

BEFORE THE COMMISSION FOR COMMON-INTEREST  
COMMUNITIES AND CONDOMINIUM HOTELS  
STATE OF NEVADA

JOSEPH (J.D.) DECKER, Administrator,  
REAL ESTATE DIVISION, DEPARTMENT  
OF BUSINESS & INDUSTRY,  
STATE OF NEVADA,

Case Nos. 2015-3615; 2015-2155;  
2015-3100; 2015-2207

Petitioner,

FILED

vs.

JUL 13 2016

ANTHEM HIGHLANDS COMMUNITY  
ASSOCIATION; ROBERT STERN;  
CHARLES HERNANDEZ; and RONNIE  
YOUNG,

NEVADA COMMISSION OF  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

Respondents.

OPPOSITION TO MOTION TO RECONSIDER FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER

The Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division"), by and through its counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney General, hereby files its Opposition to Respondents' Motion to Reconsider Findings of Fact, Conclusions of Law and Order pursuant to NAC 116.560(3). This opposition is made and based on the following Memorandum of Point and Authorities as well as any and all pleadings on file herein and any oral argument that may be heard at the time of the hearing of this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The motion to reconsider – filed on behalf of Respondents, Anthem Highlands Community Association and Charles Hernandez – challenges certain provisions of the Commission's order. The motion was filed with the Commission on July 1, 2016, but was not served on the Division's legal counsel as required by NAC 116.617. The motion challenges the Commission's finding that Hernandez violated the law "knowingly and willfully." Absent



1 determined by a special election, payment of the costs for the hearing in the amount of  
2 \$4,023 to be paid by Hernandez in 90 days, and for all board members to take the CAI class  
3 for board members within one year. The only provision of the Commission's order that  
4 Hernandez and the Association are not challenging is the provision that board members take  
5 the CAI class.

### 6 III. LEGAL ARGUMENT

#### 7 A. THE MOTION FAILS TO MEET THE LEGAL STANDARD FOR FILING A MOTION TO RECONSIDER.

8 According to NAC 116.617(9):

9 A motion for rehearing or reconsideration may be based only on one of  
10 the following causes or grounds:

11 (a) Newly discovered or available evidence of a material nature  
12 which the moving party could not with reasonable diligence have discovered  
13 and produced at the original hearing before the Commission.

14 (b) Error in the hearing or in the decision that would be grounds for  
15 reversal of the decision.

16 (c) A change of substantive law.

17 (d) The need in the public interest for further consideration of the  
18 issues or evidence, or both.

19 As further detailed below, Respondents failed to provide an adequate basis for the  
20 motion based on NAC 116.617. The motion to reconsider is improper and should be denied.

#### 21 B. THE MOTION FAILED TO PROVIDE NEW EVIDENCE THAT IS MATERIAL TO THE HEARING.

22 NAC 116.617(9)(a) allows a motion to reconsider to be filed based on new evidence  
23 that is of a material nature only if Respondents "could not with reasonable diligence have  
24 discovered and produced" it at the original hearing. In the first paragraph of the motion, it  
25 promises to provide "new facts" that would have an impact on the Commission's decision.  
26 However, no such facts were identified in the motion. The only new fact referenced in the  
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1 motion is the email exchange between Mr. Decker and Commissioner Williams. The email  
2 was about whether a commission meeting would be scheduled to hear the motion for a  
3 prehearing conference. Respondents were not diligent in discovery of the evidence, and they  
4 misinterpret the email as ex parte communication.

5 Respondents admit that the email was produced to them by virtue of a subpoena to  
6 Administrator Decker served late on May 27<sup>th</sup>, the Friday before Memorial Day. There was  
7 approximately one week before the hearing after the Memorial Day holiday. The subpoena  
8 itself gave Mr. Decker 20 days to respond, so Respondents would have known when it was  
9 served that they may not be able to get the records they were requesting prior to the hearing.  
10 Respondents failed to exercise reasonable diligence to discover the evidence.

11 In addition, Respondents failed to provide a copy of the letter sent to Respondents'  
12 counsel from the Commission's counsel dated June 28, 2016 in which Commission counsel  
13 states that the email between Mr. Decker and Commissioner Williams was not ex parte  
14 communication as it did not pertain to facts or issues of law before the Commission.<sup>2</sup>  
15 Commissioner Williams had no obligation to disclose the email, abstain from voting or recuse  
16 himself from the hearing.

17 Respondents allege Mr. Decker was directing Commissioner Williams how to vote on  
18 the motion, but that is not true. In fact, Mr. Decker specifically states, the "[m]otion will be  
19 heard at the next regularly scheduled Commission meeting." The motion was in fact heard at  
20 the Commission's meeting. It was not decided by Mr. Decker. The Commission decided not  
21 to grant the motion by unanimous vote. The email exchange only shows that there was no  
22 interim meeting scheduled to decide the motion. This is not a new fact. Clearly there was no  
23 interim meeting scheduled, because the Commission heard the motion at its regular meeting.  
24 There was no request in the motion for an interim meeting of the Commission, and the  
25 respondent has no authority to dictate the Commission's schedule in that regard.

