

**Ballantrae Condominium Association
Board of Directors Meeting**

**Date: May 27, 2022 Time: 10:30 A.M.
Location: Gulf Gate Library Meeting Room A**

AGENDA

Special Meeting, No Regular Business

- 1. Call to Order, Roll and Proof of due notice of meeting**
- 2. Resident Questions regarding settlement**
- 3. Adjournment**

Reminders:

**BOD Meeting June 15th 6:30 p.m., Gulf Gate Library
Meeting Room A**

Ballantrae Condominium Association Amended Board of Directors Meeting

DATE: May 27, 2022 **TIME:** 10:30 am.

LOCATION: Gulf Gate Library, Meeting Room A

Board Members Present: David Dicke, Pat Boustedt (calling in), Drew Lowther, Michel Glower. Quorum established.

Attendees: Mike Miller, Manager; 14 Residents (plus and minus about 5 individuals who wandered in and out)

Call to Order: The meeting was called to order by David Dicke at 10:30 a.m.

As this is a special meeting, no board business was conducted.

President's Opening Statement

Before we approach these settlement questions, I think it is important to provide a couple of extra details for the community.

With the single signature of a prior president, Unit 11D was given permission to put a small expansion on the lanai – into the common elements. The owners chose to wait until after their unit was painted to act on their plans. So, at virtually the same time as the patio extension was started, another homeowner in our community requested – ***and was granted approval*** - on ***the signature of the president alone***, to alter and take over a sizable portion of common element and install a large skylight.

The issue we have faced is how one incursion into common area resulted in an enforcement action and a settlement in order to come to a conclusion. Yet the second owner has faced no consequences. What should the board do? What is justice for these actions? We don't want to take a punitive approach, but would rather communicate directly to resolve issues as they occur.

What we do know is that the board needs to tighten up our approach to managing our community so these situations won't happen again.

The board has been working hard detailing and finalizing The Architectural Review documents and seeking to institute a committee to oversee resident requests for building changes. We are implementing a clean slate document for every unit as part of this process. These things will allow our residents to understand the possibilities and limitations of living in Ballantrae, following the rules of our Association and the State of Florida.

There is a lot of work in managing our properties. We have been trying to expand, inviting other homeowners to assist in the business of Ballantrae – and have been gratified by many who have been willing to make a difference, small or large. Working within the rules and laws, we are trying our best to make solid decisions for the benefit of every resident.

Resident 1:

What was the name of the attorney that worked on the settlement? Were there any other attorneys? No Did all members of the BOD work on the settlement together? Did you use the old settlement as a guide or did you start fresh? You are getting into an area of Attorney/Client privilege confidentiality. Was the whole board present? No Did you modify the document afterwards? No Did the attorney tell you not to sign? Attorney/Client privilege Did all the board agree to sign? Yes Why did only the President sign the settlement? That was all that was required. Why didn't the board let the owners see the agreement before you signed it? It was the Board's responsibility.

Response: Jackson Kracht was the attorney for the Association. All of the board attended the mediation, all agreed to the settlement on the day of the mediation. The settlement was not altered after it was signed. The board cannot answer questions about the settlement or our discussions with Attorney Kracht that day, as the settlement is a privileged document and those discussions are within attorney-client privilege.

Resident 1, continued:

What has been the cost of this since you took over the board? Approximately \$10,000

Response: The board did the mediation to get the community out of this the least expensive way possible. We investigated how much was spent every year for the past 30 years in legal and professional fees. (See chart on next page.) For 24 of the last the last 30 years, Ballantrae has worked with each other as neighbors. Whenever there were disagreements, people compromised as neighbors.

Until 2017 when something happened and legal fees have skyrocketed. We need to work together as neighbors again to keep the legal costs low.

We need to speak with each other as neighbors before we hire the lawyers to send certified letters.

Why is the Board Advised not to Answer?

In these minutes you will see that the board was advised by counsel not to answer some of the questions. We want you to understand why.

This is a case where the Association has a dispute with one or more owner. So even though all of the owners are members of the Association, because the counter party is one of the owners, it would be poor strategy for the Association to share details of the planned litigation and/or settlement to all of the owners. As an owner, the counter party would be one of the owners who received the "inside information."

