

***Minutes of the April 1, 2012 Pilot Point Council of Owners
Pilot Point unit 19***

President Ed Kingman called the meeting to order at 9 AM.

Present: Vince D'Anna, Ed Kingman, Ronald Lee, Roger Campbell by phone, Richard Ward
Angie

Review and approval of December 3, 2011 Minutes:

The minutes were approved as posted on the website after a brief discussion about the Burke parking situation. Moved to accept by Campbell, second by D'Anna.

Process for solving unit change issues:

Presentation of the four documents will be sent to the unit owners.

Cover Letter, FAQ, Andy's write up and Ballot. See attached..

Ed Kingman described the process and gave an estimate of the costs to complete the transition.

Review of the proposed 2012 Budget Amendments and presentation of the 2013 Budget.

Roger Campbell presented the revised 2012 Budget and the proposed 2013 Budget.

The monies that were not spent in 2012 (\$87,603) would be carried over into 2013 and the designated projects for these monies would be completed.

A motion was made by Roger Campbell and second by Vince D'Anna to accept the budgets as amended for 2012 and as presented and modified for 2013.

Notice of annual meeting and proxy:

See attached

Election of Council Members:

Ed Kingman and Ronald Lee agreed to run for Council.

Legal Review, Zoning and Building Inspector:

Vince D'Anna gave a summary of all of the current issues.

Meeting was adjourned at 1 PM

Respectfully submitted,

Ronald P Lee
Secretary
Pilot Point Council of Owners
Sunday, April 1, 2012

**Pilot Point Council of Owners
Council Meeting December 3, 2011**

Unit 19 Pilot Point

9:00 AM

Agenda

- 1 Approval of prior minutes**
- 2 Review of financials year to date-Roger**
- 3 Legal review-Vince D'Anna**
 - a.City Appeal**
 - b.Progress moving to Ducoia**
 - c.Other issues**
- 4 Meeting with Cape Shores and Port Lewes**
- 5 Black Pine Death-causes, partial solutions**
- 6 Comcast contract issues**
- 7 Mail Box Replacement**
- 8 Driveway seal coat – owner intervention**
- 9 Siding rot repair-units 27,28**
- 10 Shed repairs unit 40, 41**
- 11 Entrance roof repairs unit12 ,14**
- 12 Street side roof replacement units 47-53, back side pending owner skylight replacement**
- 13 Walkway to beach replacement status**
- 14 Tennis court condition report**
- 15 Feedback on siding replacement meetings**
- 16 Urban Blight-Recycle and Trash Can Management**
- 17 2012 meeting dates**
- 18 Other issues**
- 19 Adjournment**

***Minutes of the December 3, 2011 Pilot Point Association of Owners Council Meeting
Unit 19 at Pilot Point***

President Ed Kingman called the meeting to order at 9:00 AM.

Council members in attendance were Ed Kingman, Ronald Lee, Vince D'Anna, Richard Ward, Roger Campbell and Angela Howell

The minutes of the previous meeting were available for all in attendance and the minutes were approved as presented.

Legal review:

City appeal: Pilot Point lost its appeal to the city. Vince explained the decision of the judge and pointed several flaws in his decision. The council has filed notice to appeal the decision of the court but has yet to decide if that will be the course of action. A decision must be made within the next few weeks in order to give the attorneys a sufficient time to write the briefs. Vince will get an estimate of the cost of the appeal taking it to the point of oral argument.

Other issues: Burke parking space situation. After a brief discussion about the parking situation in front of Sam Burke's house, Richard Ward volunteered to talk to Sam to try to arrive at an amicable solution.

DUCIOA: The ballot to move Pilot Point under DUCIOA as well as a three page informational sheet was distributed (a copy is attached) to the council members. Council will have a meeting in the near future to discuss the best way to distribute this information to the unit owners.

Meeting with Cape Shores and Port Lewes:

Ed Kingman recently met with the representatives from Cape Shores and Port Lewes to discuss the recent designation of Cape Henlopen Drive as a scenic highway. Pilot Point will now have some input with issues such as road landscaping and signage along the highway.

