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IGNORANCE IS NOT BLISS: WHY ARE COMMUNITY ASSOCIATION VOLUNTEER BOARD MEMBERS SUED?

By JOEL W. MESKIN, ESQ., CIRMS, CCAL FELLOW, MLIS

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Volunteer board members are often baffled and incredulous when someone challenges or complains about a decision that they have made, a rule that they have changed, or a special assessment that they have issued. I have touched, in one way or another, between five and six thousand claims and/or lawsuits against community associations and their volunteer board members. As I travel around the country, people ask me what I have been able to distill from all these claims. Without skipping a beat, I respond by telling them that "ignorance is not bliss!"

The "ignorance" I refer to is twofold. First, unit owners do not read the governing documents they have agreed to comply with prior to purchasing their home in a common interest association. In most cases, these unit owners probably do not read the governing documents until they have an issue with the board, the association or their neighbors.

Practice Pointer 1: Read the governing documents before you buy; ignorance of the governing documents is not a defense and an association member is presumed to have read the documents he or she has agreed to when they purchased their unit.

Second, the volunteer board members turn their positions into something beyond their purpose and their authority. This is further exacerbated by the fact that these volunteer board members are often the same unit owners that have not read the governing documents.

Practice Pointer 2: Each association member who wants to join the board should be required to confirm that he or she has read the governing documents before agreeing to become a board member.

What comes to mind each time this twofold dilemma arises is a pearl of wisdom my father used to share with me. He would say: "Why do people never have time to do things right in the first place, but always have time to fix them?"

Practice Pointer 3: Each board should have an annual board training, even for those members who have been on the board. The value of an annual training far outweighs the cost, if any, as well as the effort. This will lead to monetary and time savings when the board knows how to operate properly. The National CAI office has great resources as

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SAVE the DATE!
Trade Show
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OCTOBER 13, 2018
9:00 - 3:00PM
Hilton Long Island, Melville

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The CAI Long Island Newsletter is published quarterly by the Long Island Chapter of Community Associations Institute (CAI-LI) and is distributed to its members and is available on the Chapter website (cai-li.org). This publication provides members of CAI with letters from the Chapter President, informative articles written by industry professionals and service providers, updates on current legislation, and business advertising. The Chapter strives to provide our members with timely information and tools needed to keep them informed on community association issues.

The Newsletter Committee is always looking for new articles to publish. Articles should be educational and non-promotional in nature and have a suggested word count between 500 and 1,500 words. CAI-LI retains the right to edit articles to conform to content and space requirements. If you are interested in submitting an article for possible inclusion, please contact Christine M. Majid, Chapter Executive Director, at info@cai-li.org. Are you interested in advertising with us? Let us know!

Quarterly Deadlines

Winter Issue - January 31

Summer Issue - July 31

Spring Issue - April 30

Autumn Issue - October 31

EXTEND THE LIFESPAN OF YOUR COMMUNITY POND WHILE BUFFERING LONG-TERM EXPENSES

By KYLE FINERFROCK, ENVIRONMENTAL SCIENTIST - SOLITUDE LAKE MANAGEMENT



When communities begin anticipating and planning for possible future expenses, they will likely discover that the removal of accumulated sediment in stormwater retention ponds has a very large price tag. In fact, dredging is often one of the largest expenses a community will ever face. Luckily, there are things that can be done to help reduce costs and prolong the time span

between dredging. By better understanding the purpose of a stormwater pond and employing proper management techniques, a community can rest assured that the best decisions are made for the pond, the surrounding environment and the community's budget.

While a stormwater pond can be a beautiful asset to a community, it also has specific engineered and environmental purposes. First, it is used to slow down and dissipate the energy of the flowing water from rainstorms, which picks up speed and energy as it passes over a community's impervious surfaces such as roofs, streets, driveways and sidewalks. If the water doesn't get slowed down by a stormwater pond, it can create erosion problems or flooding downstream. Second, a stormwater pond is used to collect pollutants and sediments in order to prevent them from being deposited elsewhere. Sediment, grass clippings, leaves, fertilizer, pollutants and other organic matter will all be collected and accumulate in the pond over time. At some point in a stormwater pond's lifetime, the sediment accumulation will become too great and dredging will be required to remove several feet of sediment and restore the lifespan of the pond.