26 The Commission was not persuaded by Respondents' arguments in support of their  
27 motion. The Division argued that the motion was brought only to delay the hearing and not to

28 <sup>2</sup> See Ex. B, Letter dated June 28, 2016 from Sarah A. Bradley.

1 get clarity with regard to the complaint. This is evidenced by Respondents' failure to address  
2 their concerns with the Division prior to the hearing, and that they answered the complaint  
3 several weeks prior to the motion. The email exchange was not ex parte communication  
4 between Commissioner Williams and Mr. Decker, it is not material evidence or even relevant  
5 to the hearing, and it would not have changed the outcome of the hearing or the motion for a  
6 prehearing conference. The motion fails to identify any other new evidence to support its  
7 request for reconsideration. Respondents failed to satisfy NAC 116.617(9)(a) as the basis for  
8 their motion to reconsider.

9 **C. THERE WERE NO ERRORS IN THE HEARING OR IN THE DECISION THAT WOULD**  
10 **BE GROUNDS FOR REVERSAL.**

11 **1. THE COMMISSION'S FINDING OF A "KNOWING AND WILLFUL" VIOLATION**  
12 **OF NRS 116.3103 IS SUPPORTED BY THE FACTS AND THE LAW.**

13 NAC 116.617(9)(b) allows for the filing of a motion to reconsider if there was an "error  
14 in the hearing or in the decision that would be grounds for reversal of the decision." The  
15 motion spends about 5½ pages arguing the Commission could not find a knowing and willful  
16 violation of NRS 116 and that negligence was not shown because the elements of the civil  
17 tort of negligence were not satisfied. Respondents are wrong on the law and fail to appreciate  
18 the difference between the civil tort of negligence and negligent conduct in general.

19 NRS 116.785(5) requires a finding that a board member or officer knowingly and  
20 willfully committed the violation; otherwise, any fine or costs imposed against the board  
21 member or officer would have to be paid by the association. In other words, the Association  
22 would want this Commission to find a knowing and willful violation, so the Association would  
23 not be responsible for any fine or costs imposed. In addition, NRS 116.785(2) requires a  
24 finding that the board member or officer knowingly and willfully committed a violation to have  
25 them removed from their office or position.

26 The violation in this case concerns NRS 116.3103. NRS 116.3103 imposes a duty on  
27 the executive board to act as fiduciaries, on an informed basis, in good faith and in the honest  
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1 belief that their actions are in the best interests of the association. To act knowingly and  
2 willfully in violating NRS 116.3103 is to act with knowledge of the facts and to act voluntarily.  
3 Hernandez did not testify at the hearing, so the Commission did not have any facts before it  
4 to conclude anything other than he knew the facts and acted voluntarily. There was no error  
5 in the hearing or in the decision with regard to finding a knowing and willful violation of NRS  
6 116.3103.

7 This Commission adopted a regulation to detail factors it would consider when  
8 determining whether a board member or officer violated NRS 116.3103. NAC 116.405 lists a  
9 number of ways a board member could be found to have violated NRS 116.3103. This  
10 Commission found that NRS 116.3103 was violated by Hernandez based on the  
11 Commission's finding that Hernandez committed an act or omission which amounts to  
12 incompetence, negligence or gross negligence. Hernandez argues that he cannot be found to  
13 have knowingly and willfully committed negligence. But that is not the standard.  
14 Incompetence, negligence and gross negligence refer to the act or omission itself. These  
15 words are given their plain meaning.<sup>3</sup> Incompetence refers to the lack of ability to do  
16 something well.<sup>4</sup> Negligence is the failure take the care that a reasonable person would.<sup>5</sup>  
17 Gross negligence refers to a higher degree of departure from what is reasonable.<sup>6</sup> The  
18 Commission is not required to specify whether they believed his acts or omissions showed  
19 incompetence, negligence or gross negligence. The Commission simply used the provisions  
20 of NAC 116.405 to support their finding that he violated his fiduciary duty to the Association.

21 The Commission found that all of the factual allegations in the complaint were proven  
22 by a preponderance of the evidence. Based on those facts, Hernandez likely committed no  
23 less than 8 different violations of NRS 116.3103 based on his acts or omissions amounting to  
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25 <sup>3</sup> The Nevada Supreme Court "has established that when it is presented with an issue of statutory interpretation,  
it should give effect to the statute's plain meaning." (*MGM Mirage v. Nev. Ins. Guar. Ass'n*, 125 Nev. 223, 228,  
209 P.3d 766, 769 (2009).

26 <sup>4</sup> *Merriam-Webster's Learner's Dictionary* (July 11, 2016), <http://www.merriam-webster.com/dictionary/incompetence>.

27 <sup>5</sup> *Merriam-Webster's Learner's Dictionary* (July 11, 2016), <http://www.merriam-webster.com/dictionary/negligence>.

