

Annual Meeting

ESTATE CHOCOLATE HOLE LANDOWNERS ASSOCIATION, INC (ECHLA)

*March 31, 2010
St. John School, Giff Hill*

The Annual Meeting was called to order by ECHLA President Larry Boxerman at 7:15 PM. Paula Lambert, Treasurer, calculated that a quorum was established at the beginning of the meeting: 108 proxies & members, or 25 more than the required 40% of 208 eligible parcels' proxies (83), were available to cast votes.

Packets of information were available for pick-up at the sign-in desk. Available were:

- 1.) Agenda
- 2.) P&L for Fiscal Year 3/1/09-2/28/10
- 3.) Summary of Legal Fees for Fiscal Year Feb (sic) 2009-Feb 2010 by Category
- 4.) Legal Fees Detailed by Category, Action & Cost
- 5.) P&L Previous Year Comparison
- 6.) Two Budget Forecasts: one assuming no increase in Dues/fees and a second forecast assuming a Proposed Dues Increase and one-time Legal Fees Assessment
- 7.) Slate of Officers for 2010-2011 Fiscal Year

The President called for approval of 2009's Annual Meeting minutes, which were distributed to all members, with additional materials, in June, 2009, and which are also posted on ECHLA's website (www.echla.org). A motion was made to waive the reading of the minutes. After discussion, and an explanation that the Treasurer's Report was approved at last March's annual meeting and was not the subject of the minutes' approval, the 2009 Annual Meeting minutes were approved by acclamation.

PRESIDENT'S REPORT

Larry Boxerman opened the meeting with a welcome to all and a summary of the Agenda (Attachment 1), noting that the major events and efforts of the Board over the past year would be fully covered in the evening's agenda. He highlighted the Pond Bay Club as a two part project--an on-going monitoring effort and then a legal intervention task associated with First American's being denied funds by their lender. He identified the Covenants and Restrictions (C&R) and C&R rewrite projects, the Encroachments project, and ECHLA's common parcels' revaluation at a very high level, as sources of increased spending year after year. He cited Web Development as a project not undertaken in the past year due to time and financial constraints, and noted Abigail Schnell-O'Connell has volunteered to lead that effort in 2010-2011.

TREASURER'S REPORT

Paula Lambert, Treasurer, explained Attachment 2, summarizing the cash flow of the past year, highlighting the total revenue of \$109,366.90 and expenditures of \$193,082.55, which created a negative cash flow of \$83,715.65. She emphasized that the Board is not spending funds it does not have, as the 2009 fiscal year began with a cash balance of well over \$100,000. The February 28, 2010 Balance Sheet shows \$57,003.87 in Cash and \$84,854.33 in Accounts Receivables, for Total Assets of \$121,858.20.

The subject of **delinquent accounts** was moved up to the Treasurer's Report timeslot. Paula explained ECHLA's process of notifying property holders three times of their delinquencies; making them aware of filing fee charges and the 18% interest charge for long overdue financial obligations; the filing of liens at two years' delinquency; Followed by small claims court action. Paula also mentioned ECHLA's right to foreclose on properties in arrears (a right that ECHLA has not exercised to date). She informed the membership that ECHLA files liens on a property to secure our interest in case of a sale or re-financing. She also strongly expressed the ECHLA Board's willingness to work out payment plans for those unable to pay in full, as well as offering a 30% break on the interest due. However, we are in a deficit position because some owners don't pay in a timely fashion. Paula noted that two thirds of those in arrears are only one year in arrears and that she expected most to pay at the next billing. She also noted that the web makes it easier to locate people who have not notified us of any change of address. Paula's estimates of the likelihood of collecting on existing delinquent accounts were as follows: 12 in ECHLA East (out of 20 currently delinquent), 12 (of 18) in North, and 9 (of 21, minus 3 Pond Bay Club lots) in West. There is one non-responsive household account in West with \$12,000 due and who is unlikely to pay.

A member asked what the **Insurance line** was. Paula explained the Directors' and Officers' insurance and also the Liability policy which protects ECHLA's liability for accidents on its roads.

A question was raised regarding the actual cash available for road work vs. the balance in the accounts. Questions arose from members regarding the **separation of Road funds from Operating funds**. Paula explained the established practice of 'loans' to the Road funds from the Operating account, in order to let road committees do substantial projects with the expectation of paying back these loans from future road income, *when* the operating account has a surplus. In the current environment, the legal fees for, among other things, enforcing Covenants and Restrictions violations and collecting delinquent accounts required that the Operating Account borrow from the Road Funds. Paula noted that Road Fund totals were East: \$31,131, West: \$39,732; North \$14,836, and that they need to be replenished.

