

PALISAIR HOME OWNERS ASSOCIATION

ANNUAL MEETING 2018

INTRODUCTORY COMMENTS

Howard Weisberg

Welcome to the fifty-eighth annual meeting of the Palisair Home Owners Association. I am Howard Weisberg, President of the Association.

Tonight, I will take about twenty minutes to give an overview of the accomplishments of the Association since the previous meeting, and of our plans for the future. Then, we will enjoy a twenty to thirty-minute presentation by Jeff Edelstein of SOS Survival Products on disaster survival, a topic that should be of interest to all homeowners in today's world. After that, there will be five to ten-minute presentations by our Treasurer, Chuck Emerick, our Trees Committee chairperson, Suzanne Weisberg, our Plans Administrator, Kim Bantle, and again by me on the CC&R restatement.

Our Association's policy on public comment by Members at public meetings is more generous than the minimum legal requirements. We will accept questions or comments at the end of each presentation. However, please save your comments until the end of each talk, and confine your comment to a maximum of three minutes, so that we can get through our long agenda. Of course, speak only when recognized by the chair. Also, please remember that there is no membership quorum at this meeting and the Association is not able to vote or conduct other business tonight.

Administration. There have been a number of administrative changes. Our previous President, Francine Kirkpatrick, had to go on medical leave last year, and now has moved to Oregon and is selling her house. Francine spearheaded the transition in 2011 to conformance with the Davis-Stirling Act governing California homeowner associations, and the concomitant change from optional dues to mandatory dues, with the strong ability to enforce collection. Francine led the Association to a great recovery after the dark days just a few annual meetings ago when it was announced that a significant fraction of the Board was resigning, new Board members were needed, but that no one on the Board could recommend serving because of the stress. Since then, under Francine's leadership, we introduced

transparency and regularized procedures that now make membership on the Board a doable commitment.

I am happy to say that we now have a full contingent of nine Board members including four officers. Recently added are Chuck Emerick, Dawn Hill, and Kathy Wedeking. Chuck took on the job of Treasurer early in the year. We expect Dawn to take over as Secretary, starting with the next monthly meeting, with our current Secretary, Diana Ungerleider, staying on to provide continuity. Kathy is our newest Board member, and brings impressive experience to the Board.

Election results are as follows: Ballots submitted, 78, Miriam Schulman 56, Dawn Hill 45, Kathy Wedeking 52, Michael Cohen 26, Abstentions 5.

The Board-nominated candidates were reelected by a significant margin. This election reminds us of what we already have found out in past elections, surveys, and other feedback, namely that, among the Members that are interested enough to vote, support for keeping the Association strong, and diligently enforcing the CC&Rs, especially regarding view protection involving trees and remodels, runs anywhere from two to one to six to one. However, as we also already knew, there are some Members that are strongly oppositional, and we are obligated to respect their opinions and requests for information.

Treasury and assessment collection. Our new Treasurer has probably contributed more than anyone else in the past year to helping regularize our operations. He has spent countless unsung hours improving our QuickBooks database and reports so that our financial operations can now be routine and assessment collection can be fully tracked and invoiced. We will now have monthly General Ledger reports and quarterly Budget vs Actual reports. These will provide additional transparency, and will help the Board carry out its duty to review the Association's financial records.

In addition, Chuck and I have put in many hours on working to collect past-due assessments and to create an environment in which, going forward, all Members will pay promptly.

You can find much more detail about the topic of collections in the Minutes of recent Board meetings, and I will not go further over this here.

I do remind the small remaining number of Members that have still not responded to our requests to pay past due amounts that in the near future we will be turning your files over a law firm that specializes in collecting back assessments for California homeowners associations, and that you will be responsible not only for past due assessments, penalties, and interest, but also for the legal fees of collection.

Thanks to the groundwork by Chuck, we will soon be able to train a paid assistant or bookkeeper on carrying out most of the detailed workload that currently falls on the Treasurer. This will mean that the Association will no longer depend on always being able to find a volunteer Treasurer that is expert in QuickBooks and is willing to spend large amounts of unpaid time each month on responsibilities beyond those of an ordinary Board member.

Legal counsel support. A big benefit of collecting all 140 assessment amounts due each year is that we are now able to spend a significant annual amount on legal expenses, without running a deficit or requiring a further increase in the annual assessment.