28 <sup>6</sup> *Merriam-Webster's Learner's Dictionary (Law Dictionary)* (July 11, 2016), <http://www.merriam-webster.com/dictionary/negligence#legalDictionary>.

1 incompetence, negligence or gross negligence. The Division could have – as requested by  
2 Respondents – listed each fact that relates to each violation of law, but that would not benefit  
3 Hernandez. It would only increase the number of violations of law against him.

4 For example, based on this Commission's factual findings, the violation of NRS  
5 116.3103 could apply to each fact as follows:

6 1. RESPONDENT HERNANDEZ knowingly and willfully violated NRS 116.3103  
7 (through NAC 116.405(3)) by failing to act in good faith and in the best interests of the  
8 Association by committing an act or omission which amounts to incompetence,  
9 negligence or gross negligence *by trying to convince Ms. Fassette to vote in favor of*  
10 *the Earlestone Memorandum with a quorum of the board present outside a regular*  
11 *board meeting.*

12 2. RESPONDENT HERNANDEZ knowingly and willfully violated NRS 116.3103  
13 (through NAC 116.405(3)) by failing to act in good faith and in the best interests of the  
14 Association by committing an act or omission which amounts to incompetence,  
15 negligence or gross negligence *by failing to notify Ms. Fassette that a quorum of the*  
16 *board would be present at a meeting Ms. Puhek set up with her.*

17 3. RESPONDENT HERNANDEZ knowingly and willfully violated NRS 116.3103  
18 (through NAC 116.405(3)) by failing to act in good faith and in the best interests of the  
19 Association by committing an act or omission which amounts to incompetence,  
20 negligence or gross negligence *by failing to exclude the Earlestone Memorandum from*  
21 *an emergency meeting agenda as he told Ms. Fassette he would.*

22 4. RESPONDENT HERNANDEZ knowingly and willfully violated NRS 116.3103  
23 (through NAC 116.405(3)) by failing to act in good faith and in the best interests of the  
24 Association by committing an act or omission which amounts to incompetence,  
25 negligence or gross negligence *by failing to address Ms. Fassette's concerns*  
26 *regarding the Earlestone Memorandum.*

27 5. RESPONDENT HERNANDEZ knowingly and willfully violated NRS 116.3103  
28 (through NAC 116.405(3)) by failing to act in good faith and in the best interests of the

1 Association by committing an act or omission which amounts to incompetence,  
2 negligence or gross negligence *by failing to allow Ms. Fassette to return to her seat on*  
3 *the board.*

4 6. RESPONDENT HERNANDEZ knowingly and willfully violated NRS 116.3103  
5 (through NAC 116.405(3)) by failing to act in good faith and in the best interests of the  
6 Association by committing an act or omission which amounts to incompetence,  
7 negligence or gross negligence *by refusing to attend an informal conference requested*  
8 *by the Ombudsman's office to resolve a complaint filed against him.*

9 7. RESPONDENT HERNANDEZ knowingly and willfully violated NRS 116.3103  
10 (through NAC 116.405(3)) by failing to act in good faith and in the best interests of the  
11 Association by committing an act or omission which amounts to incompetence,  
12 negligence or gross negligence *by failing to call for a vote for the agenda item*  
13 *regarding Ms. Fassette's request to return to the board at the board's July meeting.*

14 8. RESPONDENT HERNANDEZ knowingly and willfully violated NRS 116.3103  
15 (through NAC 116.405(3)) by failing to act in good faith and in the best interests of the  
16 Association by committing an act or omission which amounts to incompetence,  
17 negligence or gross negligence *by only agreeing to allow a vote regarding Ms.*  
18 *Fassette's return to the board if Respondent Stern voted and behaved how he*  
19 *requested.*

20 The Division did not list each fact to relate to as many violations of law as possible, in  
21 part, because it looked at the bigger picture of what the Association was going through. The  
22 Division focused on the collective conduct of Hernandez that amounted to a violation of  
23 NRS 116.3103 based on incompetence, negligence or gross negligence. The Commission  
24 found Hernandez's actions were with knowledge of the facts and voluntary. This is consistent  
25 with the finding that Hernandez's conduct was incompetent, negligent or grossly negligent.  
26 This is not a civil case for negligence against Hernandez. The Division does not need to show  
27 duty, breach, causation and damage, as Hernandez alleges. This is an administrative  
28 proceeding against Hernandez for violations of NRS 116. The Commission found that

1 Hernandez violated NRS 116.3103 based on its finding that he committed an act or omission  
2 which amounted to incompetence, negligence or gross negligence. As listed above, there are  
3 no less than 8 ways the factual findings support the violation of law. A motion to reconsider  
4 based on this alleged error in the decision is not supported by the law and should be denied.

