

IDR Meeting Minutes

Attendees: Mr. Gus Aarnes, Park Paseo Homeowner Association Board President
Mr. David E. Cane of Cane, Walker and Harkins Assoc.
Ms. Lynn Wyatt, Park Paseo Managing Agent
Mr. Arthur Schwarz, member of the Park Paseo Homeowners Association
Mr. Donald Eppley, colleague of Mr. Schwarz

I Prologue

The Internal Dispute Resolution (IDR) Meeting minutes are given as follows:

- I Prologue: An introduction to this document.
- II Meeting Minutes: An objective statement of the meeting conduct.
- III Summary: A discussion of the meeting consequences.
- IV Conclusion: A discussion of the meeting results.

California Civil Code [§5910](#) and [§5915](#) establish the framework for an IDR. The Park Paseo Homeowner Association Board has elected to use California Civil Code [§5915](#), [2019 Unaudited Financial Report](#), INTERNAL DISPUTE RESOLUTION (CIVIL CODE §5915}, as the model for an IDR.

An IDR must include a Board of Directors member and a member of an association, see California Civil Code [§5910\(c\)](#) and [§5915\(2\)](#). Each party may be assisted by one other person (California Civil Code [§5915\(4\)](#)) to "...confer in good faith",

An [IDR](#) was requested to allow members oversight of the legal opinion of Mr. Cane to the Board allowing the Board to bypass [Bylaw VII\(2\)\(2\)](#) that a vote (poll) be taken of all members of the Park Paseo Homeowners Association prior to obligating the Association to exceed the projected annual budget in any year by more than 5% of that budget. The Board has asserted [attorney-client](#) privilege in denying this access.

The wording of [Bylaw VII\(2\)\(2\)](#):

[BylawVII\(2\)](#) "Actions prohibited Without Member Approval."

[Bylaw VII\(2\)\(2\)](#) "Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year."

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II Meeting Minutes

The meeting was a dial-in conference call and began on 6 Nov 2020 at 10:00AM.

1. Introductions were made.
 - a) Mr. Aarnes introduced Mr. Cane and Ms. Wyatt.
 - b) Mr. Schwarz introduced Mr. Eppley.
 - Mr. Aarnes persistently asked whether Mr. Eppley was an attorney until it was time to move on.
2. Mr. Schwarz objected to three members representing the Board saying that the IDR statute only allows two members.
 - a) Mr. Aarnes stated that Ms. Wyatt was present to take minutes of the IDR to present to the Board.
 - b) Mr. Schwarz stated that Ms. Wyatt has a vested interest in the proceedings in that she is supervised by the Board and owes her loyalty to them.
 - c) Mr. Schwarz stated that there would be no objection to a neutral party being present to take minutes.
 - d) Mr. Aarnes stated that his presence was not necessary and left the meeting.
3. Mr. Cane read the IDR complaint.
4. Mr. Cane affirmed that the legal opinion was privileged communication ([attorney-client](#)) and not available for members to see.
 - a) Mr. Schwarz began to direct questions to Mr. Cane.
 - b) Mr. Cane said that he “was not here to answer questions” but did answer two:
 - The Board can get a legal opinion on any article in the [Bylaws](#) and [CC&Rs](#).
 - The Board need not make this opinion public.
5. With no director present there was no one empowered to act on the Board’s behalf, and with Mr. Cane unwilling to answer questions there was no one able to clarify issues. Mr. Schwarz terminated the meeting.

III Summary

The IDR meeting stopped when Mr. Aarnes left the meeting. As specified in Civil Code §5910(c) the association must participate, and by Civil Code §5915(3) the association shall be represented by a director. All discussion following the exit of Mr. Aarnes was not part of an IDR meeting.

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Mr. Cane's position is that he is the Board of Directors attorney and not the attorney for Association members, see [Smith v. Laguna Sur Villas Community Association](#). This position is correct. Mr. Cane has no obligation towards Association members.

With no director present and without the ability to question the Board's attorney, the following are conjectures:

1. [Bylaw](#) VII(2)(2) "capital improvements" has been interpreted to only apply to new capital acquisitions and to not apply to upgrades. Under this interpretation, an 'upgrade' is not an 'improvement', and the Board has unlimited discretion in spending for an upgrade.
2. Mr. Cane stated that the legal opinions are [attorney-client](#) privileged. This assertion probably means that Mr. Cane feels that legal opinions given to the Board are work products and are therefore exempt from disclosure to Association members, see [Smith v. Laguna Sur Villas Community Association](#). Under this guideline, all communication to and from the attorney to a client, the Board, are privileged and are not subject to be considered association records or enhanced association records, see Civil Code §[5200](#), for purposes of inspection and copying.
3. If the opinion is held under [attorney-client](#) privilege then the opinion can not be brought forward in court in any legal proceeding. The attorney-client privilege is absolute in all environments and not only in preventing the opinion from being given to any member of the Association. Effectively there is no recourse to the members if the Board elects to use a legal opinion adverse to the member's interests.
4. With no director present there was no opportunity to discuss a breach of [attorney-client](#) privilege by Mr. Aarnes at the public portion of the 10 Sep 2020 Board Meeting where he declared the existence of a legal opinion on [Bylaw](#) VII(2)(2) .
5. The ability to obtain a legal opinion on any article in the Associations in the [Bylaws](#) and [CC&Rs](#) makes these documents moot. With the legal opinion being protected by [attorney-client](#) privilege the Board can reinterpret and keep secret any legal opinion, allowing the Board discretion in obligating the Association to actions and expenses not in the Association members best interest, without oversight or member approval.

Further, at Board discretion an existing legal opinion can be 'overturned' by a subsequent legal opinion without member oversight or knowledge. This leads to uncertainty as to Board intentions since the Board can get a legal opinion overturning an existing legal opinion to suit the Board's purpose.

Such behavior is protected and not subject to oversight, see [Smith v. Laguna Sur Villas Community Association](#).

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6. The Board has not acted in good faith. With the exiting of the assigned Board director, Mr. Aarnes there was no opportunity to confer and there was no effort at resolution. This violates §5215(4) which states in part that “The parties shall ... explain their positions to each other, and confer in good faith in an effort to resolve the dispute ”. The purpose of the IDR from the Board perspective seems to be to have the attorney state that his legal opinion was protected under [attorney-client](#) privilege with no further discussion.

IV Conclusion

This is an unfortunate day for the Association:

1. The Board will protect it's own interest over the Association members by acting in bad faith.
2. The Board claims a right to change the meaning of any [Bylaws](#) or [CC&R](#) article by getting a legal opinion from the Board's attorney, to act on this legal opinion and then to shield itself from member oversight by maintaining [attorney-client](#) privilege.
3. The Board prefer's secrecy.