We now have a General Counsel, provided under retainer with a law firm that provides General Counsel service for hundreds of California homeowner associations. The General Counsel knows our Association and is on call for brief telephone consultations with our Board at no cost. The firm keeps us abreast of the yearly changes in law with which we must comply, they provide free annual training for directors, and they provide additional legal assistance at low discounted rates. They also build and maintain the very useful Davis-Stirling.com website. I recommend that you visit this website if you are interested in homeowner association law.

In my opinion, the modest amount of legal support that we now receive is essential to the success of our efforts to keep the Association strong and enforce our CC&Rs effectively.

The Davis-Stirling Act provides many hoops that a homeowner association must jump thru, and new ones are added each year. These include holding the proper insurance, observing specified time limits for various responses to homeowner requests, following requirements for annual reporting, and following proper procedure leading up to rulings on possible CC&R violation by overgrown trees and by proposed remodeling projects. With the

help of advice from our General Counsel, we can comply with these requirements.

The good news is that if we jump thru these hoops, and if we deliberate in good faith, the Business Judgement rule means that a court will not second-guess our rulings. Legal action against the Association will be deterred. Legal action against us will be further deterred by the Davis-Stirling provision that the losing party in an action involving the enforcement of the CC&Rs must pay the other side's legal costs.

Plans committee. This year, plans for three major remodeling projects were submitted, and, ultimately, approved. Construction has not started on any of the three projects yet but as far as we know construction of each will start soon.

In each case, the entire Board membership, acting as the "Tract Committee," views the proposed project from adjacent properties and hears comments from possibly affected neighbors. Where issues of view obstruction exist, we require the erection of "story poles" to help us visualize the potential obstruction. In each case the Board then deliberates and votes on whether the project "would be unsightly, or detrimental to, or unreasonably obstruct or unreasonably diminish the nature or quality of the view from any other land in this or an adjoining tract, or otherwise tend to lower the value of any land of the tract." As usual, the primary emphasis in the three projects this year was on view obstruction.

For 1160 El Medio, in 2016 the owners had presented a remodeling plan that would add height and extend the existing residence. After story poles were erected, it was seen that the proposal would create new obstructions of the view from several neighboring properties. The Board, after a contentious deliberation, voted to reject the plan. We asked the owners and architect to come up with a new plan that stayed closer to the existing grade and exploited the downslope at the rear of the property, building down. A new plan was submitted and it was approved.

For 1055 El Medio, the owners submitted plans to demolish the existing residence on the property, one of the largest lots in the Association, and to construct a new, very large residence, including a second story. Story poles revealed view blockages from several neighboring properties, and various other view obstructions were found. The owners and their architect,

responding to preliminary finding by the Board, eliminated the second story and made various other changes to mitigate possible view obstructions. The revised plans were approved, subject to various restrictions including the choice of a non-glaring material for the flat roof.

For 1124 Las Pulgas, the new owner submitted plans for a remodel of the existing residence that kept the same roof outline but extended the residence, which is built at the top of an uphill slope from the street, out toward the street. Story poles were erected. There were no neighbor complaints. The project was approved.

Trees committee. Early in the year, the Board resolved to take vigorous steps to enforce the CC&Rs regarding view obstruction by trees, including addressing violations where homeowners have been advised by past Boards that a violation exists, but have not taken action.

As a first step, we followed the procedure provided by the Davis-Stirling act to adopt Rules that extend the CC&Rs to adopt a rule permitting fines.

Since our fines rules have been adopted, we have held two Enforcement Hearings. These are meetings of the full Board in Executive Session where both the tree owner and the affected neighbors may attend. Preferably, they are held on site so all members of the board can view the alleged violation. The board then deliberates and, if a violation is found, may impose monthly fines that continue until the violation is cured.

Subsequently, we have held two Enforcement Hearings. In the first, all tree-owning neighbors in attendance agreed to trim or cut down their trees and no action was taken about them. In the second, the Board voted that a large tree unreasonably obstructs the view from two neighboring properties and that trimming or pruning the tree would not cure the violation. If the violation is not cured, within thirty days, the Board will start levying a monthly fine.