5 **2. COMMISSIONER SIBLEY'S COMMENTS DURING THE DISCIPLINE PHASE OF**  
6 **THE HEARING ARE NOT PROHIBITED BY LAW AND DO NOT WARRANT**  
7 **REVERSAL OF THE DECISION.**

8 Respondents allege an error in the hearing occurred when Commissioner Sibley made  
9 a comment during the Commission's deliberations regarding the discipline they could impose.  
10 Commissioner Sibley did not participate in the entire hearing and abstained from voting  
11 regarding the findings of fact and violations of law solely due to his absence on the first day of  
12 the hearing. Commissioner Sibley did not have a conflict of interest requiring his recusal  
13 under NRS 281A.420. But even under NRS 281A.420, Commissioner Sibley's comments  
14 would be permitted. NRS 281A.420 prohibits actions on a matter. It does not prohibit  
15 comments. It was, therefore, not an error in the hearing for Commissioner Sibley to comment  
16 regarding the discipline. Commissioner Sibley's comments certainly do not warrant a reversal  
17 of the decision.

18 **D. THERE IS NO NEED IN THE PUBLIC INTEREST TO CHANGE THE DECISION.**

19 Respondents failed to supply new evidence or demonstrate an error in the hearing or  
20 decision to support their motion to reconsider. The only other possible basis for a motion to  
21 reconsider is a "need in the public interest for further consideration of the issues or evidence,  
22 or both." NAC 116.617(9)(d). Respondents argue that requiring a special election needs  
23 further consideration by the Commission. Respondents claim the special election is too  
24 costly. It was known to the Commission that the Association had an election in May. When  
25 the Commission asked the Division for its recommended discipline, the Division was well  
26 aware that a recent election took place. The Division requested that the order include a  
27 special election to fill Hernandez's seat on the board, because the Division wanted the  
28 homeowners to vote for his replacement with the benefit of the full knowledge of the

1 proceedings before this Commission. There is a need in the public interest to allow the 1600+  
2 homeowners to fill the vacancy, not the contrary.

3 The cost to hold a special election pales in comparison to the cost the Association has  
4 incurred and continues to incur by first fighting the Division and now fighting this Commission.  
5 To argue that cost is the issue now is disingenuous. More than half of the motion alleges this  
6 Commission cannot find Hernandez knowingly and willfully violated the law. If the  
7 Commission were to agree with the arguments made, the payment of costs would be  
8 imposed against the Association. If the Association were actually concerned about costs, it  
9 would not authorize its attorney to advocate a position that could make it responsible for more  
10 costs, in addition to the attorneys' fees incurred filing the motion.

11 What is really behind this argument is Hernandez. The motion states Hernandez  
12 "wishes to see the Association protected from further hardship." If that were, at all, in any way  
13 true he would have agreed to step down before the last election, so his replacement could  
14 have been selected then. That is what Mr. Young did. It is only now that the Commission  
15 found he violated the law and removed him from the board that he wants to look out for the  
16 Association. The motion states, "Charlie feels comfortable in resigning, knowing the board  
17 can simply appoint the next-highest candidate and continue on with business as a full, 5-  
18 member board." (Motion at 21-22). While it's great that Hernandez is comfortable complying  
19 with the Commission's order that he be removed, he does not know that the four remaining  
20 board members would agree on "the next-highest candidate" or any other candidate who ran  
21 in the prior election. Hernandez's opinion on the matter is meaningless.

22 The motion does not include any indication that the current four board members have  
23 or would agree on anyone to replace Hernandez. In fact, the motion filed on behalf of the  
24 Association was not voted on or even approved by the Association at the board's only  
25 meeting after the Commission meeting.<sup>7</sup> The Division tried to make it clear to this  
26 Commission that the Association's issues were not solely because of one or two board  
27 members. The problems for this Association are on-going. The Division still believes that the

28 \_\_\_\_\_  
<sup>7</sup> See Ferguson Declaration.

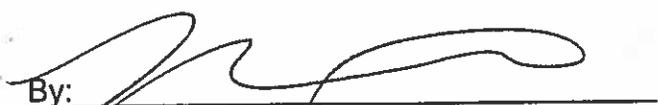
1 best way for Hernandez's vacancy to be filled is by a vote of the owners. Respondents failed  
2 to establish any need in the public interest to change the order regarding the special election  
3 and failed to meet the requirements of NAC 116.617(9)(d).

4 **IV. CONCLUSION**

5 Respondents' motion for reconsideration fails to meet the requirements of  
6 NAC 116.617(9). No new material evidence was produced, there were no errors in the  
7 hearing or in the decision to warrant a reversal, and there is no need in the public interest for  
8 further consideration. For all the foregoing reasons, the Division respectfully requests that the  
9 motion for reconsideration be denied.