It can take years for a community to properly budget for a much-needed dredging project. As a result, I'm frequently asked to identify the exact timeframe dredging should take place, but I often struggle to give a short answer. Each community is different and each has its own unique goals and variables to consider. In some cases, the decision to dredge comes in an attempt to revive the aesthetics of a stormwater pond. Other times, dredging occurs as a result of



Proactive lake and pond management techniques, including aeration, can help prolong the lifespan of a community stormwater pond and improve the beauty of the surrounding ecosystem.

municipal enforcement. In general, dredging is recommended every 20 years to help ensure a stormwater pond is functioning properly. But with proper proactive pond management techniques, it is possible to prolong the need for dredging to every 30 years or more, providing significantly more time to budget and prepare for the expense.

There are several things a community can do to take control of its stormwater pond and budget, starting with data collection. Inspecting and collecting data about a pond is the best way to anticipate potential problems that can shorten the lifespan of the waterbody. A **stormwater inspection** will look at the engineered structures within the watershed to check for failures or damages that can cause erosion and accelerated sedimentation in a pond. Problems found during an inspection

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well as on demand video training courses. There is no excuse for not taking the time to prepare for a board position.

I tell boards and managers that, in the normal course, a board meeting should not take more than an hour. Yes, certain issues create exceptions, but that should in fact be an exception. In response, I often hear "yah, right." The key is for board members to understand their obligation and responsibility and treat the management of the association as the business it is.

The board is a body comprised of individuals that is charged to manage the association pursuant to the by-laws and relevant statutes. The board is a body that makes decisions and policies and delegates to the individual who will carry out the delegated matter. When a board member exits the properly noticed board meeting, they have NO authority to act in their capacity as a board member except pursuant to the delegated authority expressly given them by the board during a properly noticed board meeting, or proper consent to act without a meeting. Remember, each board member has one vote whether he or she is also an officer of the association such as the president, vice president or other.

Most tasks delegated by the board are given to the community association manager, if there is one, or employees. Sometimes, there is no CAM or employee, and the action is delegated to a volunteer board member or other association member

volunteer. In that case, the board member is carrying out the delegated action as a "volunteer" and not in his or her capacity as a board member.

Practice Pointer 4: Remember, a board member is not an employee, and apathy is not a defense. If the board member says I have to do it, because no one else will. However, if no one else will, there is a deeper issue that must be addressed, because again the "volunteer board member" or "other volunteer" is not an employee. If no one will step up, the board should hire a management company or an employee. If the board is not willing to do that, then the board should go to court and seek a receiver which will end up costing the board and the association the money they did not otherwise want to spend. At the end of the day, the board is charged with protecting the association's assets and must take the steps to do so.

In addition to understanding the role of a board member, the following are additional practice pointers that will help simplify and shorten a board meeting and mitigate claims.

The board members must open, read and prepare questions, if any, on the issues to be addressed on the agenda. The single biggest waste of time in board meetings are board members who come unprepared and spend time getting up to speed

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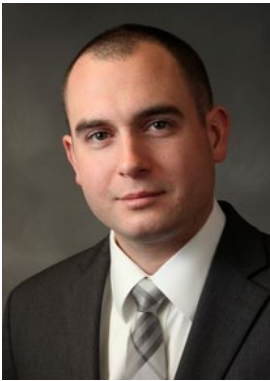


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PRESIDENT'S MESSAGE

By CHRISTOPHER BYRNES, ESQ. - SCHRODER & STROM, LLP
AND CAI -LI CHAPTER PRESIDENT FOR 2018



Welcome to spring, everyone! As we enter the second quarter of 2018, our Chapter has some fun and exciting events planned. Our **Seventh Annual Golf Outing is scheduled for June 6th, 2018**. Once again, we will be playing the **Sandpiper Nine at the Spring Lake Golf Course in Middle Island**. Dinner and raffles will follow – everyone leaves a winner!

We are hosting our **annual summer social at Captain Bill's in Bay Shore on July 17**. We had record turnout last year, and expect the same once again. This is the blowout party of the summer- you do not want to miss this event!

Finally, I am pleased to announce that **CAI - Long Island has been recognized by CAI National as having the highest retention rate (a staggering 94%) out of all mid-size chapters nation-wide**. This is a testament to the hard work of our Membership Committee (chaired by Suzanne Borelli of Belfor Restoration) and our Chapter Executive Director, Christine Majid. **We owe our members special thanks for their continued participation.**

I hope everybody's spring is warm and productive, and I look forward to seeing you all at our upcoming events!

