

# CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION

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## REGULAR P.O.A. BOARD MONTHLY MEETING MINUTES

**August 13, 2008**

Board Members Present: Al Smith, Patrick Wallace and Carlos Gonzalez-Brito

At 6:05 pm, Al Smith, President of the Board, called the meeting to order.

Staff Members Present: Chris Behan

Others Present: Chuck & Vicky Shaw, Steve Keim, members of the community

**New Board Member Oath of Office** Carlos Gonzalez-Brito, Al Smith and Patrick Wallace signed the Oath of Office as the newly elected/re-elected members to the board. The vote tally for a two year term was: Al Smith 175 votes, Carlos Gonzalez-Brito 145 votes, Patrick Wallace 141 votes. Write in votes: Jerry Bartush 1, Michael Klein 2, Joanne Reynolds 1.

### **Approval of Minutes and Financials**

Approval of P.O.A. Board Meeting Minutes from previous Regular P.O.A. Board Meeting of the July 9, 2008, was postponed to the Sept. meeting due to a lack of a quorum of Board members that were present at the July meeting.

Financial Report: Background for the new members and July 31, 2008 financial reports were presented to the Board including: the Cash on Hand as of July 31, 2008; Bank Reconciliation statements for the Money Market, Operating, Hockey Rink, and Performance Deposit Accounts for the month of July and a summary of CD accounts. Chris explained that he will begin reviewing expired Performance Deposits (greater than 2 years old) and determine whether they should be written off or refunded. Written off performance deposits could be a one time source of operating funding. Short of incorporation, the POA will need to cut back on costs due to our tight budget and no additional sources of income. After reviewing the presented materials, Carlos moved to approve the financial report as presented for July 2008. Patrick seconded the motion. Motion was unanimously approved.

**Unscheduled Property Owner Comment:** None

### **New/Continued Business:**

**Friends of Snodgrass Presentation:** Chuck and Vicky Shaw made an hour long PowerPoint presentation regarding the proposed CBMR expansion onto Snodgrass Mountain. A CD copy of the PowerPoint presentation and handout are available at the P.O.A. Office. This information is also available on the P.O.A.'s website at [www.cbsouth.net](http://www.cbsouth.net). A question and answer period followed. No action was taken.

**CB South Music Festival, Sunday September 28, 2008, Red Mountain Park:** Chris gave the new members background on the upcoming Music Festival which is a benefit for the Hockey Rink. Steve Keim then gave the Board an update. He is using the Hockey enthusiasts in the

valley to promote the event. He is working on sponsorships and has Flying Dog Brewery as the beer distributor. He is also working on trash collection, security, bus service, advertising, fencing, tickets, wristbands and vendors. The concert will be the “regular” level, children 12 and under will be free with a paying adult. The concert should be over by 9 P.M. Additional information is available at [www.theruckus.com](http://www.theruckus.com).

**Modification to CB South Notice and Hearing and Enforcement Policy and Procedures:**

In an effort to better streamline the covenant enforcement governance policy the Board adopted in 2006, Chris suggest the following modification to that policy, as indicated below:

**NOTICE AND HEARING AND ENFORCEMENT POLICY AND PROCEDURES**

CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION, INC.  
NOTICE AND HEARING AND  
ENFORCEMENT POLICY AND PROCEDURES

**Adopted August 13, 2008**

The following procedures have been adopted by the Crested Butte South Property Owners Association, Inc. (“Association”) pursuant to C.R.S. 38-33.3-209.5, at a regular meeting of the Board of Directors.

NOW, THEREFORE, IT IS RESOLVED that the Association does hereby adopt the following policies and procedures for the enforcement of the Association’s restrictive covenants:

1. Power. The Board of Directors shall have the power and duty to hear and make decisions regarding violations and written Complaints filed with the Board and impose fines or other sanctions, pursuant to these Policies and Procedures. The Board may determine enforcement action on a case by case basis, and take other actions as it may deem necessary and appropriate to assure compliance with the Crested Butte South Property Owners Association, Inc. Covenants and Restrictions (“Covenants”), the Association’s Articles of Incorporation, Bylaws, and rules and regulations promulgated thereunder (“Documents”), and to create a safe and harmonious living environment.

These enforcement provisions may be in addition to other specific provisions outlined in the Association’s Covenants and Restrictions, Articles of Incorporation, Bylaws or Rules and Regulations (“Governing Documents”), and the Association is not required to follow these enforcement provisions before seeking such other remedies. The Association may choose a legal remedy or seek assistance from other enforcement authorities, such as police, fire, or animal control, as it deems appropriate.