10 DATED this 13th day of July, 2016.

11  
12 ADAM PAUL LAXALT  
Attorney General

13  
14 

15 By: MICHELLE D. BRIGGS  
16 Senior Deputy Attorney General  
17 555 E. Washington Ave. Ste 3900  
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19 (702) 486-3420  
20 Attorneys for Real Estate Division  
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### CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 13th day of July, 2016, I served the foregoing OPPOSITION TO MOTION TO RECONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER by causing a true and correct copy thereof to be served via U.S. Mail, Postage Prepaid addressed to the following:

Boyack Orme & Taylor  
Attn: Edward D. Boyack  
401 N. Buffalo Drive #202  
Las Vegas, Nevada 89145  
*Attorneys for Charles Hernandez and  
Anthem Highlands Community Association*

Certified Mail Number: 7013 1090 0000 1700 4575

*Michelle Cardo*  
An Employee of the Office of the Attorney General

**EXHIBIT “A”**

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Respondents.

DECLARATION OF DARIK FERGUSON

I, Darik Ferguson, make the following declaration:

1. I am the Chief of the Compliance/Audit Section of the Common-Interest Communities and Condominium Hotels section of the Nevada Real Estate Division.
2. On July 6, 2016, I emailed Marlina Short, the community manager for Anthem Highlands Community Association.
3. In my email to Ms. Short, I requested copies of all board minutes for June 2016 including executive sessions.
4. On July 6, 2016, Ms. Short emailed me draft copies of meeting minutes for a meeting of the board held on June 22.
5. The minutes provided by Ms. Short included the executive session.
6. Attached to this Declaration are true and correct copies of the minutes provided to me by Ms. Short.

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7. The redacted portions of the board's executive session do not relate to this matter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 12, 2016

  
\_\_\_\_\_  
DARIK FERGUSON

# ANTHEM HIGHLANDS COMMUNITY ASSOCIATION

Board of Directors Meeting  
Wednesday, June 22, 2016 at 6:00PM  
Solera at Anthem Community Center  
2401 Somersworth Drive  
Henderson, NV 89044  
MINUTES

## CALL TO ORDER

President Capello called the meeting to order at 6 p.m. upon establishment of a quorum.

## ROLL CALL:

Frank Capello, President – PRESENT  
Mark West, Treasurer - PRESENT  
Ken Brensinger, Secretary – PRESENT  
Jill Levin, Director - PRESENT

Vice President - VACANT

## MANAGEMENT PRESENT:

Marlina Short, CMCA®, AMS®, PCAM®, Community Manager, FirstService Residential

**HOMEOWNER'S OPEN FORUM** – In accordance with NRS116.31083 this portion of the meeting is devoted to unit owners' comments and discussion of those items listed on the agenda directly. Comments are limited to three (3) minutes. Per NRS116.31068, the general substance of remarks made by unit owners during this time is shown as follows:

- Vacancy on the Board and the expenses the owner incurred being a candidate for the last election

## APPROVAL OF MINUTES

May 18, 2016 – A motion was made by Secretary Brensinger, seconded by President Capello to approve the minutes from the regular board meeting held on May 18, 2016 as presented. Motion carried unanimously.

May 25, 2016 – A motion was made by Secretary Brensinger, seconded by Treasurer West to approve the minutes from the organizational meeting held on May 25, 2016 as presented. Motion carried unanimously.

**LANDSCAPE REPORT** – The Board reviewed the Landscape Report as submitted by Brightview Landscape.

## APPROVAL OF FINANCIALS

April 2016 – A motion was made by Treasurer West, seconded by President Capello to approve the April 2016 financials as presented. Motion carried unanimously.

**REVIEW / APPROVE BAD DEBT WRITE OFF** – None.

## PENDING LITIGATION / LEGAL MATTERS

Advanced Lighting Update – Management provided the update new LED test bulbs will be installed on June 27, 2016.

Case No 2-15-cv01692-JAD-VCF, Fannie Mae vs. Anthem Highlands – Management provided the update there has been no activity in this case since the filing of cross claims and will be continued to be monitored for activity.

Legal Matters Update – The Board reviewed the legal matters update letter as submitted by Ted Boyack, Association General Counsel.

## COMMITTEE REPORTS

Haddington and Edinburgh Budget Working Group Call for Volunteers Letter – A motion was made by Treasurer West, seconded by President Capello to table the Haddington and Edinburgh budget working group call for volunteer's letter. Motion carried unanimously.

## ACTION LIST REVIEW / MANAGEMENT REPORTS

Action List – The Board reviewed the action list as submitted by FirstService Residential.

## UNFINISHED BUSINESS

Commercial Insurance Proposals – A motion was made by Treasurer West, seconded by Secretary Brensinger to approve the proposal from LaBarre/Oksnee Insurance for the annual premium of \$18,214. The motion carried unanimously.

Monthly lighting maintenance contract proposals – A motion was made by President Capello, seconded by Director Levin to approve Desert Clark lighting maintenance quarterly contract. President Capello amended his motion to table the lighting maintenance contract proposals, seconded by Treasurer West. Motion carried unanimously.

Roving security patrol proposals – A motion was made by President Capello, seconded by Treasurer West to reject roving security patrol for 2016 fiscal year. Motion carried unanimously.