CC&R restatement. We have received first draft of our CC&R restatement from the attorney. It has been reviewed by interested Board members, and an extensive list of changes has been drawn up. Further work has been on hold because of the diversion of effort to the initiatives in 2017 regarding assessments and trees. I hope the effort will get back on track very soon.

Any member that wants to comment on the second draft once it is ready can contact the Association to receive a copy.

The next step will be that members will receive a voting packet and the final draft. Separately, there will be an informational packet containing information provided by the Board, along with written comments submitted by any interested Member supporting or opposing approval. There may also be in-person presentations.

The voting process is somewhat similar to the process we have just completed for our annual elections, but with tougher voting requirements. To adopt the restatement, more than half the membership of 140 homeowners must submit valid ballots and vote Yes, meaning at least 71 Yes votes. For comparison, in the 2011 vote, 106 ballots were submitted, with 80 Yes, 24 No and 2 abstentions. The ratio of Yes to No was 3.3 to 1.

Conclusion. Everyone that has not already done so, please fill out and return an email permission form, giving us your latest e-mail address and giving us permission to send routine Association notifications by email rather than US mail. This saves us money on printing and postage. The law now requires us to renew this information every year, even if nothing has changed.

Also, if you would like to volunteer to help out with a board responsibility and eventually, perhaps, eventually serve a term on the Board, please fill out the sign-up sheet. Thank you.

PALISAIR HOME OWNERS ASSOCIATION
ANNUAL MEETING, FEBRUARY 5, 2018
HIGHLIGHTS FOR THE YEAR

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Thanks to the groundwork by Chuck, we will soon be able to train a paid assistant or bookkeeper on carrying out most of the detailed workload that

currently falls on the Treasurer. This will mean that the Association will no longer depend on always being able to find a volunteer Treasurer that is an expert in QuickBooks and is willing to spend large amounts of unpaid time each month on responsibilities beyond those of an ordinary Board member.

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The Davis-Stirling Act provides many hoops that a homeowner association must jump thru, and new ones are added each year. These include holding the proper insurance, observing specified time limits for various responses to homeowner requests, following requirements for annual reporting, and following proper procedure leading up to rulings on possible CC&R violation by overgrown trees and by proposed remodeling projects. With the help of advice from our General Counsel, we can comply with these requirements and many others. By doing so, we greatly minimize our risk of legal action against us and the significant expense that comes along with it. As a result, I strongly believe this modest amount of legal support that we now receive is essential to the success of our efforts to keep the Association strong, enforce our CC&Rs effectively, and minimize our expenses.

Plans committee. This year, plans for three major remodeling projects were submitted, and, ultimately, approved. Construction has not started on any of the three projects yet but as far as we know construction of each will start soon.

In each case, the entire Board membership, acting as the “Tract Committee,” views the proposed project from adjacent properties and hears comments from possibly affected neighbors. Where issues of view obstruction exist, we require the erection of “story poles” to help us visualize the potential obstruction. In each case the Board then deliberates and votes on whether the project “would be unsightly, or detrimental to, or unreasonably obstruct or unreasonably diminish the nature or quality of the view from any other land in this or an adjoining tract, or otherwise tend to lower the value of any land of the tract.” As usual, the primary emphasis in the three projects this year was on view obstruction.

In the first project, the owners presented a remodeling plan that would add height and extend the existing residence. After story poles were erected, it was seen that the proposal would create new obstructions of the view from several neighboring properties. The Board, after a contentious deliberation, voted to reject the plan. We asked the owners and architect to come up with a new plan that stayed closer to the existing grade and exploited the downslope at the rear of the property, building down. A new plan was submitted and it was approved.

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Trees committee. Early in the year, the Board resolved to take vigorous steps to enforce the CC&Rs regarding view obstruction by trees, including

addressing violations where homeowners have been advised by past Boards that a violation exists, but have not taken action.

As a first step, we followed the procedure provided by the Davis-Stirling Act to adopt operating rules permitting fines for violations of the Governing Documents.

Since our fines rules have been adopted, we have held two Enforcement Hearings. These are meetings of the full Board in Executive Session where both the tree owner and the affected neighbors may attend. Preferably, they are held on site so all members of the board can view the alleged violation. The Board then deliberates and, if a violation is found, may impose monthly fines that continue until the violation is cured.