The high expenditure for the budget line item **Legal Fees** was discussed. It was remembered that Bob Wolfe, an on-island lawyer during ECHLA's formation, had provided substantial legal guidance *gratis*, but that times have changed with respect to both the character and number of legal actions, and that it was important to have on-island regular

counsel. Larry Boxerman directed members' attention to Attachment 3 (Legal Fees Explanations). Larry and Board Member Kevyn Salsburg cited ECHLA's mandate from the membership over the past two years finally to do something about the encroachments by enforcing ECHLA's Covenants and Restrictions. They also noted that the increase in legal fees was expected, but that the amount of the increase could obviously not be forecasted when this project began. Paula noted that \$15,000 of 'loans' to the Road Committees of several years ago would be recouped to help replenish the General Operating Account. Still, there is a need for the proposed one-time legal fee assessment to cover legal costs.

A proxy-holder made a motion for a **resolution to establish a legal advisory committee to the Board**. Discussion was called for. There was extensive discussion regarding (1) the role of the Board (whose mandate is to enforce the four core ruling documents) and the need for additional Board members with capability; (2) the need for a list of such advisors rather than another committee; (3) the role of such a committee, the possible modification of the By-laws to facilitate its formation, and its formation so as to serve the needs of ECHLA's Board; (4) the need for VI qualifications and knowledge on any such legal committee; (5) the insistence that committee members would need to recuse themselves so as to have no vested interest in any proceedings, nor any real or perceived conflict of interest in any similar proceedings; (6) the expressed reluctance of the Board to form another committee to undertake activities that duplicate the Board's mandate to enforce the Covenants and Restrictions.

Larry Boxerman interjected that the membership drove the Board's actions over the past two years to undertake the encroachments survey and initiate enforcement and legal actions regarding the C&Rs, that the legal actions were not frivolous or independent actions of the Board. He again called attention to the Board's accounting of all legal expenditures (see Attachment 3 which states the year's legal expenditures, citing the budget line item as no mystery). Board member Kevyn Salsburg noted that the legal fees for the next year are also stated in the Attachments, and that there will be recoupment of some legal fees at the conclusion of the legal actions.

Attorney Nancy D'Anna brought it to the attention of the membership that the most verbal proponents of the motion to establish a legal advisory committee are defendants in one of ECHLA's legal actions and their property manager. Several members and Nancy also recalled that lawyers who live in Chocolate Hole have themselves been part of the non-compliance problem.

A resolution was again proposed and (not unanimously) passed by show of hands: that the Board of Directors form a legal advisory committee of on- and off-island residents with legal experience, except that no-one serving on this committee will participate in any issue in which they are a party, nor where they have a conflict of interest.

There was a motion and seconded, that the Treasurer's Report be accepted. It was unanimously approved. (There was a member request later in the meeting that Paula

prepare quarterly progress reports on the 2010-11 expenditures, and she agreed to furnish them.)

ON-GOING BUSINESS AND OTHER ITEMS

Pond Bay Club: Andy Arnold, VP, reviewed ECHLA's October 2002 Agreement with (First American) Pond Bay Club (PBC) in which 3 lots were granted a variance by ECHLA so that they could be used for Parking; in return the PBC would maintain the Chocolate Hole East Road, reroute/legalize beach access, complete a sidewalk to the beach, remove the stranded boats on the beach, and provide parking, as part of beach access rerouting, for Chocolate Hole visitors. **The construction of sidewalks along ECHLA's road has been permitted to Pond Bay Club as a valid variance described in the American Disabilities Act.** ECHLA's role during construction was to monitor their performance. In this regard, water quality was noted in June 2009 as deteriorated.

At the time that First American was denied further payments from their lender, Pond Bay had built the parking pad, had done \$300,000 of damage to the roads, the construction bond was forfeit, and \$60 million of work was yet to be done. Nancy D'Anna explained that we have filed a lawsuit, along with all the other lien holders (valued at \$5 Million) to recover our estimated expenses to complete the work they promised us. As our agreement with Pond Bay was filed in 2002, it puts us first in line among lienholders. The legal argument is that ECHLA waived its C&Rs for the Pond Bay parcels, and that the obligations of Pond Bay and all the considerations granted Pond Bay or its successors, conveys with the ownership of the land. If Pond Bay re-starts, ECHLA will insist that its obligations to ECHLA be completed before any other work is begun; if the property is bought, the buyer acquires the obligations. Nancy's position is that we are first in line ahead of the Bank, whose loan was granted in (probably) 2006.