Kind Regards,

Chris

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Long Island Chapter Calendar of Events

*Thursday, May 17th - 6:00 p.m.
Chapter Membership Meeting with
"Speed Networking Workshop for
Community Association Board Members"
Fairfield at St. James HOA Clubhouse
1 Fairfield Drive, St. James*

*Wednesday, June 6th - 3:00 Shot-gun Start
CAILI 7th Annual Golf Outing
Spring Lake Golf Club, Middle Island
Dinner to follow at 5:15pm*

*Tuesday, July 17th - 6:00 to 8:00 p.m.
Summertime Celebration Social
Captain Bill's Restaurant
122 Ocean Avenue, Bay Shore*

*Thursday in September - 6:00 p.m.
Chapter Membership Meeting with
"Difficult Home Owners"
Educational Seminar*

*Saturday, October 13th - 9:00 a.m. to 3:00 p.m.
12th Annual Trade Show
Hilton Long Island, Melville
Free Admission for Community Board Members*

*Saturday, November 3rd - 8:00 a.m. to 2:00 p.m.
Board Leadership Development Workshop
for Community Association Board Members
Belfor Property Restoration
60 Raynor Avenue, Ronkonkoma*

*Thursday in December - 6:00 to 8:00 p.m.
Annual Holiday Dinner
More information to be announced*

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during the meeting.

Adopt a form of **Robert's Rules of Order** and stick to them. Even if the board members are close friends and the use of rules seems awkward, the day a rogue unit owner or someone not playing with a full deck shows up, having in place a consistent set of rules will be worth its weight in gold. If rules are first used with respect to a specific individual, the door to discriminatory application of rules is opened. **These rules should include a limited time for speaking by unit owners at a board meeting.**

Have a **prepared agenda and stick to the agenda.** If there are items that are not on the agenda, they should be tabled for another meeting.

Do not tolerate a lack of civility or an individual who insists on disrupting a meeting. Do not engage that individual and adjourn the meeting to discuss further action with counsel. Counsel may need to seek a court order. A court may require a security guard and put the cost on the disrupter.

Just because someone asks a question does not mean an answer must be given. There may be questions

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out of order or otherwise inappropriate. This is why an established set of rules are warranted.

Whenever possible, even if an open meeting is not required by the governing documents or statute, have an open meeting to avoid any appearance of secrecy or conspiracy.

Prepare a short video regarding "life in our community." This can identify the governing documents, identify how the association is managed and who is eligible for the board and rules that may be unique to this association or to life in a common interest development.

Understanding the board's duties and obligations and making sure unit owners receive, read and ask questions about governing documents is the best risk management tool the association can use. ■

Comments or questions? Feel free to reach Joel W. Meskin, Esq., Managing Director Community Association Products at McGowan Program Administrators via email at jmeskin@mcgowanins.com.

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might include a cracked inlet pipe, woody vegetation along the dam embankment or a clog in the outlet structure. Most failures found within stormwater ponds can be identified early when problems are manageable; this helps to keep repair costs to a minimum and helps extend the working life of the waterbody.

In addition to a stormwater pond inspection, which helps identify problems outside of a pond, a bathymetric study will provide a **detailed internal map of the pond**. During the bathymetry process, GPS lake mapping technology is used to plot the surface of a lake or pond. Each specific GPS point is associated with a particular water depth. After thousands of surface points with corresponding depth information are collected, the data is compiled to create a three-dimensional map of the pond bottom. This map can be used to identify the total water volume and the amount of accumulated sediment, and can help pinpoint problem areas where accumulated sediment has been deposited.

Mapping a stormwater pond every few years allows a community to track the sedimentation rate and more effectively determines when dredging may eventually need to happen. Oftentimes, bathymetry data can be compared to “as-built” stormwater plans to see how the pond has changed since construction. Sometimes the sedimentation problem is due to organic material, including leaf litter or excessive aquatic plant



Hydro-raking can be a less invasive and more cost efficient alternate to traditional dredging, which is often times one of the most expensive projects a community will ever face.

growth that has accumulated material in the pond. These areas can be physically dug out from the shore and localized to where the problem occurred.