Associations could never win if they had to share their strategies, and the rest of the owners would incur legal bills and special assessments with little hope of prevailing. That is why the board meetings to discuss litigation are closed and cannot be attended by owners. And why the board cannot discuss the discussions held between the lawyer and the board members in the mediation.

But the settlement is signed and a done deal, so why not talk about it? Our Ballantrae Association lawyer was approached in May by an attorney hired by a resident to ask questions about the settlement negotiations. This is an indication that there are one or more residents TODAY who are considering legal action against the Association. It is in the interest of the Association and the unit owners that we protect our interests and minimize the potential for possible legal action.

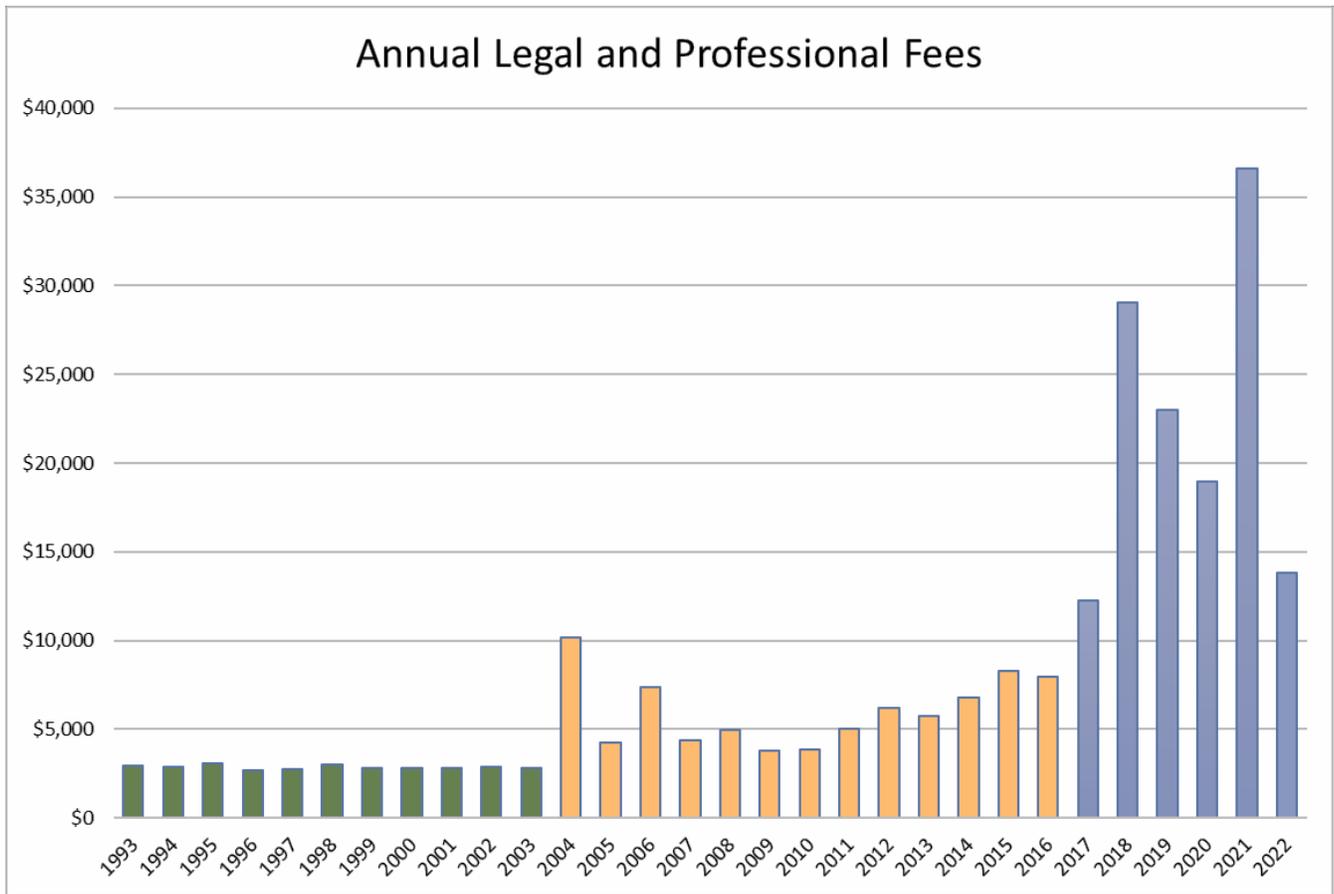
Legal Fees – Comments:

Drew Lowther:

“When we took over the Board, we were deeply in a legal battle over this. We were advised that the cheapest way to get out of this thing after the previous Board’s actions was mediation. The community has already been assessed \$300 because of these legal fees. Legal fees were out of line before we even came on the Board. We were saving money, not wasting it. Mediation allowed us to get out of this and move on without spending any more money.”

From 2015 forward 80 to 90% of legal costs were due to rewriting our entire Governing Documents to bring them up to state statutes.

John Frazzini: Legal Fees – see attached document



Resident 2:

It seems flawed that the signed settlement agreement cannot be changed. 60% of the current board was not elected so they are not a representative board. Why were items 6A through G omitted in the final settlement? Why no covenant to make 11D tear it out when they move?

Why are owners of 11D allowed to serve on committees?

Response: We cannot answer questions about the settlement negotiations.

See Jim Boyd's attachment. All answers to Jim's questions were met with 'attorney/client privilege confidentiality.

Resident 3:

Who is the client? If the owners are the members of the association why can't the owners see these privileged documents? Why aren't we part of the client?

Response: We cannot answer (see sidebar on page 2).

Who exactly is the client? Response: The Board of Directors

Aren't we the homeowners the client? Response: Yes

Resident 4:

It seems to me this whole thing is never going to be put to rest because certain people want to keep it going on. It should have never started in the 1st place and it would never cost us the homeowners the money it's costing. And if you continue to fight this it's going to cost the homeowners more. So you're not happy with the present board.

When you were on the board, you shut everybody down. You went ahead, you hired the lawyer, you didn't communicate to homeowners know that this was going on at all. Well, what you did cost a lot of money to all homeowners. Now is the time to let the new board run this place. You have had your turn.

~~You people~~The 2021 BOD continue to come to the present BOD meetings and continue to be disruptive because you're upset/angry with what you did or did not accomplish. I went over there [to unit 11D] and nobody goes in the back there. They made it beautiful there. This is not, it should not, have been an issue right from the beginning.

Resident 5:

I was just wondering why the clean slate clause was deleted?

Response: We cannot answer that. But there is a clean slate policy going forward as part of the adoption of the Architectural Design Review procedures.

Response by President: The clean slate is going ahead but why it was deleted is attorney/client privilege confidentiality, but we are going ahead with a clean slate document that we are working on with our attorney. We will be getting it out to everyone once we have finalized it. It will also be included in the Architectural Review documents.

Resident 6:

I am rather new. Does this mean that tonight I can pull my chair right up to your lanai and sit out there and do what I want because that's common element?

Response: Yes, you can bring a table and sit right outside as long as you take the table back home with you when you leave.

Drew Lowther:

I've been in Ballantrae for 10 years, over 10 years and I never would have wanted to be on the board of directors because I know it's a thankless job and I don't have time quite frankly. But when I found out about the assessment that was going to happen because of legal fees, I attended the meeting last August in the Elks Lodge. And people, if you just moved in, you might not be aware it was like a mutiny. There were about 50 homeowners and every single one of them was very upset to hear about the suit, finances spent and they did not want this

to go forward and said so. Everybody wanted it to stop then and there. The former board president refused to stop when there were literally 50 or 60 people at the meeting and every one of them was incredibly angry that this was going on, that the board president would not stop the litigation, that we had been subjected to this and it would continue no matter what the residents wished.

So when we had the election and new board members were elected, I thought things would change for the better and the new board would actually represent the residents and their wishes. It was then that the 2021 board members that supported the enforcement action resigned. The current BOD then asked me to serve on the 2022 board. Resident 2 says we were not elected. If I had a choice, I would not be on the board. I don't want to be here, but I'm here. I'm here because of common sense. That's why I'm here and hopefully common sense will prevail. Because it's ridiculous for us to go to lawyers over a 2-foot patio that these people put outside their unit. It's ridiculous.