Black Pines:

Ed shared with the council some information about the plight of the black pine tree and some possible solutions for the replacement of the trees that have died.

Comcast Contract:

We are currently in the second year of an automatic contract extension of the original seven-year Comcast contract. It was agreed among the council that we would be willing to enter into another contract with Comcast for a five-year period provided that the services and costs are at least comparable to what an individual would be able to purchase on their own. Vince indicated that our current service that cost forty dollars per unit would cost an individual unit owner sixty dollars. Angie volunteered to do the negotiation with Comcast.

Mail Box Replacement:

The mailbox for unit 19-25 has rotted and the USPS will be replacing the unit after the holidays. Angie will also look at the mailboxes for units 1-11 to determine if they also have to be replaced. In the meantime, mail can be picked up at the mail delivery office on Savannah Road.

Driveway Seal Coat:

Matt's management did a great job seal coating and road repairing our roads

Repairs:

Siding rot and sheds for units 27 and 28 as well as the sheds for Burke and Enrico were repaired or replaced. The entrance roofs for Wozniak and Kaufman were or soon will be replaced. We have not yet had the roofs replaced for units 47-53. We are waiting for the owners to replace the skylights.

Beach Walkway:

The walkways to the beach are in deplorable condition and we must accelerate the repairs, possibly repairing one in the spring and one in the fall. Ed will rewrite the specs and put the work out for bids.

Tennis Courts:

The tennis courts are in dire need of repair. Vince said that we have received a bid for more than fifteen thousand dollars to repair all of the cracks in the tennis courts and an additional thousand dollars to repair the fence. Vince will contact them in February to schedule the work. Ed indicated that we would solicit opinions from the unit owners concerning the amount of money that we need to spend to fix the courts.

Siding Replacement:

Ed gave us an update on other communities in the area, such as Kings Grant, that are currently undergoing siding replacements.

Other Issues:

Ed informed us that we are currently having problems with barn swallows in the spring. We will have to replace the vent screening in several units. We are still having a problem with units leaving their trashcans out when they leave on Sunday evening and not making arrangements to have their cans returned to their house after pickup. Vince volunteered to look into this problem and possibly arrive at a solution.

Financial:

Angie asked the council if Pilot Point wants an audit or a review for the next accounting period. Angie will contact Tom Sombar and ask him for the cost for each. Angie also informed the council that the delinquencies are currently over \$18,000.

Elections:

The terms for Ed Kingman and Ron Lee are completed in April 2012. Ed indicated his desire to run again and Ron indicated his desire not to run for office. We will need to find someone to replace Ron.

2012 Meeting Dates:

still need dates

Respectfully submitted

Ronald P Lee

Secretary
Pilot Point Council of Owners
Saturday, December 10, 2011

Pilot Point Council of Owners

C/O L&N 7904 Costal Highway, Suite #2, Ocean City, MD 21842

Dear Fellow Owners,

RE: Process to resolve mortgage, title and insurance issues related to unit changes

At last year's annual meeting, attorney Andy Taylor explained in great detail the legal problems we have as a result of approved and unapproved unit changes. He also explained a path to resolve the problems. In his attached memo he lays out what was discussed at the annual meeting. This letter summarizes steps to implement the correction plan.

Step 1. Contained in this packet is a ballot. This ballot is for a vote by the ownership to amend the Pilot Point Declaration to be governed by all of the Delaware Uniform Common Interest Ownership Act (DUCIOA). Pilot Point is currently under the mandatory provisions of DUCIOA. The vote in Step 1 will not bring Pilot Point fully under DUCIOA. We will fully be governed by DUCIOA after all required documents are amended and a vote by the ownership accepts the amendments and they are recorded. That action is STEP 2. An affirmative vote by 67% of the ownership is required at this step. **The step 1 vote is the ballot contained in this packet.**

Step 2. The Council will have Declaration amendments drafted and sent to each owner. After each owner reviews the updated DUCIOA documents, the ownership will vote to adopt an amended Declaration under the governance of DUCIOA. An affirmative by 67% of the ownership is required for passage. The legal documents will be recorded. Upon recordation Pilot Point will be fully governed by DUCIOA.