To help prolong the need for dredging, **hydro-raking may be an effective solution for removing organic material**. A hydro-rake is a floating machine that can rake out organic material down to depths of 8-12 feet. Removing built

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up organic material can help reduce nutrient sources and add depth to a pond, which can help create an environment less likely to grow unwanted algae and aquatic weeds. While a full-scale dredging operation will require draining a stormwater pond of all the water, disturbing ecology of the organisms living in and around the pond, **hydro-raking will give a community the chance to remove material with minimal disturbance to the ecosystem and prolong the time before dredging becomes a necessity.**

From the moment a stormwater pond is created it begins to die, but a highly trained lake and pond professional can help identify proactive and individualized management strategies to reduce the waterbody's rate of aging, including nutrient remediation, aeration, buffer management, water quality monitoring and more. Just as a car requires regular maintenance to ensure it operates effectively, **proactive maintenance will go a long way in ensuring a stormwater pond performs as intended.** By understanding the functions of a stormwater pond and using data to fix problems when they are small, a community can cut costs, utilize the full potential of its stormwater pond and spend more time budgeting for the future. ■

Kyle Finerfrock is an experienced Environmental Scientist with SOLitude Lake Management. To learn more about this topic, please visit www.solitudelakemanagement.com/knowledge.



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TRADE SHOW 2018 Preview

It seems as though it was just yesterday that we were leaving the Hilton Hotel in Melville after wrapping up the 2017 annual trade show. Well here we are, spring is about to get into full swing (we all hope), and we are just over 5 months from the 2018 show. As co-chairs of this year's event, we are very excited about the upcoming 12th Annual Trade Show, and want to share some information and details.

In order to continually bring all of you a vibrant and information-packed event, with over 60 exhibitors, the Trade Show Committee has been actively at work, since last November. We are very proud of the committee's achievements thus far, and believe that the collective efforts of this group will help create the best trade show to-date. The committee consists of individuals who are business members and community volunteers, as well as CAI-LI Board members. A cross-section of the Chapter's membership helps bring fresh ideas and energy to the event. In this regard, we always welcome suggestions from the membership, so feel free to share them with us (contact information is provided below).

We are holding the event at the **Hilton Hotel in Melville, NY, on October 13th from 9:00 am through 3:00 pm.** This year's event will feature 10 educational classes, which is an increase of 2 from last year.

The 10 seminars we are offering this year are:

- Ask the Experts**
- Ask the Attorneys**
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- Best Practices**
- Budgeting & Financial Issues**
- Committees in a Condo, Co-op or HOA**
- President/Vice President – Duties**
- Self-Managed Communities**
- Tell Me Something I Don't Know**
- The Future of Associations on Long Island**

Classes will feature panelists from various professions (e.g. banking, legal, accounting, management) and various trades-people, as well as community volunteers. Remember, as we've said in the past, **"Come with questions, and leave with answers."** We look forward to seeing you!

For additional information, visit our website Trade Show Page (<http://www.cai-li.org/annual-trade-show.html>). You may also contact our Executive Director, Christine M. Majid, at info@cai-li.org or call (631) 882-8683.

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WHEN TRENDS TREND IN YOUR FAVOR — CAPITALIZING ON COMMUNITY GROWTH AND GROWING VALUE IN YOUR COMMUNITY

By RALPH CERULLO, ADVANCED PAVEMENT GROUP



Community living is on the rise in the United States. Since their inception in the 1970's, community-governed models have steadily risen from 10,000 communities in 1970 to 342,000 at the end of 2016, according to the results of the National and State Statistical Review for 2016 conducted by the Community Associations Institute. With no indication for development of communities declining, it is the

perfect time for homeowners and community boards to take advantage of a growing market share that is highly attractive to service providers across every industry.

Smarter decision making, advanced planning techniques, and lifecycle driven commitments are the best way for communities to gain control of budgets, save for contingencies and manage all their needs successfully. This is not to suggest that attempting to commoditize the services needed to maintain your facility is the play. Rather, the advantage in this climate is in developing highly intelligent bidding models to ensure that assessments match needs and meet requirements before any meeting is held or vote executed. How can this be accomplished? Well, there are several tactics that should be applied to the 2018 agenda.

Define Goals to Manage Lifecycles

There is one major advantage in community models; most likely all of the units were built simultaneously. What does that mean? Well, most likely the utilities, grounds features and amenities are all similar in age, depending on the overall life of the community and how repairs and replacement have been phased over time. It is possible to control the long-term goals of budget items. Breaking down the lifecycle expectancies of all the major expenditures within the community will provide a baseline for planning initiatives. Once an inventory and assessment is completed, prioritizing short term and long term goals is possible.