Lighting resolution for Haddington and Edinburgh – A motion was made by President Capello, seconded by Treasurer West to table the lighting resolution for Haddington and Edinburgh. Motion carried unanimously.

Haddington four square and mailbox stone enhancement proposals and letter – A motion was made by Treasurer West, seconded by Secretary Brensinger to approve sending the letter to Haddington residents for the four square and mailbox stone enhancement proposals. Treasurer West amended his motion to table the Haddington four square and mailbox stone enhancement proposals and letter, seconded by Secretary Brensinger. Motion carried unanimously.

Geotech Consultant update on Bicentennial Road improvements – No update at this time.

#### **NEW BUSINESS**

Board member orientation workshop date and time – A motion was made by President Capello, seconded by Director Levin to approve a Board member orientation workshop with date and time to be determined. Motion carried unanimously.

If a vacancy on the Board occurs by way of resignation prior to the final Commission order being issued in case #2015-2155, the Board will appoint the candidate with the next highest votes in the last election to fill the vacancy until an election can take place. This action is being taken to make sure the Board has 5 members at all times. – A motion was made by President Capello, seconded by Secretary Brensinger to remove the item if a vacancy on the Board occurs by way of resignation prior to the final Commission order being issued in case #2015-2155, the Board will appoint the candidate with the next highest votes in the last election to fill the vacancy until an election can take place. Motion carried unanimously.

Ratification of action without a meeting to vote to hire security patrol for 4<sup>th</sup> of July for four hours to make sure illegal fireworks are not being set off in the Community – A motion was made by President Capello, seconded by Secretary Brensinger to acknowledge action without a meeting to vote to hire security patrol for 4<sup>th</sup> of July for four hours to make sure illegal fireworks are not being set off in the Community. Motion carried unanimously. A motion was made by Treasurer West, seconded by Director Levin to reject hiring a security patrol for 4<sup>th</sup> of July for four hours to make sure illegal fireworks are not being set off in the Community. Motion carried unanimously.

Ratification of Action without a meeting to vote to send a letter to the attorney for the foreclosure case on Strichen Avenue requesting all documentation and a fee review of the charges. If the fees are not reduced then the association will file a dispute with the State Bar of Nevada – A motion was made by President Capello, seconded by Treasurer West to acknowledge action without a meeting to vote to send a letter to the attorney for the foreclosure case on Strichen Avenue requesting all documentation and a fee review of the charges. If the fees are not reduced then the association will file a dispute with the State Bar of Nevada. Motion carried unanimously. A motion was made by President Capello, seconded by Treasurer West to approve sending a letter to the attorney for the foreclosure case on Strichen Avenue requesting all documentation and a fee review of the charges. If the fees are not reduced then the association will file a dispute with the State Bar of Nevada. Motion carried unanimously.

**NEXT MEETING DATE(S)** – The next board meeting is scheduled for Wednesday, July 27, 2016 at 6:00 p.m. at Solera at Anthem (with executive session at 4:30 p.m.)

**HOMEOWNERS FORUM** – This open forum session is reserved for general homeowner comments. General comments / subject matter was as follows:

- Postponement of Haddington and Edinburgh budget volunteers letter
- Concerns regarding not having 5 Board members
- June Commission hearing results and costs to the Association

- Homeowner assessment statements not being received for July
- Board meeting agendas not easily found on community website; send via email instead of postal service
- Association attorney representing Anthem Highlands and Charles Hernandez conflict of interest
- Landscape issues in Inverness common areas
- Disappointment in landscape vendor not attending the Board meeting
- Mailbox stone enhancement should have been done by developer
- Landscape contract bids and renewal
- Late fee waivers
- Light bulbs not matching in street lamps
- Audience unable to hear the meeting
- Congratulations to Mark West and Jill Levin on the election
- Legal costs to the community
- Board fiduciary duties
- Suggested layout change of the Board table configuration and audience chairs

**ADJOURNMENT** – There being no further business to discuss, a motion was made by President Capello, seconded by Treasurer West to adjourn the meeting at 7:28 p.m. Motion carried Unanimously.

Respectfully Submitted By:

Marlina Short, CMCA, AMS, PCAM FirstService Residential

Accepted By:

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Secretary

Date

**DRAFT**

# ANTHEM HIGHLANDS COMMUNITY ASSOCIATION

Executive Session

Wednesday, June 22, 2016 at 4:30PM

Solera at Anthem Community Center

2401 Somersworth Drive, Henderson, NV 89044

## MINUTES

*Executive Session is not open to homeowners unless called to a hearing.*

### CALL TO ORDER AND ESTABLISHMENT OF A QUORUM

President Capello called the meeting to order at 4:30 p.m. upon establishment of a quorum.

