

# SaveMarinaHills.org

## Synergy with Assemblywoman Patricia Bates

SaveMarinaHills hand in hand with a growing trend toward more empowerment by homeowners vs. associations

Assemblywoman Patricia Bates last year introduced AB 512, which became law as part of the Davis-Stirling Act at the beginning of this year. The bill added provisions concerning procedural fairness in decision making and rulemaking by homeowner associations.

SaveMarinaHills appreciates the present effort of Assemblywoman Bates with assembly bill AB2376 which introduces fairness of Architectural Committee decisions. When this bill passes and becomes law, Architectural Committees of Homeowner associations will have to put in writing why they

voted against projects they rejected. The proposed bill reflects a growing trend toward more empowerment for homeowners vs. associations.

Hans Strupat from SaveMarinaHills, was interviewed for a story that appeared on March 19, 2004, in the business sections of the Orange County Register. He suggested a penalty for Directors who willfully violate the

state law. For a view at the article see [www.SaveMarinaHills.org/graphics/OCRegisterAB2376-040319.gif](http://www.SaveMarinaHills.org/graphics/OCRegisterAB2376-040319.gif) ©



# SaveMarinaHills.org

- **Term Limit Petition is now #1 priority!**
  - **In 1997 the Directors spent about \$140,000 of our money to stay in power!**
  - **Board wrongfully uses political argument against term limits and fails to issue proxies as required by CC&Rs**
  - **Board fails to produce accounting records as required by state law**
  - **Did Directors make a mistake in preparing and filing garage/parking amendment?**
- Read More inside this newsletter.**

### Feedback from last month's newsletter.

*Congratulations on a fine web site. Thank you for doing 'the right things' for the cause. The homeowners will benefit from your efforts, and this greatly re-inforces the efforts in other associations who experience the same, or similar problems.*

*Homeowner from another LN Association 0403241421*  
*Seems to me ... the Wilson's have been caught with their hand in the cookie jar! They can explain it away as much as they like, but actions always speak louder than words. As for the board member actions as of late, regardless of whether their intentions are good or bad, the evidence is clear, they are acting as if it is their community and we are to live by their set of rules.*

*Terracina Homeowner 0403151423*  
*This snarling, sneering club-house mob mentality has been my experience ... for some time.*

*Amarante Homeowner 0403220754*

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**Come to the next Board Meeting on Wednesday, April 14, at 6 P.M. Express your concerns to the Board!**  
*Jane Dry has promised that the meeting will not be rescheduled surprisingly*

## Reestablish a democratic decision making process in Marina Hills

### Mistake in CC&Rs

During the month of March we all got a letter from Keystone Pacific, informing us about the recording of the recent CC&R amendment for the Garage Parking.

In our opinion, Mr. Tinnelly, made a small, but confusing mistake in the drafting of the official recorded amendment. President Jane Dry and Secretary Linda Baker, possibly without reading or understanding the document, signed the wrongly drafted amendment. This document was then officially recorded with the Orange County Recorder. Finally Denise Bergstrom, Vice President of Keystone, possibly also without reading it, signed the cover letter and mailed the document to all 1538 homeowners.

At first, the mistake may seem only minor, but the Second Amendment refers to the Second Amendment as the First Amendment within the Second Amendment and simultaneously refers to the First Amendment as the First Amendment within the Second Amendment. This is way too confusing. (The real First Amendment was recorded in 1997 and was used by Szwajkos et al to stay in power and to declare the overwhelming recall vote from 1997 as invalid.)

We cannot leave such confusion to future generations of Marina Hills homeowners! Therefore SaveMarinaHills has requested the responsible parties, Mrs. Jane Dry, Mrs. Linda Baker, Mr. Richard Tinnelly and Mrs. Denise Bergstrom to correct this mistake within 30 days, without cost to the homeowners. ©

## Term Limit Vote is Priority #1

Directors in willful and unethical violation of CC&Rs attempt to preempt homeowner vote!

The Directors, in an unsigned letter from March 3, 2004, to all homeowners wrongfully use a political argument against term limits as justification to violate the Marina Hills CC&Rs and Bylaws. (CC&Rs and Bylaws can be viewed, although somewhat simplified, as the equivalent of the Constitution and the Declaration of Independence on a national level.)

While it is perfectly fine for each Director of the Board to have a private opinion about term limits, it is against our governing documents to not call a vote when petitioned by more than 5% of all homeowners. Directors do not have veto power!

