

## **THE FAIRLAND CABANA CLUB ASSOCIATION**

To: All Members of The Fairland Cabana Club Association

From: The Fairland Cabana Club Association Board of Directors

Date: April 29, 2010

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There have been a number of inaccurate statements made on the internet that we would like to take this opportunity to correct. Earlier this Spring, in the course of considering making certain repairs and upgrades to the Association's pool and cabana area (the "Pool Facilities"), the Board of Directors sought the advice of legal counsel. The questions asked centered around the required scope of repairs given the use of the pool by both Association members and their guests, and a local swim team comprised only partially of Association members.

The discussion raised a number of legal complications that the Board had not previously considered, and resulted in the decision not to allow the swim team to use the pool unless and until these issues are resolved. The three main issues are as follows:

- 1) The Association's insurance policy contains a number of exclusions from coverage such that the Association could be exposed to uninsured liability if the pool was used by the swim team for practices and/or meets, even if the swim team were comprised of Association residents only. The Board instructed its manager to investigate whether additional insurance could be purchased by the Association to cover it for this type of activity, and to obtain a quote for the cost of that additional insurance.
  
- 2) After consultation with legal counsel, it was determined that the use of the pool for swim meets could alter the Association's legal status such that a significant sum of money would have to be expended to bring the Pool Facilities into compliance with the Accessibility Guidelines contained in the Federal Americans with Disabilities Act (the "ADA"). If the pool were used strictly by Association residents and their "bona fide" guests (as is authorized by the Association's Bylaws) for traditional recreational use only, the Association would not be subject to the ADA, and would not have to comply with ADA Accessibility Guidelines. The Association has retained an expert to provide advice as to the extent of the required changes, and will thereafter obtain estimates for that work so that the Board of Directors can make an informed decision. Obtaining these estimates will also allow the Board to inform Association members of any increases in annual or special assessments that would be necessary to fund the required ADA modifications.
  
- 3) The Association's Bylaws and CC&Rs dictate that the pool is for the use of the Association's residents and their "bona fide" guests. Neither the Bylaws nor the CC&Rs give the Board of Directors the authority to grant the swim team exclusive use of the pool for either practices or meets without amending the CC&Rs by vote of the membership. The Board is also bound by California Civil Code 1363.07, which states that exclusive use of common area (the Pool Facilities) may not be granted to any member without the approval of sixty-seven percent (67%) of the Association's membership. This is of particular concern given the

significant number of hours of exclusive use of the pool requested by the swim team, which according to a proposed contract received from the swim team, includes at least the following dates and times:

April 19-May 28: Pre-Season Clinics. Monday - Friday. 3:30-5:15.

Two lanes required; 3<sup>rd</sup> lane as available

May 23: 11:00am-4:00 pm. Team Kick-Off BBQ

Team event

June 1-11: Official Team Practice. Monday - Friday. 4:00pm-6:00pm

Two lanes required; 3<sup>rd</sup> lane as available

June 14-July 30: Official Team Practice. Monday - Friday. 7:30am-12:00pm.

Five lanes used. Team makes room for occasional lap swimmers as necessary.

NO PRACTICE 7/14 OR 7/21

June 14-July 30: Afternoon Team Practice. Monday - Friday. 4:00pm-6:00pm

Two lanes required; 3<sup>rd</sup> lane as available

June 19: Home meet. 8:00am-1:30pm

Five lanes required

June 26: Home meet. 8:00am-1:30pm

Five lanes required

July 7: Home Night Meet. 6:00pm-9:30pm

Five lanes required

July 24: Home meet. 8:00am-1:30pm

Five lanes required

July 24-25: Team Sleepover. 4:00pm-10:00am.

August 1: Awards Night. 7:00-9:00pm

Once the Board of Directors has completed its investigation, a decision will be made about whether or not to send out ballots to the Association's members to vote on the periodic exclusive use of the pool by the swim team. Until that time, consistent with the Association's CC&Rs and California law, the Pool Facilities will be open for use by the Association's residents and their "bona fide" guests only.

### **ATTEND THE MAY 10 BOARD MEETING**

The Board of Directors is aware that many of you have questions about the ongoing investigation being conducted and the legal issues surrounding the proposed use of the pool by the swim team. The Association's attorney has therefore been invited to attend the Association's next open Board meeting, during which an hour will be set aside at the beginning of the Board meeting for a question and answer period with the Association's attorney. The meeting will be held at 7:00 p.m. on May 10, 2010, in the Multi Purpose Room at the Fairlands Elementary School (4151 W. Las Positas Blvd., Pleasanton), and will be open to all members of the Association.