

Point Vivian Park Association INC.

21088 Point Vivian Road
Alexandria, NY. 13607

**Regular Meeting of the
Board of Directors
8-18-2018 Minutes**

August 18, 2018

Time: 10:00 AM

Location: Pavilion

Invocation & Pledge of Allegiance Secretary Randall explained the purpose and forms an invocation can take. An American flag will be posted in the Pavilion at all times and the individual doing the Invocation will lead the Pledge of Allegiance. This should be done before the meeting is called to order.

A regular meeting of the Board of Directors of the Point Vivian Park Association INC was called to order at 10 AM by Tim Westover, President and Chair.

Roll Call was taken by Sec. Randall, the following directors were present/absent: (* indicates absent)

Directors Westover, Randall, Kernan, Wittmeyer, Vaden, Pratt, Harris*, Hludzenski *.

Directors Excused – Harris (work) Hludzenski (previous commitment)

Director Beaulieu submitted his resignation to President Westover.

Members in Attendance: Nelson French, Barb Smith, Helen Johnson, Molly Westover

Adoption of the Agenda

- a. Motion to adopt the Agenda as written by Chair Westover
- b. Seconded by Tres. Kernan
- c. Approved unanimously

Bylaw Section 7.07 Meetings of Board 6c – Time limits for speakers this BOD Meeting:

- a. Recommendation: Limitation of 3 mins
- b. **Motion** to Accept: Limitation of 3 mins
- c. 2nd: Sec. Randall
- d. Discussion: None
- e. **Vote**: Approved unanimously

Approval of Previous Meeting Minutes:

July 21, 2018, BOD minutes.

- a. Recommendation: Accept July 21, 2018, BOD minutes by Sec. Randall
- b. Motion to Accept: July 21, 2018, BOD minutes Dir. Wittmeyer
- c. 2nd: Director Vaden
- d. Discussion: None
- e. Vote: Approved unanimously

Reports

A. Executive Director

Director Len Wittmeyer has been appointed Vice President per our Bylaws. Would like to thank Len for agreeing to continue as VP which was his position under President Harris.

Being in this position a month now, I want to state that I am uncomfortable going outside the Association's Attorney's opinions on the December 8, 2015 Amended Memorandum Decision and Order by Judge James P. McClusky index No.014-1326, RJI No. 22-14-1138. Our Attorney has recommended that the Tenants in Common authorize the Association more than stewardship functions/authority – therefore, **I am scheduling an Association Special Meeting on Saturday 25 May 2019. The purpose of this meeting will be to discuss proposed Bylaw changes requiring Tenant in Common approval. This is a discussion meeting and NOT a Voting meeting.**

Subsequently, Tenants in Common will be asked to vote on the Bylaw changes discussed, at a later date, possibly electronic vote.

Some members believe the Association Board of Directors is made up of "yes men".

Interesting comments and certainly worthwhile everyone seeking a more diverse and younger population on the Board.

My limited experience as a Board Member has almost exclusively been spent responding to lawsuits, legal letters or other non-productive member letters. It would be great if the entire Point could leave the above disruptive, non-productive, expensive and time-consuming activities behind us.

The Association elects a minimum of 5 positions every year – 1st Saturday in July. I will tell you the Board is tired of

having to beg or drag candidates to be candidates. Bring on new candidates!!!!!!

In my opinion, this failure to attract new blood to the Board is because of all of the above non-productive legal and non-legal letters and pettiness for which the Point has apparently now become infamous.

B. Finance Director Tres. Kernan stated:

Jada Walldroff has just about completed the review and expects it anytime now.

C. Governance Committee Dick Randall – Report

The bylaw changes are now completed and the new draft of the 2018 bylaws is ready to be reviewed for comment and will be ready for finalizing after the reviews.

The Governance committee will begin to work on the tenants-in-common amendment proposed by legal counsel during the winter months.

Old Business:

Board Member Guidelines 7-18-2018 - Tim Westover

Requested the board members, to reread the Association Bylaws prior to the Special Member Meeting called for 4 August. Understand proposed Changes.

Board members are encouraged to assist all members to vote at all Member meetings. If a member cannot be present for an Association meeting, Board members should encourage to provide them or another member with their proxy vote.

