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# The San Bernardino County Sentinel

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Friday, September 10, 2010

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## Cedarpines Park: 1984 Board Decision Trumps Shareholders

By Gail Fry

The closely-knit board of Cedarpines Park Mutual Water Company board has been able to keep control of the water company away from the will of the shareholders over the past 26 years

through a requirement that 50 percent plus one of the shareholders was a quorum.

A copy of the bylaws of Cedarpines Park Mutual Water Company (CPMWC) dated 1996 obtained by The Sentinel

state that the corporation is subject to the General Corporation Law, which is set out in California corporations code sections 100 through 2319.

Corporations code section 602(a) provides unless otherwise provid-

ed in the articles, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of the shareholders. However, it also says a quorum can be a lesser amount

of the shareholders and in the case of a mutual water company the law provides an allowance of twenty percent of the shares entitled to vote.

The CPMWC bylaws

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dated 1996 show no definition of a quorum of shareholders, thereby, causing shareholders to look at the corporations code for guidance and to the minutes of the meetings held over the years.

According to minutes dated July 30, 1966, the number of shareholders at that time was 1,212 and reflects they were 250 shareholders short of a quorum. The board discussed that there had been a change in the law in 1965 allowing a quorum to be reduced to 20 percent of the shareholders.

On July 30, 1966, Director Oppen said, "Our bylaws provide that in certain areas they can be amended only by a vote of the shareholders. Other sections can be amended by the Board." Oppen moved to amend the bylaws to read, "20% of the shares issued outstanding, in good standing, represented in person or by proxy, shall constitute a quorum for the transaction of business."

Corporations code section 211, provides, "Bylaws may be adopted, amended or repealed either by approval of the outstanding shares (Section 152) or by the approval of the board, except as provided in Section 212. Subject to subdivision (a) (5) of Section 204, the articles or bylaws may restrict or eliminate the power of the board to adopt, amend or repeal any or all bylaws."

At the July 28, 1984, meeting the minutes reflect President Fischer declaring, "In 1966 the board at the annual meeting, attempted to change the quorum requirements from 50% plus one to 20% of all shares outstanding. The change was adopted but we have now found the change not to be lawfully amended, therefore 50% plus one of the total number of shares outstanding must be represented to conduct a legal meeting. The water company has issued 4,030 shares and only 886 1/2 proxies have been counted. We do not have enough

proxies to conduct a legal meeting." Therefore, the minutes reflect that the board appointed two interim directors to sit on the board.

A letter dated December 1, 2004, from the law firm of Fullerton, Lemann, Schaefer & Dominick, LLP addressed to Robert Friedman (a CPMWC former board member) attempts to address the difficulties of obtaining a quorum.

The letter discusses the fact that Section 2.15 of the bylaws of Cedar Pines Park Mutual Water Company sets the quorum for a shareholders meeting at a majority of the shareholders and that at least 50 percent plus one of the shareholders must be present in person or by proxy at the meeting in order for business to be conducted.

The letter acknowledges that the number of shareholders combined with the number of shareholder proxies has been far less than the 50 percent quorum requirements and that it is frequently less than the 20 percent of the total vot-

ing power of the shareholders.

The letter states, "The only times when a quorum has been obtained is when the meeting agenda features a discussion of considerable interest in the community." The letter points out that there has "not been a contested election for a seat on the Board of Directors within the memory of anyone presently serving on the Board."

The letter continues, "You have told me that there may be a feeling by some shareholders that the quorum requirement is effectively depriving them of the right to vote and be heard on corporate matters. But it does not appear that anyone has tried very hard to obtain the votes and proxies necessary to be elected to the Board of Director or to bring matters to a vote before the shareholders."

The letter from the law firm suggests three possible scenarios to resolve the problem. One solution was for a new corporation with new articles of incorporation

and bylaws be created and then merged with the existing company for a cost of \$15,000 in legal fees.

Another solution was to create a technical invalidation of the bylaws by amending the articles of incorporation to then contradict the supermajority provisions contained in the bylaws citing that under corporations code the bylaws cannot contradict the articles of incorporation. However, the law firm acknowledges that an amendment to the articles of incorporation would require a majority vote of the shareholders.