While it is perfectly fine for each Director to vote against

term limits once the voting is underway, it is against basic democratic procedure to deny homeowners the right to vote on an amendment of the CC&Rs and/or Bylaws.

While it is perfectly fine for the Directors as private individuals to campaign against term limits and to even influence their friends to vote against term limits, it is unethical to abuse resources of their position to attempt to preempt this decision by a quasi official document from the Keystone Pacific management company.

**We cannot let this stand! If democracy is mocked in our own backyards, how do we explain to our children the true meaning of democratic behavior. If the Directors**

**choose which rules of the CC&Rs and Bylaws to follow, and which to disregard whenever it best fits their purpose, we might as well not have any rules at all.**

Therefore SaveMarinaHills will use all efforts and resources to cause the Directors to comply with the CC&Rs and allow homeowners to vote on term limits. If the majority of the Marina Hills homeowners decide for term limits, SaveMarinaHills will use all resources and efforts to oversee and report on accurate implementation of the will of the homeowners.

It is the opinion of SaveMarinaHills that nothing good can come of any one person who remains in power, overseeing a great deal of money, for too many years. ©

## The High Cost to Fight Democracy

In 1997 the Directors, including Tom Szwajkos, spend \$140,000 to stay in power

This is not the first time in the history of Marina Hills that an attempt is made to bring back democracy to the homeowners of Marina Hills. In 1997, a duly elected Board Member, Mr. Sullivan, attempted to look behind the scenes and bring transparency of the director's actions to the homeowners of Marina Hills. After several months in office, the majority board members, including the still sitting Tom Szwajkos, initiated a law suit against the new and duly elected board member Sullivan. The CC&Rs forbid the Directors to initiate lawsuits for these reasons.

In an effort to help the minority board member nine take of the eleven District Delegates attempted to recall the entire

board. When the votes were counted more than 70% of all Marina Hills homeowners voted to recall the boards. In a desperate effort the then board



Homeowner funds in the amount of approximately \$140,000 (based on accounting statements during that time) were spent in 1997 to keep the Directors in power. Treasurer Vito Ferrante states that the association so far has spent \$8,991 because of our SaveMarinaHills newsletter.

members including Szwajkos, again against the rules of the CC&Rs, sued all nine Delegates and hurriedly (while unethically using the resources of Keystone Pacific) changed the CC&Rs to be able to declare the 70% plus recall vote of the homeowners as procedurally flawed.

The legal costs of the then Board are estimated to be about \$140,000 (two Superior Court trials with depositions etc.)

Now in 2004, the Directors, instead of simply following the CC&Rs, again are attempting to avoid democracy and they are starting to amass legal costs to defend themselves against the will of the homeowners.

The Directors are using our homeowner funds to defend their positions on the Board. ©

# March Board Meeting

Majority of time is spent discussing SaveMarinaHills newsletter

Linda Baker, after having been appointed at the January Board meeting, and having been absent at the February Board meeting, introduced herself retroactively to the community. *Such an introduction should have been made in January, and then the homeowners should have had the opportunity to elect Mrs. Linda Baker – instead Linda Baker was appointed by her friends on the Board. The proposed Term-Limit petition will eliminate such appointments to the board and will instead allow homeowners to elect candidates for vacant director positions.*

Linda Baker stated that she was well qualified to serve on the Marina Hills Board because of her long-time experience on the Siena Board. *SaveMarinaHills research indicates that Linda Baker has been on the Siena Board almost the entire time since at least 1996. This explains why Mrs. Baker is absolutely against term limits. The proposed Term Limit Amendment is for the Marina Hills Board only; even after the term limit amendment has passed for the Marina Hills Board, Mrs. Baker can stay on another 15 years on the Siena Board.*

Linda Baker furthermore stated that she was a “very outspoken and persistent leader during the 1997

[Szwajkos] Parsekian” crisis in Marina Hills. *SaveMarinaHills researched the issue and found that this is simply not true. The official Marina Hills newsletter, in their May 1997 issue lists all the critics of the then current board by name. This includes the nine Delegates who initiated the recall vote and the two minority board members, most of whom got sued by the Szwajkos board. Linda Baker isn’t mentioned anywhere.*