### ROLL CALL:

Frank Capello, President – PRESENT

Mark West, Treasurer – PRESENT

Ken Brensinger, Secretary – PRESENT

Jill Levin, Director – PRESENT

Vice President – VACANT

### OTHERS PRESENT

Marlina Short, CMCA®, AMS®, PCAM®, Community Manager, FirstService Residential

Ted Boyack, Association General Counsel, Boyack, Orme & Taylor

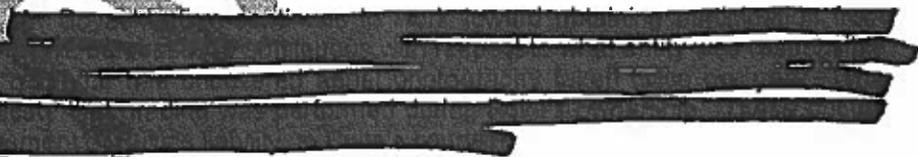
### APPROVAL OF MINUTES

A motion was made by Secretary Brensinger, seconded by President Capello to approve the minutes from the executive session on May 18, 2016 as presented. Motion carried unanimously.

President Capello spoke up at this time to move agenda item Legal Matters for this meeting to the beginning of the Executive Session due to time constraints of the Association Attorney.

### LEGAL MATTERS

Advanced Lighting – 

Chapter 40 against Lennar and Pulte – 

Bank of America vs. Anthem Highlands (A711638) – Notice of Entry of order Granting Motion for Voluntary Dismissal of Action was filed on 4/23/16 with the court. On May 26, 2016, the case was vacated/closed.

Bank of America vs. Heritage Square South HOA et al (A12670230B) – 

Joseph Decker, NRED, Department of Business & Industry, State of Nevada vs. AHCA, Pennie Puhek, James Lauth, and Charles Hernandez (2015-291) – The complaint has been postponed to the November 15 – 17, 2016 Commission Hearing. The response to the complaint was filed on April 25, 2016.

Joseph Decker, NRED, Department of Business & Industry, State of Nevada vs. AHCA, Robert Stern, Charles Hernandez, and Ronnie Young (2015-3615; 2015-2155; 2015-3100; 2015-2207) – The cases were heard before the Commission on June 7 – 9, 2016. The Commission rendered the following decision:

The Commission found one out of seven counts against Mr. Hernandez for negligent conduct and assessed \$4,023 to Mr. Hernandez in costs for the hearing. No fines were imposed against Mr. Hernandez. All Board members are required to attend education classes within one year. Mr. Hernandez is to be removed from the Board and is

prohibited from serving for five years. The Commission also ordered a special election to take place, to fill the vacant position.

FNMA vs AHCA (215CV01692JADVCF) - [REDACTED]

Elsinore LLC vs AHCA (A13685833C) - [REDACTED]

**RECESS** – A motion was made by Treasurer West, seconded by President Capello to recess the executive session at 5:58 p.m. and proceed with the Regular Session meeting. Motion carried unanimously.

**CALL TO ORDER** – President Capello called the meeting to order to resume the Executive Session meeting at 7:41 p.m.

**HEARINGS –**

1	[REDACTED]	Landscaping-free/appears stressed – NOW IN COMPLIANCE
2	[REDACTED]	Landscaping-missing tree- Granted 30 day extension to cover with turf per Board with management to verify landscape coverage.
3	[REDACTED]	Parking-commercial vehicle in view – NOW IN COMPLIANCE
4	[REDACTED]	Landscaping-garbage and debris in yard – Still in violation as of 6/22/16
5	[REDACTED]	Signage-for sale-prohibited – NOW IN COMPLIANCE Weeds – NOW IN COMPLIANCE
6	[REDACTED]	Maintenance/Stucco damage – Granted 2 week extension per owner's request.
7	[REDACTED]	Landscaping-rock landscaping-barren – Still in violation as of 6/22/16.
8	[REDACTED]	ARC-general improvements-no approval – Still in violation as of 6/22/16.
9	[REDACTED]	ARC-general improvements-no approval – Owner requested to move hearing to July to appear in person.
10	[REDACTED]	Landscaping-replace dead shrubs – NOW IN COMPLIANCE
11	[REDACTED]	Landscaping-weeds-all areas – Still in violation as of 6/22/16
12	[REDACTED]	Landscaping-rake leaves and remove debris – NOW IN COMPLIANCE
13	[REDACTED]	Landscaping-replace dead trees-Granted 30 day extension to cover with turf per owner's request with management to verify landscape coverage.

\*\*A motion was made by Treasurer West, seconded by President Capello to proceed in accordance with the adopted enforcement policy if the items listed on the hearing list shown as *still in violation* by fining the homeowner \$100, providing 14 days for compliance then fining \$100/week until compliance occurs. Motion carried unanimously.

**HOMEOWNER CORRESPONDENCE / REQUESTS / DISPUTES**

[REDACTED] The homeowner appealed in person to request a waiver of the entirety of the fine account and to clarify where to park his utility service vehicle. After reviewing the information, a

motion was made by Treasurer West, seconded by Secretary Brensinger to waive the initial fine and continuing fines in the amount of \$700 and clarify the utility service vehicle be parked in the driveway in the outcome of hearing letter. Motion carried unanimously.