The third solution was to utilize the provisions of corporation code section 7515 which provides, "If for any reason it is impractical or unduly difficult for any corporation to call or conduct a meeting of its members...in the manner prescribed by its articles or bylaws...then the Superior Court...may order that such a meeting be called or that a written ballot or other form of obtaining the vote...

be authorized, in such a manner as the court finds fair and equitable under the circumstances." The law firm quoted a cost of \$15,000 for bringing such an action before the court.

Cedar Pines Park Mutual Water Company did not take action on any of the solutions suggested by the law firm Fullerton, Lemann, Schaefer & Dominick, LLP and as a result the water company still has the impossible challenge of attempting to reach a quorum required for the shareholders to hold an election and for the board to hold a legal meeting.

Corporations code section 603(c) says, "In the absence of a quorum, any meeting of shareholders may be adjourned from time to time by the vote of a majority of the shares represented either in person or by proxy, but no other business may be transacted, except as provided in subdivision (b)" and subdivision (b) only allows adjournment.

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The corporations code says bylaws may authorize a corporation to conduct a meeting with a quorum of less than one-third of the voting power then they can only vote on matters of a general nature.

Without the unanimous written consent of all shares entitled to vote the shareholders cannot elect the directors and the power is left to the board of directors and that is how the business of CPMWC has been conducted for the past 26 years.

Vice President Ron Albright informed the *Sentinel* that a quorum is necessary in order for the shareholders to hold an election. According to Albright, a quorum requires 50 percent

plus one shareholders in good standing to either attend the annual meeting or have a completed a proxy form on file.

"Proxy" means a written authorization signed authorized by a shareholder or the shareholder's attorney in fact giving another person or persons power to vote with respect to the shares of such shareholder.

Albright remarked that there have only been one or two occasions in the past 20 years where a quorum of the shareholders was reached. Albright explained that this year the annual meeting was extended in order to try to reach a quorum.

Albright explained, "If a quorum is not reached then we can't hold an election by the shareholders. Then the remaining board members would elect the new

board members."

This year Cedarpines Park Mutual Water Company has scheduled its annual meeting and board election for Saturday, September 18, at 1:30 p.m. at the Cedarpines Park Community Center located at 21827 Plunge Road.

The letter and Notice of Annual Shareholders' Meeting Proxy Solicitation and Instructions from Cedarpines Park Mutual Water Company (CPMWC) dated June 2010, show two vacant positions on the board that are up for election.

The notice gives instructions on how to complete the proxy form and explains the proxy has to be delivered to the office no later than 4:00 p.m. on Monday, September 13, 2010.

The proxy form has a space for the shareholder

to complete who they wish to vote for them as their proxy, however, the form also says that if the shareholder does not name a proxy, "The Cedarpines Park Mutual Water Company, Board of Directors, will designate Wilfred Steiner, secretary of the company, to represent my shares as endorsed by the board of directors."

Shareholder Steven Hackin provided a board action request form at the August 13 board meeting requesting the board include the names of the candidates, the proxy solicitation and instruction and information about each candidate with the July-August bill.

Hackin said, "The candidates names were not listed in the notice of annual shareholders meeting dated June 2010. Therefore, none

of the shareholders knew whom to cast their proxy for or anything about any candidates."

Hackin's explained, "The only name mentioned four times was the Secretary of the Board. Clearly, this is biased and gives preferential treatment to the board. This was not a fair, reasonable or legal method for each voter to have all information to make an informed decision in casting their proxy vote."

Experts in the field of elections express that the use of proxies provides more opportunity for fraud in an election.

The candidates running for the board are Lynn Chen, Ron Albright, Sandi Segalla, Glen Dark, Paul Hartman and Suzanne Bowen. In reviewing the San Bernardino County Assessor records, all of

the candidates with the exception of Suzanne Bowen were found to own property in Cedarpines Park.

Shareholder Cheryl Turpin said, "I just received the list of candidates five days before the election. I do not know any of these individuals besides vice president Ron Albright and have never seen any of these individuals attending the meetings. CPMWC is not able to tell us how many shares are outstanding, our best estimate is 4,320 shares."

Section 2.13 of CPMWC bylaws states, with regard to filing proxies, "Casting ballots all rules and regulations shall operate impartially fairly and equitably."