In the hearing, all tree-owning neighbors in attendance agreed to trim or cut down their trees and no action was taken about them. In the second, the Board voted that a large tree unreasonably obstructs the view from two neighboring properties and that trimming or pruning the tree would not cure the violation. If the violation is not cured, within thirty days, the Board will start levying a monthly fine.

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ANNUAL MEETING 2018
LANDSCAPE COMMITTEE REPORT

Suzanne Weisberg

Hello. I am Suzanne Weisberg, the chair of the landscape committee.

We have had a productive year as we refine our ability to protect the valuable views in our tracts, by enforcing our covenants, conditions, and restrictions, or CC&R's. Those CC&Rs run with the deed to each property in our association of 140 houses. This means that if you are the owner of a property in the tract, you are bound by the CC&Rs as currently formulated. You are also bound by Rules that can be, and have been, established by the Association following procedures spelled out in California State law (the Davis-Stirling Act). The purpose of the CC&Rs and Rules is to maintain the character and quality of this beautiful seaside community for all of us, and to maintain our property values, especially by protecting our views.

Very often, when a potential view violation is called to the attention of a homeowner, they are happy to trim back the tree or hedge that has become so overgrown as to represent a problem for an adjacent homeowner, and often reduces the adjacent homeowner's property value. But in some cases, the offending homeowner is reluctant to act, or simply refuses to act.

Here are key excerpts from our CC&Rs and Rules that govern view obstruction by trees:

Article III, Section 9 of the CC&Rs states the following, in part:

... fences, etc., and trees shall not be placed, permitted or maintained on any land of this tract in such a location that they unreasonably obstruct or unreasonably diminish the quality and nature of the view from any other land in this or an adjoining tract.

...

Upon a finding made by the Tract Committee that the nature or quality of the view is unreasonably diminished or unreasonably

obstructed by fences, etc. or by trees on any land in this tract, ... the owner thereof, upon written notice sent by the Tract Committee, within thirty (30) days shall remove, cut down or cut back any such obstructions ...

Article V, Section 8 of the CC&Rs states the following, in part:

... 'view' shall include, but is not limited to, the sight of the ocean, mountains, city, valleys, canyons, sunrises and sunsets or any other sight deemed by the Tract Committee as being an important part of the property's value that is entitled to protection ...

The following language authorizing fines is contained in the Association's Rules under "Fine Policy":

When the Board initially determines that a homeowner has violated the Covenants, Conditions, and Restrictions (CC&Rs) and a fine should be imposed, it will notify the homeowner at least 15 days in advance that a hearing will be held as part of a scheduled Board meeting. The notice will include the date, time and place of the meeting, the nature of the alleged violation and a statement that the homeowner may attend and address the Board at the hearing. It will also include a time frame for compliance. ... If the Board determines at the hearing that a fine should be imposed, it shall be imposed according to the schedule below, and any fee for the Association's attorney shall be added. For a continuing violation, an additional fine may be imposed each month of violation without further notice or hearing, until the violation has been determined by the Board to have been remedied.

...

Violation Fine Schedule

...

Continuous violations for landscape or tree violations are subject to a fine of up to \$250.00 per month for each month of the violation, whether consecutive or not, until the violation is remedied

Here are some excerpts from relevant court cases that serve as the background for our association's response to these cases.

A homeowner association has a **duty to enforce** its governing documents. The enforcement of CC&Rs must be "in good faith, not arbitrary or capricious, and by procedures which are fair and uniformly applied."

Since associations have a duty to enforce restrictions, it follows that they have **a duty to investigate complaints by residents of rules violations**.

Associations can enforce restrictions through **monetary penalties, suspension of privileges** and legal action for **injunctive relief**.

Homeowners also have standing to enforce CC&Rs and can hold associations liable for their failure to enforce governing documents. Neither renters nor prior owners have standing to enforce governing documents.

Boards have **discretion when it comes to the decision to litigate to enforce governing documents**. Boards can weigh the cost of litigation, the gravity of the violation, and the likely outcome of the litigation, and make a good faith determination to litigate or not to litigate a particular violation.

Although a homeowners' association has **discretion** to decide whether, and in what manner, to enforce the governing documents, this discretion must be exercised consistent with its fiduciary duties and the plain language of the CC&Rs.