Not once in one of those counterpoints did any of the former BOD members mention anything about all the legal bills they ran up. Their reasoning supposedly was that residents should just have to pay this money because we're going to take care of you. And it's incredulous and I think that anybody with common sense can see that.

Resident 7:

There are two alternatives: One is to inventory all violations and make people remove them. This would make everything clear for all owners in the future. Most condominium associations prefer this method. Twenty years of built-up violations.

Second approach is what we're doing today, using a clean slate to inventory infractions. What happens if you miss one? Can you see how muddy and complicated the process is going to get for future boards and committees? If you do this clean slate now, why can't we do another clean slate later? At what point do we ever follow the documents in Florida law?

And what about disclosures on grandfathered violations during the sales process? A new homeowner would need to know which violations are fine, even though the documents and statutes say otherwise.

See Dealing with Infractions by Sue Frazzini attached

Resident 8 (previous board member who resigned):

People question whether the Association would win if the enforcement action had moved to litigation. People say we misled the Association's lawyer. I spoke to him and asked if he was misled and he said no.

The legal fees spent to settle the enforcement action would not have occurred if the current board had been "transparent." No legal fees would have been needed if 11D had just signed like the previous board thinks they should have (despite that fact that most Ballantrae owners wanted the litigation against them to cease and desist as noted at the August meeting). None of this would have happened if 11D had agreed to the 2021 board's agreement even though the residents had gotten approval for the work from the 2020 board president. See, no transparency. The legal fees were ultimately caused in my mind by 11D, a former president, and the current board.

Additional Comments:

Drew Lowther:

I don't want to take up any more time. I just wanted to say that and just one more thing. When I first came on the Board I went and met with all this previous group at John's condo. I wanted to hear what they had to say. They told their side of the story for over an hour. After they all got their say out, my 1st sentence I was interrupted. They didn't want to hear it. This group did not want to hear anything. I just want you all to know we are trying to do our best. I don't want to take up any more time. I just wanted to say that and just one more thing. When I first came on the Board I went and met with all this previous group at John's condo. I wanted to hear what they had to say. They told their side of the story for over an hour. After they all got their say out, my 1st sentence I was interrupted. They didn't want to hear it. This group did not want to hear anything. I just want you all to know we are trying to do our best for the community and I hope you see the money aspect of this. Yes, the 2-foot. Yes, the 2-foot patio is technically against the law but there are a lot of units in the community that have violations. That is the whole point we are making and you singled out 1 unit. We are going to try and do a clean slate to make it very clear to go forward what is allowed. So, let's just move forward._

Response:

Jim Boyd: "I don't believe you Drew. I volunteered to be on the Board. The reason I ran to be on the Board is because I believed 11D rights had been violated. But what ended up, was this meeting you attended Drew, was a complete public relations issue. It wasn't a matter of what was right and what was wrong. When you signed on to be on the Board, I volunteered to be on the Board but you decided I was too argumentative. But the point is that when you signed to be on the Board, you signed to abide by the statutes and the governing documents. I don't understand this whole thing because the agreement you signed violated 3 state statutes and 8 of our governing documents and that is a problem for me.

Drew: "It's like I'm on 75 and everyone speeds and breaks the law. You have to have common sense." Comment: What does this statement really mean? It's common sense to break the law???

John: "To clarify Drew on what you said when we had the meeting at my home, you excluded your statements that the Board had heard from the lawyer that the lawyer said that we did not provide and mislead him on the entire case and structure. You also said that the lawyer advised the board that there was no way you could win a lawsuit regarding this matter. That upset me so I called the lawyer. He didn't answer because of client/privilege. However, I left that message. The lawyer then called David Dicke and asked permission for him to call me. He did call me and said that those comments are false. I addressed that with you telling you that and asked you where did the Board get that information and we were going to lose. Jacquie Eubanks confirmed those comments because she was at the meeting.

Drew: "I was misinformed on that."

John: "I found it slanderous because that is not what really happened. The lawyer said it was false."