In light of the Tenants in Common (TIC) voting criteria, we should start encouraging all members (owners) to attend meetings where 100% of TICs must vote and vote-for a decision for the decision to be passed. A single nay vote, abstention or TIC not voting means the decision will not be enacted.

If a Board member cannot or will not support the Association's legal advisors, (Reference Point Vivian News Letter April President's Message) the Board member should consider their usefulness to the Association and Board. While each of us has a right to their own feelings and opinions, conflicting actions, decisions and active support which is contradictory to legal

advice is considered, in my mind, a conflict of interest and Board member should consider resigning.

Board Members are requested, as a common courtesy to respond to emails that they are an addressee.

Motion by chair Westover is to “Adopt Board Member 7-18-2018 Guidelines.”

2nd: Tres. Kernan

Discussion: Guidelines discussed, and opinions were expressed.

Vote: Board approved guidelines unanimously

Pavilion Board Guidance Issued 7-26-2018. Replace with 8-6-2018 revision.

Director’s Logistical Guidance on Pavilion USE Policy/Application is needed to assist ease Association Business conduct in the Pavilion.

There is No Change to the Pavilion Use Policy and Application for all Social Activities.

When the Pavilion was in reasonable condition, many cottages had a key and direct access.

This was changed over time as the Boards became more aware of Pavilion problems and membership liability. As the doors were locked, some members entering through windows. If left unlocked, kids would use it as a get away from parents, etc. Overtime, locks have been changed, windows nailed shut or otherwise blocked for access, and the clasp lock placed on the doors over the winter and summer. Currently, the flooring supports are rotten precluding the ability to lock the main door with a key. Therefore, Clasp lock needed on both doors.

Board Guidance:

Director Harris has been authorized make additional keys to the Clasp Lock key(s) an assignment to requesting Directors and Diane Wittmeyer (Pavilion Use Designated Authorizer). Directors should NOT LEND Key to anyone and will not duplicate the key.

Pavilion Use Policy remains as Written, reviewed by Legal and Will not be changed.

Pavilion Board Guidance 8-6-2018 revision

BOARD members will be able to use the **Pavilion for Association Business** (IF IT DOES NOT INCLUDE ANY SOCIAL ASPECT OF MEETING e.g. pot luck dinners, etc.):

Directors do not have to fill out an application for Association Business Meeting.

Directors must contact Diane and schedule any Association Business Meeting and identify the purpose of meeting.)

I will assume all responsibilities for Pavilion opening, clean-up and closure. (The pavilion should never be left unattended while open.)

Directors should not lend their key to anyone or delegate closing of pavilion.

Directors scheduling the pavilion will also Text the President or Assigned Director in the absence of the President. [What, where, when, purpose in addition to contacting Diane.]

Directors ARE REQUIRED TO Complete Pavilion Application and obtain approval for all Committee Sponsored Social Functions just like all members

Motion made to “Approve Pavilion Board Guidance 8-6-2018 revision.” by Chair Westover.

2nd Treas. Kernan

Discussion: Mostly agreed with the revisions.

Motion to Accept: Pavilion Board Guidance 8-6-2018 revision

Vote: Approved the revised Board Guidance unanimously

Records Retention System –Sec. Richard Randall

Secretary Richard Randall - **Association Record Retention Plan:**

Proposal to Reallocate Approved Budget Funds to Procure Duplex Printer to Supplies, etc.

Current plan is to create a comprehensive record retention system that will comprise of a paper copy of essential documents as well as a digital storage area using Dropbox.

Recommendation: Reallocate \$500 from purchase of Printer to Supplies
Motion to Accept: Reallocate \$500 from purchase of Printer to Supplies
2nd: Dir. Wittmeyer

Discussion: Review and explanation of proposal change was made by Sec. Randall. The Randall family will purchase a printer and pay for it to be used with this project. The funds will be used for paper, supplies, and materials. Dir. Jake Pratt will look into possible low storage cabinet to store the bounded records at the Pavilion.

Vote: The revised plan was approved by all board members.

