

Bears Den HOA
Special Meeting of the Homeowners
Tuesday April 10, 2012

Meeting Minutes

A Special Meeting of the Bears Den HOA was held on April 10, 2012 at the Rocky Mountain Bible Church meeting room in Frisco, Colorado. The purpose of the meeting was to discuss and to vote on the proposed Fifth Amendment to the Bears Den Declaration.

The only Board member present was Robert Hughey.

Homeowners present were:

Chuck Boyd
Teresa Silcox
Eric Mahlowitz
Ryan Banker
Miles Porter
Mary Staby

Others present were:

Eddie O'Brien, Prudential Real Estate
Paul Dunkelman, Esq.
Noah Klug, Esq.
Eric Fisher, Esq.
Jennifer Kermode

The meeting was called to order at 5:00 PM by Mr. Hughey. The proxies were reviewed and it was determined that a quorum was achieved between the proxies that were received and members who were present therefore the meeting was conducted as scheduled.

Mr. Mahlowitz's proxy was revoked by his personal presence.

Eddie O'Brien provided information about the contract buyer of the Tusso commercial units. They will be for office use only. The offer tendered is for 2 of the units, A-1 and A-2. No extraordinary costs are expected to finish the spaces.

There were some concerns expressed by Teresa Silcox and Chuck Boyd as to why the assigned LCE spaces were different than what was originally discussed in the previous meeting of the owners. Teresa asked why can't the owners choose their respective spots. It was explained that this configuration was made in part to satisfy the needs of the sales contract with the buyer for the commercial units for specific spaces. Mr. Hughey pointed out that Ms. Silcox was picking up an extra space as part of the amendment.

A discussion took place on the draft Fifth Amendment. Some owners expressed concern that they had been provided with copies of the settlement agreement and Fifth Amendment shortly before the meeting.

Mr. Mahlowitz's attorney argued that the meeting notice was improper. Mr. Klug noted that the board has the authority to enter into the agreement without owner approval and was not asking the owners to approve the agreement. He further noted that the state statute only requires a general notice of the subject matter of an amendment, not the actual amendment itself. He further opined that the meeting notice was proper. Mr. Klug indicated that it would be preferable for the owners to have more time to consider the amendment, but the issue was being driven by the developer's closings. Mr. O'Brien said that the contract had already been extended once and the buyer's lender would not extend it again. Mr. Klug stated that any owner could move to have the meeting continued to a time, date, and place certain.

Mr. Mahlowitz moved to continue the meeting until April 11 at 5:00 PM. In the same location and Ms. Silcox seconded. This motion failed however once a vote was taken. There was a discussion of whether the developer's proxies could be voted on the issue, but Mr. Klug pointed out that it was likely the motion would fail by a vote of 11 against 7 without considering the developer's proxies.

Mr. Mahlowitz's and his attorney objected to the proposed parking and claimed the area marked CE Bikes between the two B-10 parking spaces belonged to Mr. Mahlowitz. Mr. Hughey noted that Mr. Mahlowitz had never provided any documentation in support of that claim despite being asked many times and the area had been marked CE Bikes on every version of the plat.

Mr. Hughey offered to allow 30 minutes or an hour for the owners to read the amendment before holding a vote, but none of the owners wanted to do that.

There was further discussion about the Fifth Amendment. Finally, Mr. called for a motion to adopt the Fifth Amendment, which he then made and Mr. Porter seconded.

Mr. Mahlowitz's attorney objected that the Developer could not vote on the issue because the amendment created or increased special Declarant rights. Mr. Klug reviewed the statute and then opined that the Fifth Amendment did not create or increase special declarant rights because the only rights it preserved were already

contained in the Declaration. Mr. Mahlowitz's attorney said he disagreed with that interpretation of the law.

Mr. Klug reviewed Section 5 of the Fifth Amendment (which preserved special declarant rights) and the Declaration and read corresponding provisions of one and then the other to show that they were substantially the same. Mr. Klug informed Mr. Hughey that he could amend his motion to indicate that the Fifth Amendment would terminate all special declarant rights except those listed that would be preserved from the Declaration. Mr. Hughey made the motion that was seconded by Mr. Porter. The motion carried by a vote of 15-5 with one owner not participating.

There being no further business to discuss, the meeting was adjourned at approximately 6:00 PM.

Respectfully submitted,