Resident 9 (wife of current board member):

I was in the room at the meeting with Resident Y and Resident 8 and David Dicke at Mike Miller's office. David said, how did we get to this place? What happened because before we left for Ohio, it was with the understanding that Resident Y and Resident 8 would call David at the time of their Thursday gathering and would include him in the decision-making process. That call never came. (Resident 8 answers: We couldn't because it wasn't a legal board meeting.)

At that meeting Resident 8 said we took this action because of Resident Y. And Resident Y said no, I didn't do that, we took this action because of Resident 8. I was a witness to that, my husband was witness to that, Mike Miller was witness to that. It was a time when the board was not operating officially under Florida law, making decisions without having a quorum and without posting board meetings, so it makes no sense to say including David Dicke would have made it illegal.

My husband and the current board have been trying everything they can to find a way to make a difference for this community. And to stabilize things so that we can move forward and not stay stuck in the past. Thank you.

Resident 10:

The mediation was suggested by 11D, not by the former board.

Resident 11:

For anybody who's new and doesn't know there are file folders at Miller management for each one of our units. I and a small group of owners went through 102 of these little file folders to find out over the course of history as to who had requested changes? And what was the procedure for requesting the change and for being approved.

I found some things that illustrate Ballantrae approvals and procedures. I'm mentioning people by name & do not to throw them under the bus. Because I believe that all 102 of us are volunteers, that's all we are, we are all owners of this place. Right? And we're all volunteers when we step up to serve, whether it's on a committee or a board.

In my unit folder at Miller Management, I have letters to myself; I put in two skylights and they have three signatures on the approval. I had Resident X who was Secretary at the time. Resident Y, who was on the board at the time, and I had Resident 13 who was President. I've got my letters. I also pulled out a letter from 11D and it has a former president's approval on it. I've also got a letter from when Resident Z wanted to put in new windows, they applied, did the right thing and their letter is in here and in their letter, it is signed with 3 signatures on theirs. And here's the point, on theirs **they got permission to go out for two feet onto the land** they have for lanai sliders. "Any exterior steps should be confined to the planting area without encroaching on the lawn, and in no case should it extend more than two feet from the building."

And what I'm getting at is past boards were all volunteers doing the best they could. Did they make some mistakes? Yes, but as a community are we punitive?

My skylights been in there since 2015. As far as what Resident 7 was mentioning before, I

do agree this clean slate thing could possibly be a nightmare. But to make everyone remove every alteration? Am I to get up on my roof and take out my skylights at this point? I have two of them up there. All I'm pointing out is that we were all doing the best we can and we are going to get a horrible reputation. There is a resident who is a realtor who had to leave, but she said I could quote her. We are getting a horrible reputation in the community. We're seen as punitive & litigious. When we sell our units, we will have to disclose the fact that there's either a current lawsuit in hand or one coming up because it's coming down the road and our property values are going to sink and I just don't get the point of this.

When we step up to volunteer, we step up with all the best intentions, I don't think anybody here wants to run Ballantrae because there's 102 of us, and we all own this place equally. I just wish we would put an end to this. Just put an end to it. Thank you.

Resident 12 (former board member who resigned):

When he was on the previous board, the current board president did not kick up a fuss and vote against the enforcement action. Resident 12 said they want to "spread the blame" to include the current board president.

Board attempts to wrap things up:

President: Do we think there should be consequences for 11D (improperly approved by Resident Z) but not for 15A (improperly approved by Resident 8 who is now fighting the 11D settlement)?

Drew Lowther: The residents have a right to know what's going on. But this group has made a point of going after the board for every little thing. So if we have a choice, we choose not to disclose because of this group.

Actual Comments:

"I hope I'm not getting into trouble, but I heard a couple of residents say they have a right to know what is going on. I agree with that, but at the same time since I've been on this board and see firsthand, this group has done everything they can to undermine every single little detail we do. So, if you have a choice as a board member you are not required to disclose these things. These people are just looking for any little word that you did wrong and they are going to try and nail you to the wall for it."

John: "Can you give us an example of that?"

Drew: "Every Board meeting. I asked someone after a Board meeting why you were asking all these questions when they don't even mean anything. I got an answer that is what they did to us. Anything we do is challenged no matter what it is. It has gotten way out of hand. And this is why we are not disclosing every little detail because they will try and come back and use it against us with anything they can. It is out of hand. The majority in this community want to move on. People are mad and want to move on, and that is just about everyone in the community."