2. Notice and Hearing. In the event of any alleged violation of the Crested Butte South Property Owners Covenants, the Association’s Articles of Incorporation, Bylaws, and Rules and Regulations promulgated thereunder, the following procedures shall apply:

(a) Notice of Alleged Violation. Notice of Alleged Violation of any provision of the Documents shall be provided to the applicable Owner by as soon as is reasonably practicable after the Board’s or Board-appointed

committee's receipt of such violation. The Board or Board-appointed committee may also, at its option, provide a copy of such Notice to any non-owner violator ("Related User"). The Notice shall describe the nature of the violation and shall further state that the Board may seek to protect its rights as they are specified in the Governing Documents. **The Notice shall also inform the Owner that the Owner may request a hearing to challenge or contest the alleged violation and possible fine.**

- (b) Service of Notices. Service of all notices required or permitted to be given hereunder shall be made as follows: If to a Owner and/or Related User: By personal delivery to the Owner and/or Related User; or by U.S. Mail, postage prepaid, addressed to the last registered address of the Owner and/or Related User as contained in the Association's records. If to the Association: By personal delivery or U.S. Mail, postage prepaid, addressed to the Association in care of its registered agent and office, as maintained with the Colorado Secretary of State, or such other address as the parties may be advised of in writing. Any notice personally delivered shall be deemed received on the date of delivery, and any notice mailed shall be deemed received on the fifth day following the date of mailing.
- (c) Request for Hearing. If an Owner desires a hearing to challenge or contest any alleged violation and possible fine, the Owner must request such hearing, in writing, within **ten (10) days** from receipt of the Notice of Alleged Violation. The request for hearing shall describe the grounds and basis for challenging the alleged violation. **The Owner shall receive at least seven (7) days notice of the date, time, and location of the hearing. The Board or Board-appointed committee shall determine if there was a violation, and if so, may assess a reasonable fine within the guidelines contained in this Policy and Procedure at any time within sixty (60) days of the expiration of the 10 day period or within 60 days of the hearing.** The Association's managing agent shall give notice of said assessment to the applicable Owner as provided in the Association's governing documents or this Policy and Procedure. Unless otherwise provided in the Association's Governing Documents, the fine assessment is due and payable upon receipt of notice of the fine assessment and is considered late 35 days after posting.
- (d) Board or Board-appointed Committee to Conduct Hearing. The Board or Board appointed committee shall hear and decide cases set for hearing pursuant to these Policy and Procedure. The Board or Board-appointed committee may appoint an officer or other Owner to act as the Presiding Officer at any of the hearings.
- (e) Conflicts. Any Board or Board-appointed committee member who is incapable of objective and disinterested consideration on any hearing before the Association shall disclose such to the President of the Board or Chairperson of Board-appointed committee prior to the hearing on the case, if possible, or, if advance notice is not possible, then such disclosure

shall be made at the hearing, and the Board or Board-appointed committee member shall be disqualified from all proceedings with regard to the hearing. If disqualification of any Board or Board-appointed committee member(s) results in an even number of remaining Board or Board-appointed committee members eligible to hear a case, the Board or Board-appointed committee may, by majority vote, appoint an Association member, in good standing, to serve as a voting member of the hearing board.

- (f) Hearing. The Board or Board-appointed committee shall inform the Owner of the scheduled time, place and date of the hearing, provided that the Presiding Officer may grant continuances for good cause. At the beginning of each hearing, the Presiding Officer shall explain the rules, procedures and guidelines by which the hearing shall be conducted and shall introduce the case before the Board by reading the Notice of Alleged Violation. Each party may make opening statements, may present evidence and testimony, may present witnesses, and may make closing statements. Neither the complaining parties nor the Owner (or owner's designee) must be in attendance at the hearing. However, the decision of the Board or Board-appointed committee at each hearing shall be based on the matters set forth in the Notice of Alleged Violation, Request for Hearing, and such evidence as may be presented at the hearing. Unless otherwise determined by the Board or Board-appointed committee, all hearings shall be open to attendance by all members of the Association.
- (g) Decision. After all testimony and other evidence has been presented to the Board or Board-appointed committee at a hearing, the Board or Board-appointed committee shall render its written findings and decision, and impose a reasonable fine, if applicable, within ten (10) days after the hearing. A decision, either a finding for or against the Owner, shall be by a majority of the members of the hearing board present at the hearing. The Board or Board-appointed committee may also issue and present for recording with the County Clerk and Recorder, a Notice of Finding of Violation. Upon satisfactory compliance with the Association's Governing Documents, the Notice of Finding of Violation may be released by the Association issuing and recording a Release of Notice of Finding of Violation.
- (h) Fine Schedule. Unless otherwise provided in the Rules and Regulations, any violation of the Governing Documents will subject the Owner to a reasonable fine assessment imposed by the Association as follows: (i) Notice of Violation: Written warning letter or posting of notice. (ii) Fines shall be determined by the current "Schedule of Violations and Fines" as legally adopted by Board motion. Such schedule which will be reviewed and/or revised yearly. (iii) Fines may not exceed \$50.00 per day that such violation is found. (iv) In the event of a continuing violation, a daily fine may be levied if, and only if, the Association's agent performs a daily inspection to verify the violation is continuing. Notwithstanding any

provision of this fine schedule or Policies and Procedures, the Association may use any legal means available at any time to enforce the terms of the Governing Documents.