Step 3. Existing encroachments will be documented, submitted to the ownership and voted on for approval. A 67% approval is required. The documented encroachments will be recorded by the Council. Once recorded, the unit changes will no longer be encroachments. New standards will be developed for future unit changes. That vote can be at the same time for existing encroachments. The documented changes will be recorded. Approval of encroachments and standards require a 67% approval of the ownership.

After you have read Andy's write up and the attached frequently asked questions, "FAQ", please vote the attached ballot for the Council to move forward. Please note that at the annual meeting of the 29 units physically represented, 27 voted affirmatively, one abstained and one voted in the negative. The Council did not vote proxies because it was believed the vote should be directly from the ownership. If you voted at the annual meeting you do not have to vote again unless you would like to change your vote. The Council is recommending an affirmative vote.

Sincerely Yours

Information for owners of units in Pilot Point
From Andrew P. Taylor, Esq.

Under the Unit Property Act, three documents establish and control the condominium. Those three documents are the Declaration, Declaration Plan, and Code of Regulations. The boundaries of a condominium unit are defined in these documents. The area outside the title lines of your unit is owned together by all of the owners, not one owner. That area is known as common elements or in some communities there are also limited common elements. When you purchase a unit, you are receiving title to your unit and a percentage share of the common elements. Therefore, the common elements are owned by all of the unit owners under a form of ownership known as “tenants in common”. The word “tenants” is not used in the same way you would refer to a Landlord and Tenant in a lease. As a tenant in common owner of the common elements, you are an owner of an undivided percentage share of the common elements along with all of the other unit owners.

As you know, units in Pilot Point have been expanded beyond the original boundaries approved for that unit. This creates an encroachment on the common elements owned by all of the unit owners. Court cases concerning Pilot Point have shown the difficulties with obtaining approval and enforcing standards for improvements to units. However, even if someone obtains a building permit and extends a unit beyond its approved boundaries with or without approval of the condominium council, there are still problems with delivering clear title to that unit. A potential buyer, buyer’s attorney, title company, appraiser, or mortgage lender could raise an issue with the unit being expanded beyond the approved boundaries. Therefore, even if someone “gets away” with expanding a unit, that does not solve the problem for the future, and in my opinion, they have just created a problem to be faced when they want to place a mortgage on the unit or sell the unit.

As you know, there have been court cases concerning Pilot Point. In finding that the Court of Chancery could not enforce restrictions that the Council wanted to follow, Chancellor Chandler said, “The Court of Chancery is not the institution to arbitrarily impose upon all the unit owners in Pilot Point some standard that all the unit owners can live with. That’s for the unit owners to decide on, frankly. And as hard as it might be to achieve unanimity on 100 unit owners, which I am sure it will be very hard, that’s precisely where you find yourselves. If not, then you are going to be resorting to either self-help legal actions by neighbors who will sue to stop you from doing something that that neighbor does find offensive and that, in

fact, encroaches on the common elements. That is a less wholesome way to live in a community like this, it seems to me.”

Recently the Council tried to enforce the condominium documents by challenging the issuance of a building permit for a deck. In deciding that case, the Superior Court judge stated: “This Court stated that boards of adjustment generally may not determine title incident to granting a permit, adding that the proper forum for a title challenge is the courts.” Therefore, even if the building inspector issues a permit for an expansion of a unit beyond the title lines, encroaching on the common elements, that still doesn’t make it immune from legal challenge.

The two cases referred to above concerning Pilot Point both acknowledge that an individual unit owner may file a court action against another unit owner to challenge the encroachment into the common elements and raise title questions.

Therefore, what is the solution? Unfortunately, the old documents concerning Pilot Point do not include a way to amend the documents. Fortunately, a provision in Delaware law allows the Declaration to be amended by the affirmative vote of 2/3 of the unit owners. The old condominium law under which Pilot Point was created is called the Unit Property Act. Under the Unit Property Act and the current documents of Pilot Point, the boundaries of a unit may not be changed without 100% approval of the unit owners. Trying to have all owners agree is almost impossible. The modern condominium law is called the “Delaware Uniform Common Interest Ownership Act”. This law is referred to as “DUCIOA”. You may read the entire law online finding it in Chapter 81 of Title 25 of the Delaware Code.