Scope Projects to Manage Decisions

The major issue faced in any major project is not execution, but rather defining what the project is in the first place. Repair the road between point A and point B. This is not a scope of work. The result is three contractors, three definitions of repair and three bids that range from vague to detailed, with pricing that can't be averaged and compared. The ability to manage this decision is drastically reduced. The best way to manage scope is to define objectives, research solutions and consult a professional. It may make sense to invest in an engineer for larger projects to provide a written scope. Once a scope is defined, it should be presented to each bidder. Sticking to the scope will help to gain comparable pricing. Once a decision on a service provider is made, further recommendations and scope changes can be inserted. The important part of scope consistency in this scenario is managing the decision. Controlling the parameters of the decision will, on average, result in the most qualified service provider.

Qualify to Quantify Value

Communities are in a unique position to benefit from both residential and commercial providers. Although, on the surface, this would present itself as advantageous, in actuality this can cloud the bidding process. Capability levels and community needs are directly tied together. The setting is residential, the needs are, without question, commercial. The reason community living makes sense is because it provides greater

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comforts and security due to the fact that it's fiscally managed like a business. This is not to insinuate that all service providers that are residential models are unfit to service communities. The purpose is to highlight that the scale of the community should hold relevance to the size of the service provider. Picking comparable providers of similar size and capability will ensure that bidding remains consistent with the project scope. This will serve any board well when it is time to make a decision.

Ignore the Forecast, Rain is Coming

Utilize potential providers to help profile possible outcomes of every project or maintenance item. This will help to identify what unexpected needs will arise. Insisting on "no surprises" is a mistake, mainly because it is an impossibility. Don't ever get comfortable. Whatever can go wrong will go wrong. Once control of major initiatives is achieved, contingency budgeting should be top of mind. Setting aside 10% of the total budget for contingency spending is just smart business. One sure way to lose control of spending and see priority items get pushed aside is to have an unforeseen event. Two things needed to make informed decisions are time and access to knowledge. When an emergency occurs, time and information will come with a price tag. "Buying time" may just be the one thing a contingency budget will be needed for. The more consultation that occurs

between the provider and client prior to the project start, the less time and information will be needed when a contingency item presents itself. Budgeting for these scenarios early will eliminate shock and allow managers to think clearly and solve problems.

Contract and Contract Again

Installation, repair and maintenance are all intimately interconnected. The biggest mistake when contracting a service provider for a major installation or rehab is to not simultaneously contract them for any future repairs and general maintenance items. Maintenance contracts are not the elephant in the room when discussing major initiatives, they are the insurance policy. Warrantees are great, but repair and maintenance programs speak to the lifecycle goals. Often, warrantees can even be extended if a maintenance contract is also in place. Sharing long term goals upfront will help to develop what type of maintenance plan makes sense. The key here is to protect the investment, get the provider invested in the protection and know what tomorrow looks like in real numbers.

Community living is shaping the future of real estate and redefining the value proposition for homeownership. Board and community members have the opportunity to standardize the relationship between community and service provider. The result of this relationship is higher quality services, lower incidences of indecision and most importantly, planning that mirrors the management of the immediate needs inherent for a commercial property with the extended lifecycle expectations of a residence. ■

If you have any questions, feel free to call Ralph Cerullo of Advanced Pavement Group at 516-220-9809 or reach him via email at r.cerullo@advancedpavementgroup.com.

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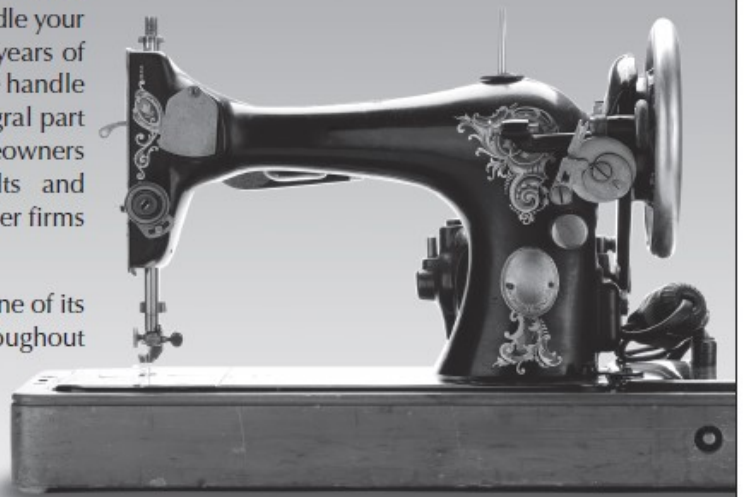
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