New Mexico subscribes. For any frivolous action which may be brought by a resident, the court has the power to stop it and assess a penalty for presenting it.

Mr. Lisko asked Ms. Star if the American Rule she mentioned would be applicable to each party covering their own legal costs, whether or not proposed Article XIV was included in the bylaws.

Ms. Star made reference to the updated HOA Act, stating that the court would ultimately make the decision upon assessment of attorneys' fees and court costs to the litigants at conclusion of the proceedings. Ms. Star therefore suggested to allow the HOA Act dictate the course of action with respect to covering fees and costs and not complicate the situation by enacting this bylaw.

Mr. Lisko told Ms. Star he believes they are both on the same page with this issue but are approaching it from two different perspectives. He then recognized member John Fredlund.

Mr. Fredlund stated the Roman numeral assigned to this article in the document was incorrect and should instead read "XIV." Mr. Lisko concurred that its having been numbered as "XIII," as had been done initially, was wrong and would be corrected in the final wording on the ballot.

The seventh of seven proposed bylaw amendments was then read aloud by Mr. Lisko. This amendment pertains to revision of Article III, Section 4, regarding compensation to members serving on the board of directors. Currently, no director may receive compensation for their service to the Association. This amendment would allow a means for an active board member to receive a 30% reduction to their annual dues. The reason for this proposed change is to act as an incentive to get more residents involved in the process of service to the Association as well as a show of appreciation for those members currently serving on the board of directors. Mr. Lisko then opened the floor for discussion, requesting any questions or concerns. None were posed.

The next item on the agenda was an updated PowerPoint slide show presentation, originally drafted in 2018, which summarizes the efforts and recommendations of the SLPPOA Water Committee to enact a special assessment for those members with excessive water usage. This slide show was narrated by John Fredlund, who served as chair of the Water Committee during the time of that study. He reported that the committee ultimately proposed a tiered system for assessing water usage. Mr. Fredlund's presentation lasted for 33 minutes. (The PowerPoint slides of this presentation will be made available at a separate link on the [www.slppoa.org](http://www.slppoa.org) site.) At the conclusion of Mr. Fredlund's presentation, Mr. Lisko opened the floor for discussion.

Ms. Star asked if a resident pays the assessment for excessive water use, can they then use as much water as they want, regardless of what other members of the Association may think?

Mr. Fredlund replied that 95% of members are not using excessive amounts of water and the assessment covering excessive use won't necessarily encourage any member to use more water. The assessment is to serve as a deterrent, not an enticement to use as much water as possible.

Mr. Lisko then addressed Ms. Star, stating he felt he had covered this very same issue with her in a prior lengthy email exchange. He stated he had suggested in that email that a policy would be drafted, which would go hand-in-hand with this proposed assessment for excessive water usage. This policy is currently a work in progress. It will establish the parameters and process involved to go about shutting off water to a property should the owner of that property be so ignorant or so calloused or so obstinate as to continue excessive water use without due regard for Association standards. The owner would be formally served notice that such constant excess is unsustainable and would then be given a certain amount of time within which to correct their errant behavior.

Ms. Star replied that in the change being proposed to Article X, Assessments, under new Section 5, Paragraph c, the word "unpaid" should therefore be removed. If it is not, then the water shut-off policy being drafted would become moot, since the owner could reason that since they had paid any assessment for excessive water use, they could then use as much water as they wanted. She then asked if members would have an opportunity to review and comment upon this water shut-off policy prior to enactment by the board and before voting on related assessment changes.

Mr. Lisko answered in the affirmative.

Ms. Shurter asked that if leakage rates in the water systems continued to increase to the point of catastrophic failure, with the Association then having to acquire a loan to effect repairs, would a bank consider assessments for excess water usage to be sufficient income to pay off such a loan?

Mr. Lisko stated he couldn't answer the question as he was unsure how that loan structure would work. He asked SLPPOA Treasurer, Jeremy Oepping, if he would care to make comment on this. Mr. Oepping declined to comment. Mr. Lisko then stated that in order to qualify for a loan for its water systems, SLPPOA would first have to establish either a water co-op board or a mutual domestic water consumers association (MDWCA) for loan administration. He asked Ms. Shurter if she had some suggestion how to otherwise go about acquiring the type of loan she mentioned.

Ms. Shurter referred to when she served on the board, the leak rate at the time was 50%. It is now at 70%. She stated that stopping residents from excessive water use is a step in the right direction, but considered the assessment for same as an insufficient remedy in acquiring funds necessary to fix the water systems and lower the leakage to a more reasonable rate of 20 to 25%.