John: "Not true" 30+% of the community asked for this meeting to get more information."

The Board: "We want to all move forward"

One final question is taken:

Resident 13: Resident 2, Resident 8 and others, what do we need to do to turn this off and move forward in a community-constructive manner?

Resident 8: 11D must sign the original settlement and have the covenant so that when they sell they will have to remove the patio extension.

Resident 13: So, if we enforce against 11D and nobody else that will make you go away?

Resident 8: Yes.

Comments:

What do we need to do to resolve it?

Response:

John: "The settlement we agreed to and they agreed to, allows them to keep the 2 feet as long as they own the property. Once they sold the property, they had to remove the 2 feet to give back to the common elements. It was a rational negotiation and mediation that they refused to sign. And now that there is a new board we have nothing. There is no enforcement, no penalties, no anything."

Michel Glower, Treasurer: If we get a covenant against one unit and we will not enforce on anyone else, will you go away? Will you stop this litigation?"

John: " You mean will 30% of the community go away"

Michel: " I don't think that is true at all." What will make you happy?"

John: "Signing the original settlement, forcing them to remove it upon sale."

George Harland and other homeowners agreed.

Adjournment: 11:35am

Motion to adjourn made by Drew. Seconded Michel. Passed 4-0.

Next month's regular meeting will be held at Gulf Gate Library Meeting Room A, Wednesday June 15 at 6:30 p.m.

Respectfully submitted,
Pat Paulson, Secretary on behalf of
Patricia Boustedt, previous Secretary

Date: September 27, 2023

Statements
Submitted by
Unit Owners

(Submitted by Jim Boyd)

Good Morning, thanks for taking time to meet with us.

Unfortunately, the settlement agreement the Board has promoted as the final agreement that cannot be changed is severely flawed. One attorney calls it completely illegal. Another is mystified why any Board Member would sign and asked what would compel a Board Member to sign this.

My issue is that the Board Members signed an oath which includes to abide by Florida Statutes and Ballantrae Governing Documents. The Board's actions seem to support only one unit's rights-11D. I was stunned when these violators were appointed to important committee heads, much less without any notice to the unit owners that these appointments were opening. It seems the current Board, which is comprised of 60% of members who did not receive a single vote in the election, deems itself as a dictatorship and not a representative board. Fortunately, we live in America which is a nation of laws and there are checks and balances. We unit owners have remedies to actions of the Board were authority is severely overstepped.

While roughly 24 sections of the 2021 agreement which was reasonable are the same in the 2022 agreement, several sections were omitted or added. I have just four issues to address:

1. In the 2021 agreement, Item 6 (a) thru (g) were very important to protecting the Association. They were omitted in the final agreement. This included maintenance, insurance, transfer of title issues etc. What was the Board's rationale for omitting these critical elements?
2. The Covenant to run with the land was extremely important. This document would have been recorded and recordation provides notice, disclosure and protection for the Association now and in the future. Future buyers, sellers and Board Members would have notice of the issue. The ARC process appears to be an attempt by the 11D friendly Board to silence this issue.
3. Claims for Injunctive and Declaratory Relief were included in the final agreement. I researched this and it is convoluted. What does it mean? What was the purpose of this clause?
4. Mutual limited releases were added. This language includes "release, remise, acquit, satisfy and forever discharge, etc." This seems to defeat the entire agreement which isn't beneficial to the Association. What was the Board's thinking here?

The answers to these questions still remain a mystery. The attorney for the Ballantrae Association advised the Board not to answer. What happened that is so egregious that our Board won't discuss? Stay tuned.

Presented by John Frazzini – LEGAL FEES

New Settlement Legal Fees 5.27.22 prepared remarks John Frazzini

We would not be here continuing to spend legal fees if the board was transparent with the ownership and interested in protecting their rights!