At a question from a member, Nancy clarified that the Wharton Smith bond was to cover "goods and services" and that ECHLA's agreement does not fall under that umbrella. Additionally, as the bond premium was paid not upfront in full but in quarters, the full value of the bond was not available to cover obligations, and the available bond proceeds were used to cover only Wharton Smith's costs.

A member asked about a previous settlement with Allan and Williams. Nancy recalled that the ECHLA Board at that time chose to settle out of court with the Finnish SKOP bank to settle claims. Tennis rights by ECHLA on the Resort remain in effect.

The next step with regard to Pond Bay is to file a motion for summary judgment, which is in progress and includes a review of all of the agreements and documents that support our legal position. Nancy D'Anna clarified that as we have an Agreement, we could not do nothing, and clearly retain our rights. In response to a member's voiced concern about continuing legal costs (given the existing fees and the multi-year history of the Pond Bay effort). Nancy stated that she has estimated \$10,000 will be needed to settle our rights, as

a judge has to look solely at and interpret the legal issues, which have already been presented.

Andy noted that the East Road Committee would have to make repairs to the Chocolate Hole East Rd. As it was in very bad condition. He asked for help from North and West to do so.

Enforcement of Covenants and Restrictions Revisited: A member interjected in the proceedings. She expressed her high level of frustration that we had earlier spent over an hour and a half discussing our high legal fees, expenditures which had been made necessary by a litigant and his/her property manager, both of whom were present at the meeting, and who were responsible for a large portion of those legal fees involving encroachments and violations against the C&R's that they should have abided by in the first place.

Encroachments: Kevyn Salsburg, North Director, re-capped the Board's progress to implement the membership's mandate to enforce C&Rs. She reported that in 2007-8 a complete inventory of all encroachments was created; that the vast majority were minor and of little bother to anyone; that with safety as the Board's primary concern, each area identified those of their encroachment problems requiring immediate action. (In this regard, she referred the membership to Attachment 5: C&R Action Summary.) All of these higher priority problems required taking legal action, with the exception one party who did not reply, ending in a mediated agreement in which ECHLA prevailed. Most owners complied with the mediated settlement, but there will be continued legal fees as one homeowner refuses to honor the signed agreement thus resulting in additional legal expenses.

On January, 2010, the Board recorded a license against all homeowners' deeds, noting that any residual outstanding encroachments on road parcels became part of their deed, and that although ECHLA was choosing not to enforce its C&Rs at this time, that ECHLA retained the right to do so at any future time and enforce removal of the encroachment. The legal fees attached to Encroachments are dependent on enforcement requirements. However, the major portion of the project is completed. Kevyn Salsburg suggested that a proposed change to the C&Rs might be that ECHLA be entitled to recover all legal fees as part of any successful legal action.

A series of discussions ensued about particular properties where ECHLA achieved success in improving line of sight and improved traffic flow. Questions were raised about particular properties, asking about equitable enforcement by the Board. A member raised a question about long-standing violations.

ECHLA's attorney Nancy D'Anna noted that existing encroachments that were not moved against by long-ago Boards, had little chance of being enforced, as the Board has essentially 'slept on its rights, i.e. 'stood by' while the encroachment was being built. By not taking timely legal action, and by continuing to engage in documented communications concerning an **illegally built wall on Croton Road**, ECHLA's Board created a

situation in which ECHLA had most likely lost its rights, regardless of how much money it has now.

A member asked for clarification as to how the License protects ECHLA from other parcel-holders' establishing the same kind of situation. Nancy said that the license stops any claim for adverse possession, retaining ECHLA's rights.

A member asked "Were the wall to be destroyed and the owner forced to sue to recover damages for their wall on ECHLA's property, what kind of legal situation would that be?" Nancy restated her belief that any action by the Board should have been taken years ago. Larry asked if that member would like to fund the legal fees involved. Nancy reported that under the VI Code, the winning party has the right to collect legal fees; however, on a case by case basis ECHLA has chosen not to do it, because it was more important to resolve the problem (in mediation) than to argue the legal fees.

A member suggested involving the Fire Department and Police Department directly to assess access and bring further VI involvement.

