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Can This HOA Board Declare This Issue Done and Stop Arguing?

October 2021

An [HOAleader.com reader asks](#): "I moved to a 14-unit HOA in November 2020 and was voted in as a board member in June 2021. Members met to approve continuation of paying two homeowners a total of \$150 annually since their homes were covering the costs of water and electricity of common HOA swales and gate. One homeowner continues to fight this saying \$150 annually is too much.

Board members called the water company and gate manufacturer, and both said that since the areas weren't metered separately, you can't exactly know the costs of running the swales and gate. However, they both said \$150 was reasonable and may not fully cover the costs.

We learned that putting in two separate water meters and electrical meters to get accurate charges would be at least \$15,000, plus each water meter has a \$14.59 minimum monthly charge.

We believe we've done our fiduciary responsibility and that \$150 is correct. We're at a loss as to what to do with her challenge on \$150. She has been a challenge on the gate repair as well. We want to address her concerns, but nothing seems to work, and she fights everything. Unfortunately, we have some homeowners who won't attend association meetings due to this person."

Our simple question to our experts is this: How can you stop arguing with an owner who's taking an issue with a board that appears to have done its [fiduciary duty](#)?

Declare It Finished and Stop Fighting

This is so common, and it happens with a range of issues. "There are several instances where that could take place," notes Zulema Mendoza, LCAM, regional vice president at KW Property Management, who oversees about 20 condo and HOA communities in Southwest Florida and North Carolina. "It's the homeowner who's not happy with the results of an action or what's been done even though

the board has done their due diligence to act in the best interest of the association."

Our experts universally say that this board--and others who've done their due diligence--can decide not to fight with stubborn owners anymore. The key is how to do that professionally.

"I absolutely felt that way when I read this question," notes Jeff Vollmer, a partner at Makower Abbate Guerra Wegner Vollmer PLLC, whose firm advises nearly 2,000 association clients throughout Michigan. "Enough is enough.

"We're talking about a minor expenditure that's been justified by the vendors the board spoke to," he explains. "You need to focus on the big-picture issues affecting the community, not the minutiae."

And if you don't stop this now, you'll be constantly fighting with this owner and others. "The board needs to be clear about its expectations in dealing with owner issues," suggests Todd J. Billy, CCAL, an attorney at The Community Association Lawyers in St. Louis, who is licensed in Missouri and Illinois and has more than 1,000 active condo and HOA clients. "Once the board makes a decision, you have to stick to it and move on unless there's some change. I suspect this type of owner will find something else to complain about. The board's job is to make decisions on behalf of the association, and this is one of those decisions."

Your Protected When You've Done Your Duty

The key here is to remember and fall back on the [business judgment rule](#), advises [Michael Kim](#), of counsel at Schoenberg Finkel Beederman Bell Glazer in Chicago, who represents about 500 associations.

"There are occasions where owners have really become obsessed with an issue," he explains. "It may be based on their sense of correctness and detail, but often they're trying to look for the 'perfect' way to handle a situation.

"Certainly, in our jurisdiction and a good many throughout the country, the courts' standard with regard to reviewing a board's decision making is the business judgment rule," notes Kim. "Boards have a fair amount of leeway in deciding how they're going to handle a situation when resources are being used for an individual's purpose.

"Perhaps someone wants to put an air conditioning condenser on the building roof, and the board grants them a license and maybe [charges a fee](#) associated with that," he explains. "Sometimes that fee is somewhat arbitrary because that could be space that's not practical for any other purpose and really has no meaningful value.

"Or if someone's using the building's electricity, such as to charge their electric vehicle, you can get down to the precision of metering," says Kim. "But if you're getting good, professional guidance saying it's not worth it to install a meter to

track that usage and it'll take 20 years to recover the cost of installing the meter, that installation doesn't make any sense.

"In those cases, if the usage is nominal but in fairness something should be charged, you pick a figure that's a fair approximation," he advises. "It doesn't have to be perfect."

Scripts to End Endless Arguing

Our experts have various ways to professionally convey the "we're done" message to homeowners. Here are their suggestions:

- This is a situation where you tell the owner that you've exhausted the discussion, you have other issues to address, and you're not going to respond further," suggests Vollmer. "You need to set that boundary.

"What if you continue to receive those types of [harassing emails or inquiries](#)?" he asks.

"You state something along the lines of: 'We're not dealing with this further. If this continues and affects other issues the board is dealing with, unless it's an emergency, the board may not be able to assist you at all. You're abusing the limited time the board and management have to handle their responsibilities.'"

- "'The board considers this matter closed,'" suggests Billy. "That's when we're trying to get in front of the issue. Eventually, if the behavior continues, I'll suggest saying, 'We consider this matter closed, and we won't respond to future requests related to this matter.'

"At that point, it's going to shift into something else, and that's fine," he adds. "But the board is being very professional in saying they made a decision and are moving on. The unprofessional way to say things when the issue shifts into something else is to say, 'If you don't like the decision, please run for the board.'"

- "What we've been advised to do by our counsel, and what we've done, is to let the resident know: 'This has been addressed and resolved, and we consider the matter closed,'" explains Mendoza.

"You might have to say that several times in a row," she adds. "There are always loopholes and different scenarios those owners will pose trying to come back to the same topic. It's about the board conveying a consistent message, not just to that owner but to all owners because that owner could be the next board member.

"When people are just not accepting the results, the board has to provide the same message," says Mendoza. "Perhaps it's even in a letter from counsel. But the message is that the board considers this addressed and resolved and that the board is moving on."

- Kim suggests: "We appreciate your concern, but under the law, the board has the prerogative to make the decision on another basis. The board feels they've made the best decision. The decision doesn't have to be perfect because the law doesn't require the board to be perfect. It requires boards to use their best judgment."

Resist Making This About You

The key is to make sure your response doesn't further the discussion or inflame others. "I had a situation with one of my clients where an owner refused to accept a board's determination on a plumbing matter," recalls Kim. "The owner would consistently write to the manager and say, 'Here's the bill; I want to be reimbursed.'

"The manager said no, then sent the matter to me, but the owner kept on a regular monthly basis sending an invoice," he adds. "I suggested the manager and client create a form letter stating something like, 'For the reasons previously explained to you, the board...'

At an association meeting, it's also critical you remain professional. "If someone keeps bringing an issue up at a meeting, you then have to perform a balancing act," states Kim. "It can be annoying and frustrating if they continue to bring up this subject, and that sense might be shared by the membership as well as by the board.

"But if you're the chair and you're in a 'public' forum, it's hard and it takes self-discipline, but you should say something like, 'Mr. Smith, we're familiar with your concerns. As you're aware, the board decided differently, and we're aware of your position. Now we need to move onto other discussions,'" he suggests.

"You don't want your disrespectful behavior in response to become an issue," notes Kim. "The people will be with you until that happens. If you're disrespectful, the people will say they agree with you but that you're not handling the issue appropriately. Then it's not about the issue at hand but how you've handled it."