GENERAL OVERVIEW

We currently have seven or eight pressing landscape issues, some of which are longstanding, and several are very egregious. Each one is now in line to be fit into the agenda as expeditiously as we can handle. We are all unpaid volunteers, as you know. I understand your frustration about your landscape concerns, but we are doing the best we possibly can to get things on the agenda in a reasonable order.

2018 ANNUAL MEETING

PLANS CHAIR

Hi, welcome all. My name is Kim Bantle. I am the Plans Administrator and work with the PHOA board and Plans Committee which includes me, Howard and Brian Bradford. The Plans Committee reports to the Board. We handle:

- new construction,
- remodels and
- other small construction projects like re-roofing and pools.
- In the last year, the PHOA has reviewed 7 new projects (as opposed to 9 last year) and overseen 3 construction projects. Of the 7 new projects, 2 have been new constructions with 3 remodels or additions and 2 landscape plans.

The PHOA continues to review its documents and work on ways to make them easier to follow and understand.

- If you are planning on doing any kind of external construction, fencing, gates, re-roofing, etc. you should consult the website, Palisair.org and review the CC&Rs, the submittal procedures and the application PRIOR to planning your construction.
- The Board must review all plans to evaluate any potential view obstruction and to make sure the plans conform with the CC&Rs.
- Story poles are required for most construction plans. In addition, site visits, documenting photos and neighborhood meetings are all part of the review process.
- Plan fees are based on the size of the project. You must be current in dues and other fees when submitting your plans.
- During the construction process the Plans Committee visits the property at various stages of construction to insure what is being built is according to the approved plans. Also an independent professional survey may be required during the early phase of construction to verify height of the foundation. Later, the final roof height is measured to assure the maximum

height complies with the approved plans. Hardscape is also checked for compliance.

Submitting, 3 step process:

- All homeowners must submit their plans for construction first to the PHOA prior to obtaining city approval or demolition. PHOA will determine if story poles are required. Neighborhood meetings and site visits will also be determined.
- Once the plans have preliminary approval from the PHOA, the plans then go through the city permitting process.
- After city approval is obtained, the plans must be resubmitted to the PHOA for final approval showing the city approved stamp.
- The Board of the PHOA is committed to an open information policy so that the PHOA, submitting homeowner and affected neighbors are all in the loop in regard to each project.
- As usual, the monthly Board meetings are open to all members of the PHOA.

Cool Roofs

The PHOA has had to respond to several changes made at the city and State level that affect this neighborhood. Title 24 passed in 2014 requires 'cool roofs' that reflect light and are energy efficient on all residential roofs that are flat or almost flat. The material allowed on flat roofs are very limited in color and very bright. At the same time, the PHOA CC&Rs prohibit roof materials that create glare. Therefore, no flat roofs will be allowed by the PHOA if they produce glare. If you are re-roofing, you must submit an application to the PHOA prior to construction with a roof sample.

HOWARD

DATE: FEBRUARY 2, 2018

Certification of Election Results for Palisair Home Owners Association

I, Clare McCaffrey, acting as the Inspector of Elections for the Palisair Home Owners Association election for Board of Directors, certify the election results as follows:

Of 140 possible home owners, 78 submitted ballots.

The quorum requirement is 47 ballots.

Total votes for Board candidates:

Miriam Schulman: 56 in favor

Dawn Hill: 45 in favor

Kathy Wedeking: 52 in favor

Michael Cohen: 26 in favor

Abstentions: 5

SIGNED: _____

Clare McCaffrey,
Inspector of Elections

ANNUAL MEETING 2018
CC&R RESTATEMENT REPORT

Howard Weisberg

The CC&R restatement is being implemented under a contract with the Adams-Stirling law firm. It represents a complete rewrite of the current CC&Rs, which were primarily drafted in the 1950's. The rewrite is in clear, modern, unambiguous, Davis-Stirling compliant, and easily navigable language. This is in contrast with many parts of the current CC&Rs.

The bulk of the language is boilerplate, customized for our association, that has been tried and tested in hundreds of restated CC&Rs that have been delivered by the law firm. The key part that is not standard is the article entitled Architectural Control. This article gathers together in one place all the provisions in our existing CC&Rs related to view protection, plans review, and restrictions on view obstruction by landscaping.