The history of the settlement legal fees:

1. Unit 11D properly requested window replacement in Feb of last year and the request was approved by the board – **NO LEGAL FEES**
2. Unit 11D poured a cement patio extension on common elements without board approval – a letter demanding that Unit 11D to cease working on the patio until the issue is resolved and to not add anything further to the patio – **SMALL AMOUNT OF LEGAL FEES**
3. Unit 11D continued to add tile to the patio in direct defiance of the boards demand letter – **MORE LEGAL FEES**
4. Unit 11D lawyer stated that they had “approval” to add the patio and that “they own” the 2’ common element the patio was on – **MORE LEGAL FEES**
5. Board was required to force Unit 11D into mediation because of their statement on owning common element – **MORE LEGAL FEES**
6. Unit 11D agreed in mediation to all terms and the association was responsible to write up the settlement – **MORE LEGAL FEES**
7. Unit 11D refused to sign the settlement they agreed on – **MORE LEGAL FEES**
8. A new board was installed this year. Their platform to the community was that LEGAL FEES were not needed and too high. They decided to have a

second mediation with Unit 11D. The new board and Unit 11D agreed that they violated 8 documents and 3 Florida statutes. No penalty to the owners and no protections for the Association was agreed too – **MORE LEGAL FEES** which were unnecessary

9. Owners have to send certified letter to see the settlement – no transparency
10. When asked on two occasions to put this item on the agenda regarding the settlement the board refused – **WHY?**
11. Owners were forced to petition the board with 26 signatures (not a small group) to force an agenda item which we assume needed a lawyer to review – **MORE LEGAL FEES** which was unnecessary
12. Today the board has not fully answered our questions and therefore we project – **MORE LEGAL FEES** which would not be necessary if the Board was honest and transparent as promised
13. Meanwhile the board is attempting to create a clean slate using the ARC committees rules and regulations to brush this illegal patio under the rug – it won't work and we would bet that **MORE LEGAL FEES** are coming the board's and associations way
14. Summary – so you can see the **LEGAL FEES** were caused by Unit 11D, Andy Westra, and the current board – we estimate that we are at about \$35,000+ in legal bills and there is more to come. All because Unit 11D decided to violate our documents and Florida statutes to their own benefit!

Dealing with Infractions remarks by Sue Frazzini

There are two approaches to dealing with infractions to our governing documents and Florida Statutes. One would have been to inventory the property for infractions and resolve the issues according to current governing documents and Florida statutes. Following this rational, 11D would be required to remove the concrete pad along with all the other violations found in the neighborhood. Infractions like statuary, pavers, landscaping pots, extra outdoor lighting, etc. This would have been a very clear way of keeping the governing documents and Florida statutes “clean” and fair to all homeowners current and future. Most Condo Associations prefer this method of resolving violation issues that have built up over time.

The second approach is what the Board is doing. You have signed a settlement agreement that allows 11D to keep a poured concrete pad attached to the unit foundation on common element. Using this Clean Slate attempt to inventory infractions will codify, in other words, make the concrete pad violations part of the governing documents, and deny future homeowners the same opportunity to have an enlarged lanai or another use of Common Element as they see fit.

This path will place undue pressure on future Boards and Committees to explain why one homeowner has committed a violation and they cannot. I see a time when a new homeowner who buys an existing property might observe other homeowners use of common element that the documents declare a violation. This will cause a rift in the neighborhood and probably result in the homeowner doing what they want anyway.

If you include all the violations found in the property inventory, as you attempt to institute a Clean Slate, what happens if you miss one? Can you see how muddy and complicated the process will get for future Boards and Committees?

Since you used this clean slate logic on an existing set of infractions, a future board could be faced with a future owner who decides to violate the common element in some other way and demands to include that violation in a second clean slate exercise.

If you do this clean slate now, why can't we do another clean slate later? At what point do we ever follow our documents and FL statutes?

The Clean slate approach you are using will force future Boards and committees undue pressure to remember to review unit files for any grandfathering on a specific request. At what point is the collective memory of the neighborhood forgotten on how to resolve this grandfathering issue? This Board has not acted in the best interests of the long term health of Ballantrae in resolving this issue.

What about disclosures on grandfathered violations during the sales process? A new homeowner would need to know which violations "are fine" even though the documents and statutes say otherwise.

In my opinion, this Board has created a nightmare for the community in an effort to favor one owner.