Nancy noted that one proposal for the C&R rewrite is to enable the Board to enact a one-time assessment against a specific lot owner to recover those legal costs involved in enforcing its own C&Rs.

Rewriting of the Covenants and Restrictions (C&R): Lisa Durgin, West Director, reported that the C&Rs need substantial clarifying/updating, a fact that became clear as the Board went through the last couple of years of the enforcement process. Items under consideration for rewrite include a definitions section (e.g. what is a business? How existing villa rentals be included? Are home offices included?); possibly including the courtesy code so that it is more clearly enforceable; and looking at the scope of ECHLA's C&Rs as compared with others which Nancy has been involved with. Lisa viewed this as a longer-term project and emphasized that this would not be a total rewrite of the 'by-laws', but rather a clarification of the existing C&Rs attached to the deeds.

Nancy stated that about 75% of the legal work of creating a draft of the updated C&R's is done; the effort in this program year will be to bring about approval (per the By-Laws) of the new wording by the membership, and then legally to file it. Larry noted that when the proposal is ready, Nancy will release a FROM: TO mapping document that will allow members to read the old vs. the amended C&Rs, and Lisa expects that the draft will be made available on the website for member feedback and commentary. It was again emphasized that the goal is to make ECHLA's core documents more enforceable, not invent new rules. It will be recorded, as an addendum, against each ECHLA deed.

Property Taxes: Abby Schnell-O'Connell, West Director, reported that an unplanned legal expense was incurred to appeal the property taxes assessed on ECHLA's common parcels; they were assessed at an over 600% increase in value. Two parcels are unable to be built upon (as they are too small), and two are beach and parking parcels that are also held in common as non-residential areas. The roadways are also parcels that were taxed.

At this time, the VI assessor's office has asked for additional information to document the status of these parcels and it has been provided.

Website Update: Abby Schnell-O'Connell has also volunteered to work with the existing webmaster to create a new site with improved membership functionality. Paula pleaded that the membership inform her of any changes in their e-mail addresses.

Road Committees: The membership in each area met to discuss the fees and work to be done in each area during the 2010-2011 fiscal year. North (Bruce Munro) reported that they will maintain the dues at \$460 per parcel per year for at least one more year. West (Andy Arnold) reported that they will assess \$500 per parcel per year and begin to put in paving and swales. East (Diana Ripley) reported an agreement to assess \$300 per year.

It was mentioned at the North Road Committee meetings, that the \$2,000 expense for temporarily shoring up the area around the dumpsters to prevent an accidental cave-in would be temporarily borne by North, and that the across-the-road rebuild of the drain would be borne by West. It was also noted that when the entire Dumpster project cost is known, the Board will be approaching all additional St. John Landowner Associations, whose landholders presumably use those dumpsters, to participate in the funding of the project. North expects to be fully reimbursed for the temporary repair.

NEW BUSINESS

Larry Boxerman, President, noted that the membership dues have not been changed since 1986, and that a 50% perpetual increase is proposed; he also noted a proposed one-time legal assessment fee to make the organization (and the road funds) whole in 2010. Paula reviewed Attachment 4, and described the two Board proposals' impact on next year's budget: the assessment of a **one-time Legal Fee of \$125 per parcel** (to be used specifically to pay legal fees already incurred and replenish the Road Committee sub-accounts) and a **50% increase in dues** (originally set in 1986) to \$120 per improved parcel and \$60 per unimproved parcel per year; both would make ECHLA able to balance its books and conduct its regular business next year.

Paula noted that the dues increase alone would yield only \$9,000 in additional income. There was discussion affirming that the Board, with ECHLA membership approval, had the right to assess a fee. Upon recommendation by the membership, the proposals of the legal fee assessment and the dues increase were voted on separately. A count of proxies held by each person voting on the floor was taken. **Each proposed increase was voted on, and both proposals passed;** the one-time legal fees assessment will appear as a separate item on the next bill issued.

ELECTION OF 2010-11 OFFICERS AND DIRECTORS

The Board's slate of officers (Attachment 6) was reviewed. There was discussion concerning the fact that two positions remained unfilled: Secretary and an East Area Director. The Board invited any interested candidates to volunteer at any time, and that the Board can appoint such during the year, per the By-Laws. **A motion was made to accept the Slate; the motion was seconded, voted on, and carried.**

There was no additional new business to present. A motion was made and seconded to adjourn. The meeting was adjourned at 10:19 pm.

Respectfully submitted,

RS: Temporary secretary: Final version: April 28, 2010.