3. Enforcement, Attorney's Fees, and Fines/Sanctions. The Association shall be entitled to reimbursement of all reasonable attorney's fees and costs incurred by the Association in connection with any enforcement action, including any proceeding under these Policies and Procedures. Without limiting the Association's remedies under the Governing Documents, the Association may assess fines and suspend membership privileges in accordance with these Policies and Procedures. If the violation involves damage to Association property, the violator shall pay the costs of repair or replacement. The Board may revoke or suspend the violator's privileges for a period of time equal to the duration of the violation, except that any suspension of voting rights of a Member shall not exceed 60 days following any violation by such Member unless such violation is a continuing violation, in which case such suspension may continue for so long as such violation continues and for up to 60 days thereafter.

(a) Fines may be levied for violations of the Documents as follows:

<u>Number of violations in a 12 month period</u>	<u>Fine Amount</u>
First violation:	Warning
Second violation:	\$50
Third violation:	\$100
Fourth violation:	\$200

A Member or guest who accumulates more than 4 violations within a 12 month period will be deemed to be a habitual offender. Without limiting the Board's ability to fine or suspend membership privileges in accordance with these Policies and Procedures, habitual offenders, continuing violations, or violations which have an indefinite commencement or termination date, shall all be subject to a fine of \$1,000 per month until the violation is corrected, and suspension of membership privileges as determined by the Board. Further, in the event of a determination by the Board of a willful, wanton or flagrant disregard for the provisions of the Documents, or based on the severity of the violation, the Board may impose such additional fines as are deemed reasonable by the Board without regard to the schedule set forth above.

(b) The record Owner of real estate subject to the Covenants shall have the primary obligation to pay fines imposed for their actions and actions of their tenants, family members, and guests. Fines imposed pursuant to these enforcement policies and procedures shall become an Assessment imposed against the record Owner's real estate and enforceable as provided in the Covenants.

4. Violations or Offenses that Constitute a Present Danger. If, in its sole discretion, the Board deems that any violation is or may be an immediate or substantial threat to the health, safety or welfare of the community or an individual, the Board may impose any appropriate

sanction as necessary to abate the threat to health, safety or welfare of the community or individual without prior compliance with Sections 1 through 3 above.

5. Miscellaneous.

- (a) Failure by the Association to enforce any provision of these Policies and Procedures shall in no event be deemed to be a waiver of the right to do so thereafter.
- (b) The provisions of these Policies and Procedures shall be independent and severable. The invalidity of any one or more of the provisions hereof by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.
- (c) As used herein, the term "Board" shall include any tribunal or committee appointed by the Board consistent with the Governing Documents or consistent with the Colorado Revised Nonprofit Corporation Act.

Crested Butte South Property Owners Association, Inc.

By:  
President

Attest:  
Secretary

This Notice and Hearing and Enforcement Policy and Procedures was adopted by the Board of Directors on the **13<sup>th</sup> day of August, 2008** and is attested to by the Secretary of the Crested Butte South Property Owners Association, Inc.

Chris explained that the Warning Letter constitutes the First Violation. Failure to respond in 10 days after receipt of the Warning Letter, then leads to the fines of the Second Violation. During the 10 day period the offending party may do 3 things: 1. remedy the situation and request that a review of compliance; 2. request a hearing; or 3. do nothing and subsequently the fines of the Second Violation will begin. The P.O.A. will no longer have to send letters by certified mail. After extensive discussion, Carlos moved to approve the revised **NOTICE AND HEARING AND ENFORCEMENT POLICY AND PROCEDURES** as presented. The motion was seconded by Patrick and unanimously approved.

**Commercial Area Pedestrian Area Easements:** postponed to Sept. meeting.

**2008/2009 P.O.A. Goals and Objective Formulation and Possible Adoption:** postponed to Sept. meeting.

**Association Manager's Report**

Chris informed the Board that C.B. South now has a polling place at Sunset Hall. Residents of C.B. South will no longer have to drive to Crested Butte to vote.

Chris pointed out to the Board that the Budget includes \$3,000 for professional development for the Board Members and Manager. He has signed up for a planning conference in September, *The Colorado Chapter of the American Planning Association's Annual Conference*, in Breckenridge. The conference should provide significant useful information and updates germane to this P.O.A. If any Board members are interested in attending, he would encourage it. The Board approved payment of the conference fee, food and lodging for Chris to attend this conference. The Colorado Municipal League often has conferences which also might be worthwhile for Board members to look into. Chris will investigate whether C.B. South could join the League.

With no further matters for discussion, Al Smith adjourned the Regular Board Meeting at 9:43 p.m.