Section 81-212 of DUCIOA includes a very workable way to amend the boundaries between units and common elements by obtaining the approval of “persons entitled to cast at least 67 percent of the votes in the association.” The association referred to is all of the unit owners. Under section 212, the unit owner requesting the change would pay the expenses of doing so.

A community can vote to remain a condominium but to be governed entirely by DUCIOA rather than the Unit Property Act. This is what I recommend for Pilot Point. Property management firms are becoming more comfortable with managing communities under DUCIOA than they were when the law was new.

I recommend voting to become a condominium governed entirely by DUCIOA rather than the Unit Property Act.

Once this is done, new plans can be drawn for the units to permit the common type of expansions which were previously approved by the Council, such as decks and enclosures of space as a room in the back of units on the second floor.

Amendments to the Declaration, Declaration Plan, and Code of Regulations would be voted upon by the unit owners, and if 67 percent approved, then they would become the new documents for Pilot Point.

I have also reviewed the Condominium Rider for a conventional mortgage. In my opinion, a condominium does not need the approval of the mortgage lender to vote to be governed completely by DUCIOA rather than the Unit Property Act because you are still a condominium.

I suggest that you talk with a couple of property management firms who have now had the benefit of managing condominiums under DUCIOA to ask for feedback on the pros and cons of changing to become a condominium governed completely by DUCIOA rather than the Unit Property Act. I think their practical experience would be helpful in making your decision.

I also suggest that you talk with your insurance carrier to find out if the insurance coverages required under DUCIOA would cost more than your current insurance and the pros and cons of those coverages.

From a legal perspective, in my opinion switching to DUCIOA would allow you to solve the boundary line issues between the units and common elements. I also see other advantages to being a condominium governed by DUCIOA rather than the old Unit Property Act. As a practical matter, DUCIOA is now the law that will receive attention to keep it up to date rather than the old Unit Property Act.

Attached is a ballot previously circulated to gauge the interest of owners in moving forward with the process of having Pilot Point be a condominium governed completely by DUCIOA rather than the Unit Property Act. If you have not yet completed this ballot, I encourage you to do so.

Frequently Asked Questions (FAQS)

Q1. Why did it take so long to get to this point?

A1. When the magnitude of our problem was identified the Council explained to the ownership that it would take legal work to see if there was a reasonable way within our condominium documents to rectify the legal problem. The legal review found that our existing declaration contained no mechanisms to amend the declaration. We then sought a legislative solution and Senate bill 316 was passed and signed that provided a process to amend an existing declaration if the existing declaration did not have a mechanism to amend an existing declaration. This is the process we are using now.

Q2. How many units have changes and/or encroachments that are not recorded in the Pilot Point Declaration?

A2 A review of all units found that every unit in Pilot Point has a non- recorded change and/or encroachment. They range from minor changes to significant changes.

Q3 Has there been any impact from the non-recorded changes and/or encroachments?

A3. Yes, sales have been impacted significantly. Realtors have stated that buyers have stated that they passed on a unit because the new buyer could not make changes that neighbor's had made. This has resulted in lower offering prices. They also expressed concerns regarding access to financing and title insurance. The council is aware that the encroachment issues have had a negative issue regarding refinancing. In addition to the macro issues with lenders, when Pilot Point's specific issues are disclosed overcautious lenders have declined financing. We continue to have insurance coverage with the same company that has covered us for over 20 years. The Pilot Point coverage only covers the original building structure recorded in the existing Declaration.

Q. When the changes and/or encroachments are approved and recorded will the association insurance cover the changes?

A. No, unit changes will continue to be the financial responsibility of the unit owner.

Q4. I don't plan on selling so why should I care?

A4. Negative financial pressures can put communities in a downward tailspin. Look no further than the neighborhood impact of foreclosures. Additionally, we need to have a process to authorize approved changes for all to fully enjoy their respective unit. Furthermore the community needs a mechanism to address changes in law and technology.