Mr. Lisko replied that he is in agreement with Ms. Shurter on this point. He further stated that the board has been moving forward with repair of the water system infrastructure, which is over 40 years old, and views the current rate of leakage as unacceptable. To this end, the board hired an engineer who provided short-, mid-, and long-range goals to achieve with the water systems.

He also recommended various state agencies, with which the board has been in contact, to help develop a system that will benefit the community. Four options currently under consideration by the board include 1) do nothing and carry on as we've been, replacing one-thousand feet of line per year; 2) establish a water co-op board; 3) set up a MDWCA; or, 4) turn everything over to a water management corporation. Whichever option is eventually chosen, the board's intent is to ultimately protect, upgrade and improve the water systems. Representatives from these state agencies were invited to speak with the board, preferably in person, but if not, then via Zoom.

Lissa Moore asked why a forgiveness clause for an unintentional leak was not included in the proposed amendment to the bylaws.

John Fredlund replied the reason for that was the board at that time felt it to be more appropriate to provide forgiveness in a policy statement, rather than a bylaw, since the former would allow more discretion by the board in its application.

Mr. Lisko then asked Ms. Moore if Mr. Fredlund's reply adequately answered her question.

Ms. Moore verified she understood. She then asked whether the forgiveness clause, allowing for such discretion of its application in a related policy statement, might further be referenced in the proposed bylaw amendment, wherein an assessment for excessive water use is being addressed.

Mr. Lisko stated a bylaw amendment for an assessment of excessive water use is more definitive since it is driven solely by numbers in the amount of gallons of water used, whereas a related water shut-off policy allows the board discretion to address any number of variables that may come into play with excessive water use, whether accidental or intentional.

Mr. Fredlund further commented that if the bylaw included reference to a leak forgiveness policy then that would open the door for people wanting to be forgiven, which would ultimately take away from some of the board's discretion as to when a leak should or should not be forgiven.

Mr. Lisko concurred with Mr. Fredlund's statement, further reiterating that as being the reason that a leak forgiveness clause should not be included in the bylaws.

Ms. Moore agreed that made sense. She then asked if that policy would be sent out once written.

Mr. Lisko replied affirmatively, mentioning that when the board has drafted other policies, like the one on vacation rentals, it is posted on the website and sent out for review on SLP's listserv.

Marsha Gaillour asked if the variance between water leakage and usage can be readily identified.

Mr. Lisko replied that numbers are gathered monthly from meter readings and then subsequently posted on the slppoa.org website for review by each member. If the amount a member uses one month increases dramatically to the next, then a "leak flag" is initiated for their residence. He stated one positive effect to have resulted from the ballot initiatives being mailed to members is that it made members more cognizant of their water usage and actually got one member to repair a substantial leak at his residence, which was wasting between 60 and 80,000 gallons per month.

Ms. Gaillour asked for verification that each individual's water usage is posted on the website.

Mr. Lisko replied in the affirmative. He stated he could send her instructions on how to access.

Ms. Gaillour replied in the affirmative and thanked Mr. Lisko.

Ms. Star commented that once a board establishes a policy, it cannot be changed unless there is a quorum of the membership at an annual meeting and that such quorums have been difficult to achieve. She asked how members could then initiate future change for any unwanted policies.

Mr. Lisko replied that members could adhere to the process, which Ms. Star just mentioned, that is to achieve a quorum at an annual meeting in order to change any unwanted policy.

Ms. Star asked if there's no quorum at an annual meeting then membership would be out of luck.

Mr. Lisko replied if that is the only process allowed, then that is the only process there is. He then suggested that the board could draft a policy, present it as a draft policy, and allow it to be reviewed by membership, giving a specified period within which to comment. The board could then assess and incorporate reasonable input from the membership in final development of any policy, prior to its being formalized and subsequently enacted by the board.

Ms. Star replied positively and thanked Mr. Lisko.

Mr. Fredlund commented that the proposed bylaw change regarding the assessment only tries to fix the problem of excessive water use. It does not address the problems with increased leakage or effective management of the water systems. He supports the bylaw change. He commented that the notion that a policy may somehow go bad in the future is not a credible argument for not enacting policies now. He favors both a water shut-off policy and a leak forgiveness policy.

Mr. Lisko then recognized Judy Kilburg and gave her the floor. Ms. Kilburg was unable to reply.