Letters from Mr. Murray & Murray/Johnson – Chair Westover

Letter to PVPA Members from Mr. Murray February 14, 2018 asking to correct Memo dated 12-5-201

Letter focused on December 2015 Court Decision and Order.

Recommendation: Association Attorney provided legal opinion via email to President Harris on 3/29/2018 subject: Point Vivian Park Association /Answers to Questions. These Q&As provided in Point Vivian Newsletter President's Message April 2018 providing answers (OBE).

Therefore, recommend Board not respond.

Motion to accept: "recommendation Board not respond as answers have been provided through other means." made by Chair Westover.

2nd Dir. Vaden

Discussion: Board members agreed not to continue to pay attorney fees for unnecessary responses that have already be answered.

Vote: Motion approved as recommended – no dissent

July 5, 2018 Murray/Johnson Letter to Directors Reference Not for Profit Corporation Law: Asserting the law applies to PVPA and need for Records accessibility.

Comment by Chair Westover

Required 2017-18 Documents sent to all members.

Records retention budget line in 2018-19 Budget with a plan to have the corporate records available in July-August 2019

Between 1962 and until late 1990” s, the Association members or/and board, decided to not keep a records repository but to distribute them to all members. In 1972 the Association incorporated, and a copy of all legally required documents should have been maintained.

Recommend;

Send 8-18-2018 email Letter Response to Murray/Johnson as provided.

And send Board response copy to each Association Member.

Motion: To send 8-18-2018 Letter Response to Murray/Johnson as provided. And send response copy to each Association Member.

2nd Sec. Randall

Discussion: Board in agreement.

Vote: Approved unanimously

Legal cost reduction plan. – Tim Westover.

During the 2018 Annual Meeting and after elections, I stated that one of my commitments was to stop unwarranted legal attorney costs on the Members. We have other important issues facing the Community. Since the elections, I have sought Legal advice twice:

- a. PVPA Mr. Russell Meeting 1PM 7/18/18 Wednesday: 12/2016 Court Decision and Order
- b. PVPA Mr. Russell Conference Call 11AM Wednesday 8/7/2018: To address NPCL Section 7. (memo for Record).

Legal Letters received June and July 2018:

- a. **June 4, 2018 Caughlin to Russell** questions his legal opinion provided to Association. (Caughlin is Murray/Johnson Lawyer)..Mr. Russell called Caughlin on 11 June RE: June 4th letter.
- b. **July 5, 2018 Caughlin to Russell** asking why Russell has not heard back since phone call. And asking questions about the Association conveying property to Hooning for his septic system plus other “issues”.

The Association Board accepts the accepts the December 8, 2015 Amended Memorandum Decision and Order by Judge James P. McClusky index No.014-1326, RJI No. 22-14-1138. **PERIOD**

Association's Attorney asks why the Association wants to pay him to answer Mr Caughlin when Mr. Caughlin already has his answers.

Motion to accept: Recommendation; Assume Caughlin has answers to his letters to Russell.

2nd Dir. Wittmeyer

Discussion: Board agrees with recommendation and approves.

Vote: Approved.

c. July 30, 2018 Caughlin to Russell on behalf of Phyllis Johnson.

i. Summarized: Mr. Caughlin asking for Tenants in Common names and copies of complaints who complained about Phyllis Johnson drilling a well on Common Property.

Comment: Ms Johnson drilled a well on common property in the off season and without notifying several neighbours or the Association.

ii. Summarized: She asked, "has any recourse been considered against Mr. Randall or other 4 cottage owners using common property at Alpine Glenn".

Comment: Mr Randall wrote Ms. Johnson asking what of his is on common property. Ms Johnson replied ask her lawyer. Prior to the December 8, 2015 Amended Memorandum Decision and Order, there was an Association operating procedure stating that if a member wanted to cross under a road or other wise use Common Property for water lines, etc, they were to seek approval from the Board before doing so.

Cottage use of common property has been common over the History of the Point. However, until the December 8, 2015 Amended Memorandum Decision and Order, the Association did not operate under NYS Realtor Law for Tenants in Common.

iii. Summarized: Attorney Caughlin's letter asked if the Association told its attorney to not respond to Mr Caughlin. If so, for the Association to call Mr. Caughlin.