Q.5. Why can't we just have one vote to approve the whole thing.

A.5. The process is designed to ensure we have the required consensus and documentation at each step.

Q6. What is the process to address these legal issues?

A.6.

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Q.7 What is the cost for making these changes and how are we going to pay for it?

A.7. At this time we have no cost estimates. Regarding the declaration itself we believe we need amendments not a complete new document. Also we do not know what it will cost for the required site lines that would be drawn by a registered engineer. Unless the number is extremely high we think we can work within our current and planned budget.

Q.8. I have made few changes or the prior owner made few changes to my unit why should I share the cost of this?

A8. First, If you have made any changes you have a problem. Second, as stated above if the community as a whole has a problem you have a problem. Three, this will give you a mechanism to make property enhancing changes that you neighbor has already made.

Q9. When all this is all approved do I have to hire a lawyer to record the changes to my unit?

A9. The plan currently is that once all of the changes and/or encroachments are identified the council will file them after membership approval.

Q.10. If the Council had enough votes through proxies and those in attendance to pass step one at last years annual meeting why didn't they pass step one then?

A.10. The council felt and generally those in attendance felt that this matter is off such significance that a owner direct vote was appropriate unless specifically addressed in a proxy.

Q.11 Chancellor Chandler ruled that the Council could not approve unit changes bases on the principle of acquiescence. Why did the council think they could use acquiescence to approve changes?

A.11 the council on behalf of owners used acquiescence for over 30 years. The principle originated from a ruling by Judge Brown in *Pilot point v. RGI*. In his ruling he combined Pilot Point Phase one (units 1-32) with Pilot Point Phase 2 (units 33-60) and set forth the percentage of common ownership. He ruled that his decision was based on acquiescence.

Q. Is there anywhere else I can find the DUCOIA law?

A. Go to the Pilot Point website at pilotpointlewes.com and click on DUCIOA.

Ballot for vote on Pilot Point amending its Declaration to be governed by all of the Delaware Uniform Common Interest Ownership Act.

1. According to Title 25 Delaware Code Section 318, (as amended by SB 316) a declaration under the Unit Property Act, for residential property, which does not explicitly include a mechanism to amend the document, may be amended by a vote requiring the affirmative vote of 2/3 of the property owners.
2. The Declaration of Pilot Point does not explicitly include a mechanism to amend the document; therefore, it may be amended by the affirmative vote of 2/3 of the property owners.
3. The Unit Owners of Pilot Point have been engaged in various matters of litigation particularly concerning expansion of many units into the common elements. Uncertainty over the "title lines" of units has greatly impeded the sale and mortgage financing of units and made it difficult to obtain title insurance.
4. The Delaware Uniform Common Interest Ownership Act (DUCIOA) is the modern law to govern condominiums and solves problems not anticipated when the prior law known as the Unit Property Act was adopted in the mid 1960s.
5. DUCIOA section 81-121(a) provides "The declaration, bylaws, or plats and plans of any common interest community created before the effective date of this chapter, may be amended to achieve any result permitted by this chapter, regardless of what applicable law provided before this chapter was adopted." Section 217(a) provides the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least 67 percent of the votes in the association are allocated.
6. The Unit Owners of Pilot Point would like to benefit from the modern provisions of DUCIOA while retaining the Condominium form of ownership by amending the governing documents to achieve the result of being a condominium controlled by DUCIOA rather than the Unit Property Act.
7. It is understood that if this vote is approved by the required number of Unit Owners, the amended Declaration and documents under DUCIOA will still need to be approved by another vote of the Unit Owners. To comply with both sections 318 and 81-217, the vote needs to be "yes" by at least 2/3 of the unit owners representing at least 67 percent of the votes in the association.

Therefore, the undersigned Owner of the indicated Unit in Pilot Point votes on the following question:

Do you want to continue as a condominium community, but be governed entirely by the Delaware Uniform Common Interest Ownership Act rather than the Unit Property Act?

Please sign here and circle your vote below: _____
Signature

Yes No Abstain

Please print name

Unit number

Date