Mr. Lisko then wanted to confirm he understood the input provided by members in attendance at this meeting by recapitulating its more salient points as follows: 1) The amendment proposing to change the legal date for payment of the annual assessment should be simply stated as being due on the first of the year; 2) Change verbiage in the proposed amendment to Article XIII from La Cueva Volunteer Fire Department to Sandoval County Fire Rescue and specify that even though the number of the lot may change in the bylaws, there will be no change to any relevant water surcharge or annual assessment; and, 3) ensure that proposed Article XIV is in compliance with the HOA Act as most recently revised and is numbered with the correct Roman numeral.

John Fredlund stated he disagrees with the proposed wording of Article X, old Section 6, in its change to new Section 7, wherein it is stated, "annual, special and monthly assessments shall be fixed at a uniform rate ...". The bylaws currently allow for annual and special assessments to be fixed at a uniform rate. But monthly assessments can't be uniform for each lot as those will vary with each lot according to how much water is used. He also suggested to eliminate Paragraph c

under new Section 5. He reasoned that if an assessment is not paid then that will have already been adequately covered in the bylaws. Omitting this paragraph makes the proposed amendment less confusing, thereby ostensibly preventing an owner from being able to argue one section of Article X against another.

Mr. Lisko stated other members had already expressed concern over Article X, Section 5, Paragraph c. He then asked Mr. Fredlund to provide further clarification on the issue with the wording in the other section he had mentioned to which Mr. Fredlund then replied accordingly.

Ms. Star asked if information from this meeting would be compiled and sent to the membership.

Mr. Lisko replied in the affirmative, stating the whole meeting was being recorded to the Cloud and, once completed, he'll generate a transcript from this meeting. Ms. Star thanked Mr. Lisko.

Ms. Shurter was given the floor but found herself initially muted. She asked what would happen to the ballots that had already been cast now that the verbiage in some of the bylaw proposals will have to be changed.

Mr. Lisko replied that he addressed that in the letter, which was sent to members, changing this current meeting from one where a ballot would be cast to one for providing information only. Earlier, he had enumerated the proposed amendments which have to be revised, based upon input from members in attendance here. He further stated it would be unnecessary and burdensome to reissue a ballot for the other proposed amendments, such as changing the mailing address of the Association, when none of the members present voiced an immediate concern over any of those. The proposed amendment on the assessment of excessive water use will also have to be revised, based upon input from property owners in attendance at this meeting of the general membership. He further stated that the ballots already received shall remain sealed until such time as members will again meet to conduct the vote, either in person or in a virtual platform, at a special meeting.

Ms. Shurter stated she was satisfied by that answer. She then stated she was unsure how well-informed lot owners were about these proceedings requiring an email invitation. She then asked if the board will invite members to the next online meeting, if a physical one remains unfeasible.

Mr. Lisko replied in the affirmative. He then mentioned that board member David Stuedell has been in contact with Verizon to place another cell tower in the area so that greater internet access would be available to residents of SLP. Mr. Lisko stated he plans to send a letter to membership via US Mail, specifying a date for the special meeting, within 60 days, and suggest that residents have an email account set up to converse and send correspondence and to notify the board of that address in order to facilitate those communications. The revised bylaw amendment proposals will also be sent in a letter. Members will still have the option to either mail in their ballots and to submit comments either by US Mail, email or taking part in a Zoom meeting, in the event that social distancing requirements remain in place. He is also working to set up anonymous online voting, allowing every member the ability to cast their ballot electronically and confidentially.

Ms. Shurter stated that she is uncertain that every member will be satisfied with that option as there have been issues in the past with voting via email. She then asked if it would be possible to conduct the upcoming special meeting online and after place the ballot in the mail to the board.

Mr. Lisko stated that ballots already received will remain unopened until the special meeting takes place. If that meeting occurs electronically, at the conclusion of any relevant discussion, members will then have to immediately cast their votes online. If a member chooses to mail in their ballot, when opened, any written comments received will then be included into the record.

Ms. Gaillour asked if the board would continue to conduct meetings over Zoom, even after physical meetings may again become feasible, in order to accommodate those residents who were only at their properties on a part-time basis.

Mr. Lisko stated he had only considered a physical versus a virtual meeting to be an either-or proposition, further stating he would look into this option as it was a great suggestion.

Mr. Lisko asked if anyone else wished to make comment. As no reply was forthcoming, he then stated that he would entertain a motion to adjourn the meeting from any board members present.

Vice President Cindy Hines motioned to adjourn the meeting.

Water Compliance Director Tamara Weary responded in the chat room that she could not get her microphone to work, but would second the motion to adjourn. Mr. Lisko accepted her second.

The meeting was officially adjourned at 3:59 PM. Mr. Lisko thanked everyone for being cordial.