[REDACTED] - This homeowner is requesting the removal of \$700 in violation fines pertaining to the closed violation of wall leaching irrigation damage. After reviewing the information, a motion was made by Treasurer West, seconded by President Capello to approve the waiver of \$600 in fines and uphold the initial \$100 fine. Motion carried unanimously.

[REDACTED] - The homeowner is requesting a waiver of the \$450 in violation fines pertaining to the closed violation of storing trash containers from view that were levied by the previous management company. After reviewing the information, a motion was made by Treasurer West, seconded by President Capello to approve a waiver of \$450 in fines. Motion carried unanimously.

[REDACTED] - This homeowner is requesting a waiver of \$1950 in violation fines levied in 2011 and 2012. After reviewing the information, a motion was made by President Capello, seconded by Treasurer West to approve a waiver of 75% of the fines in the amount of \$1462.50 upon verification with Red Rock Financial Services the collection costs were paid by the owner. Motion carried unanimously.

[REDACTED] - The owner is requesting a variance for driveway gate height extension of 16 inches. President Capello directed management to remove this item from the agenda as the Architectural Review Committee previously approved this item.

**NEW BUSINESS / OTHER** - None at this time.

**REPORTS / REVIEW**

**Review of Non-Compliance Log** - The Board was provided with a copy of the non-compliance log reflecting all open violations at this time for their review and information. The Association is following its adopted Enforcement Policy at this time. No action required.

**Review of ARC Log / Submittals** - The Board was provided with a copy of the ARC log reflecting all ARC submittals & ARC Committee decisions for their review and information. No action required.

**Review of Call Log** - The Board was provided with a copy of the call log. No action required.

**Review of Delinquency Report(s)** - The Board was provided with a copy of the delinquency report for their review and information. No action required.

**REVIEW COLLECTION REPORTS** - Current collection status reports were provided to the Board for their review and information from AMS, RRFS and their current collection company HOA Services.

**BAD DEBT WRITE-OFFS** - None at this time.

**ADJOURNMENT** - A motion was made by Treasurer West, seconded by President Capello to adjourn the meeting at 8:53 p.m. Motion carried unanimously.

Respectfully submitted by:

Marlina Short, CMCA, AMS, PCAM FirstService Residential

Approved By:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

**EXHIBIT "B"**

**EXHIBIT "B"**



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street  
Carson City, Nevada 89701-4717

ADAM PAUL LAXALT  
*Attorney General*

June 28, 2016

WESLEY K. DUNCAN  
*First Assistant Attorney General*

NICHOLAS A. TRUTANICH  
*First Assistant Attorney General*

Edward D. Boyack, Esq.  
Boyack Orme & Taylor  
401 N. Buffalo Drive, Suite #202  
Las Vegas, NV 89145

via U.S. Mail and  
e-mail: [ted@edblaw.net](mailto:ted@edblaw.net)

Re: *Nevada Real Estate Division v. Anthem Highlands Community Association, et al.*  
Case Nos. 2015-3615, 2015-2155, 2015-3100, 2015-2207

Dear Mr. Boyack:

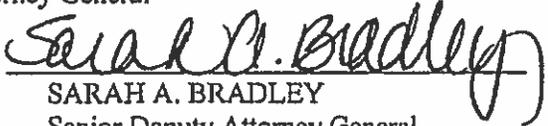
As Board Counsel to the Nevada Commission for Common-Interest Communities and Condominium Hotels ("Commission"), I am responding to your letter to Senior Deputy Attorney General Michelle Briggs regarding your concern that Mr. Decker and a Commissioner engaged in ex parte communication.

No ex parte communication as prohibited by NRS 233B.126 occurred in the e-mails that are the subject of your concern. NRS 233B.126 prohibits ex parte communication between commission members and agency staff when a contested case is pending "in connection with any issue of fact" or "any issue of law." NRS 233B.126 does not prohibit communications regarding the scheduling of matters or motions.

Commissioner Williams' e-mail to Mr. Decker concerns Commissioner Williams' availability for a pre-hearing conference prior to the June 7 Commission meeting. Mr. Decker's response does not tell Commissioner Williams how he or the Commission should decide the motion. Instead, Mr. Decker indicates that an interim meeting will not be held for this motion and that this motion will be heard at the next regularly-scheduled Commission meeting, i.e. the June 7-9, 2016 meeting. This motion was on the agenda for the June 7-9 meeting, and it was decided at that meeting. In these e-mails, neither Mr. Decker nor Commissioner Williams discuss issues of fact or issues of law.

I hope this helps to resolve your concerns.

Sincerely,  
ADAM PAUL LAXALT  
Attorney General

By:   
SARAH A. BRADLEY  
Senior Deputy Attorney General  
Telephone: (775) 684-1213  
Email: [sbradley@ag.nv.gov](mailto:sbradley@ag.nv.gov)

SB/klr