Comment:

Yes. In so many words, I said there is no reason for the Association to pay our lawyer to defend the December 8, 2015 Amended Memorandum Decision and Order. I have zero reason to contact Mr. Caughlin. If there is, we will engage our Attorney.

iv. Summarized by Caughlin, that Ms. Johnson did a remarkable job responding President Harris' incredible ambush.

Comment: Understanding there are many frustrations at Point Vivian today, Ms. Johnson has been invited to present to the Board at her convenience and the Board will submit all of her comments to the full membership.

v. Summarized Caughlin letter also stated: "As you know, the Board Can lose its "business judgement rule" privilege when it makes decisions in bad faith and/or displays an animus against a particular member".

Comment: Under no circumstances should the Board display an animus against a particular member. Members, as well as, lawyers should be extremely cautious when singling out specific current or past Board Members and making questionable statements.

Motion to set aside above Caughlin letter to Russell and any other response as there are real critical ISSUES Facing all Tenants in Common and the Association its self over the off season
2nd Treas. Kernan

Vote: Board approved the motion.

Fund Raisers – Westover

In late July, I met with Julie Reagan and explained that I as a PVPA Member can hold fund raisers for example; Red Cross, ALS, etc. requesting to use our facilities. Therefore, if the Reagan Family was to sponsor a fund raiser (**not as the Preservation Corporation**) she can do this inviting member and their guests. However, as PV is not a public community, she cannot invite or advertise to the public. As a PVPA member, Ms. Reagan agreed and included disclaimer in her Pavilion Application.

I think this is consistent with our Legal Opinion.
Motion concurrence with my guidance.

2nd: Dir. Vaden

Vote: Board approved and concurs with the guidance.

PVPA Trivia Night - \$190

PVP Cake Walk - ~\$170

Kernan Family Sponsored Point Vivian Apparel – 101 orders; raised donation count after deliveries over Labour Day Weekend.

PVPC and PVPA Discussions

As I had mentioned to the membership, I think my primary focus is to help us all find a legal path for each of the tenants In Common to move forward. Therefore, I followed up on a statement Ms. Reagan made about donations. On July 16, 2018, I emailed Ms. Reagan, Preservation Corporation President asking her for some clarifications as her views on donations to our Association and her requirement to be in essence a party to any Pavilion contract which would be funded through PC donations. Ms. Reagan is working on a clarification which I expect in 2019.

Delayed Reorganization of Committees

The single Committee that can commit the Association is the Executive Committee which was not approved by the Members at the 4 August Special Meeting. Therefore, only the Association President and BOD's, can commit the Association. (Authorize expenditures, sign contracts, etc.)

The Grounds Committee has significant efforts this off season:

1. Developing plan for Cliff Hill
2. Authorized to purchase 3 adjustable Jacks and shore up Pavilion flooring beneath door.
3. Road Pot hole fill (Spring)

New Business

Koji Kubota letter. Provided for the record and consideration, mainly for all Tenants In Common as Association does not have such authority over members using common property for their sole use.

Cliff Ave. update

Several ideas about Road repair range from complete road and wall configuration with asphalt to removing and replacing wall up to bend shoring up from outside the Bill Kernan wall.

Ed Waldroff and Roger Harris have contacted various material and build contractors to evaluate lowest acceptable materials and construction.

- i. Will seek engineering PE Stamps to assure repair plans are solid. But hope to avoid extensive and expensive engineering specs. if possible.
- ii. Financing: - Tom Kernan

f. Proxies. - Westover

- i. Vote on acceptance or rejection of single proxy not in compliance with Bylaws or Board Guidance.
- ii. Vote on Proposed Proxy Guidance to Board.
- iii. Board voted to accept the proxy and issue clear guidelines to address this issue in the future.
- iv. Comments from Board Members
- v. Comments from Members in Attendance

Mr. French stressed the Cliff Rd needs to be fixed correctly and not just cheaply. He also stressed we need the road repaired as a road and not a walking path. This was seconded by Jen Vaden.

Mrs. Helen Johnson stressed that members who have a concern over dogs should go directly to the dog owner.

Meeting adjourned at 12:00 noon