We are taking care that all important provisions of the current CC&Rs are reflected in language in the restated CC&Rs, except for provisions that are either not needed or incorrect. In addition, the restated CC&Rs and Bylaws cover a broad range of issues that may face us in the coming years but were not anticipated in the 1950s.

In areas related to view protection, we are eliminating, as much as we can, language that is unambiguous or is inconsistent with various court decisions relating to views that have been handed down over the years. As much as possible, the restated CC&Rs should be bullet-proof against various attacks that have been discovered over the years by attorneys.

Finally, and very important, we are introducing substantive changes and clarifications. The most important one regards view obstruction by remodels under 15 1/2 feet above grade. A good case can be made, based on the language of the original and current CC&Rs, that no new view obstruction was to be allowed, even for construction that lies below 15 1/2 feet above the original grade. However, as far as I know this has never been to policy of the Association, or at least of a majority of the Board. Developers were given a free pass as long as new construction is below 15 1/2 feet.

As a result, a number of projects have been allowed that resulted in substantial harm to the view from adjacent properties, compared to what was there before the remodel. The rewrite will make it unambiguously clear that this is not allowed going forward. In an informal survey that we carried out in 2016, Members endorsed this principle by a ratio of six to one.

In addition, a number of other changes are being made in the CC&Rs and the Bylaws, including the following:

1. To disallow rooftop decks except in very limited cases;
2. To disallow explicitly flat roofs made from glaring materials such as many of the materials currently prescribed by the California Green Code flat roof construction;
3. To clarify rules for off-pad construction;
4. To require applicants to be up to date with dues payments and with remedying past CC&R violations before plan approval;
5. To explicitly prohibit the presence of attorneys at Board meetings unless approved in advance by the Board;
6. To implement a policy regarding fines and their collection;
7. To allow, in the future, rules restricting “Granny Flats” and short-term rentals.
8. To tighten rules on director responsibilities and eligibility.

A further enumeration of key changes will be prepared with the final draft.

Thanks you for attending the meeting and we hope to see you at the meeting next year.

11:46 AM

01/20/18

Cash Basis

Palisair Homeowners Association
Profit & Loss Budget vs. Actual
 January through December 2017

	Jan - Dec 17	Budget	\$ Over Budget	% of Budget
Income				
HOA Dues				
Dues	48,460.00	37,268.00	11,192.00	130.0%
Late charges (10% of annual dues past 30 days from Jan 1)	893.00	25.00	868.00	3,572.0%
Penalties/Interest (12% per year of unpaid balance)	1,685.76			
HOA Dues - Other	25.00			
Total HOA Dues	51,063.76	37,293.00	13,770.76	136.9%
HOA Fees				
Application Fees	8,650.00	12,000.00	-3,350.00	72.1%
Total HOA Fees	8,650.00	12,000.00	-3,350.00	72.1%
Interest Income	10.88			
Total Income	59,724.64	49,293.00	10,431.64	121.2%
Gross Profit	59,724.64	49,293.00	10,431.64	121.2%
Expense				
Administrative Fees	12,674.00	12,000.00	674.00	105.6%
Bank Service Charges	25.00			
Bookkeeping Services	1,009.95	3,000.00	-1,990.05	33.7%
Fees misc.	430.64	650.00	-219.36	66.3%
Hosting and Web (Computer supplies, software, online fees, internet)	803.62			
Insurance Premium (Insurance expenses)	17,003.10	18,647.00	-1,643.90	91.2%
Mailings & Meetings	1,241.67	1,600.00	-358.33	77.6%
Office Supplies (Office supplies expense)	764.54	500.00	264.54	152.9%
Postage and Delivery (Postage, courier, and pickup and delivery services)	200.00			
Professional Fees (Payments to accounting professionals and attorneys for accoun...)				
Architectural Fees/Review Plans	4,237.50	6,000.00	-1,762.50	70.6%
Legal Expenses	10,671.00	9,300.00	1,371.00	114.7%
Total Professional Fees (Payments to accounting professionals and attorneys for a...)	14,908.50	15,300.00	-391.50	97.4%
Property Maintenance	250.00	200.00	50.00	125.0%
Property Taxes	14.17			
Total Expense	49,325.19	51,897.00	-2,571.81	95.0%
Net Income	10,399.45	-2,604.00	13,003.45	-399.4%