*On February 10, 1997, Keystone Pacific, overstepping ethical boundaries, sent out a letter to all homeowners supporting the litigation of the Szwajkos Board. Later that spring Keystone Pacific called many Marina Hills homeowners and solicited proxies to hastily amend the CC&Rs, so the sitting Directors could defeat the recall vote of the Marina Hills homeowners. The Siena Board, with Linda Baler as one of the Directors, fired Keystone Pacific as the management company for the Siena sub-association shortly thereafter. Did ethical and fiduciary concerns about Keystone Pacific’s behavior trigger this decision and did Linda Baker support it?*

Finally Linda Baker pledged her support for adopting a non-gratuity agreement for the directors. She cited as requirement for such a policy the offer from Mr. Strupat for a loaner computer during her time on the Marina Hills Board. *Such a non-gratuity agreement had been mentioned in the last issue of this newsletter. What we were referring to was the potential kickback of Marina Hills vendors to Board Members, such as the documented commingling of services at the Cal and Cheryl Wilson residence, not the help of one fellow homeowner to another. It is the opinion of SaveMarinaHills, that Mrs. Baker, who doesn’t have and doesn’t want to have a fax machine or computer, cannot effectively serve as an officer on the Marina Hills board. What is next? Is Mrs. Baker going to give up her car and hot running water? Time will tell how serious Mrs. Baker is with implementing a real non-gratuity policy for Board Members.*

Mrs. Jane Dry announced the appointment of two new architectural committee members.

Employee of the Board and Activities Director Mrs. Cheryl Wilson reported on vandalism at the club house fountain.

Treasurer Vito Ferrante gave a verbal budget report. Treasurer Ferrante stated that Marina Hills as a whole was below budget, but the legal expenses were above budget since November 2003 and totalled \$8,991. He stated that the SaveMarinaHills newsletter was the reason for the added legal expenses. Ferrante then elaborated on a number of Marina Hills vendors, whose yearly budget numbers had been mentioned in the SaveMarinaHills newsletter. He defended Villa Park: “17 Villa Park men are constantly working on our grounds. We are getting our money’s worth from Villa Park. *SaveMarinaHills did not criticize Villa Park nor the cost of their services, so why did Treasurer Ferrante defend them? Can Treasurer Ferrante provide the results of the last competitive bidding for this job at Marina Hills? And if this job hasn’t been sent out for bidding recently, how does Ferrante know that we would not get an even better value for our money from another vendor?*

Next, Mr. Tom Szwajkos, 11-year board member, who was effectively recalled by more than 70% of the homeowners in 1997, defended himself. He stated that in his professional

job he is a buyer for Thomas & Betts and is presently purchasing in excess of \$30 million per year. He stated that he considered the innuendos in the SaveMarinaHills newsletter a personal attack on his integrity. Then Mr. Szwajkos left the meeting.

*If Mr. Szwajkos in his professional job would not have a telephone on his desk, and his vendors/customers would not be able to call him and enter into a constructive dialogue about the problems at hand, or if Mr.*

*Szwajkos and his President would not answer direct questions from the shareholders of Thomas & Betts, Mr. Szwajkos’ career would be over in a heartbeat. Why does Mr. Szwajkos compare his integrity at Thomas & Betts with the integrity of his director position at Marina Hills, and then apply two different standards to those two positions. Why does Mr. Szwajkos not transfer the same responsiveness and openness of his professional job to the dealings within the Marina Hills community?*

*Why has Mr. Szwajkos allowed, as the most senior member of the board, that his integrity be questioned by not following the CC&Rs as required in response to the two November petitions, and why is he, the veteran member of the employer group of the Employee of the Board, Cheryl Wilson, inviting innuendo, by not causing the Wilsons to provide proof to the homeowners that they did not misappropriate homeowner funds? It is the opinion of SaveMarinaHills that Mr. Szwajkos’ failure to act in these matters has put him beyond redemption for any position within Marina Hills.*

The homeowner forum was quite an active part of the Board meeting. *The Board and their Employee successfully managed to assemble an impressive lineup of supporters for the board. These Board supporters stated that the SaveMarinaHills newsletter is “malicious, and has no betterment in mind.” Most expressed their support for the security guard Miguel: “My kids love Miguel like a father.” There were also critics of the board. A Bel Fiore homeowner stated in response to the March 3, 2004, letter that the board really doesn’t have a choice but to call the term-limit vote if they wanted to obey the legal framework of the CC&Rs.*

## Homeowners Call for Recall:

*The Board’s letter from early March clearly shows that our ROGUE BOARD has decided not to follow the rules. This may leave us no other choice but to RECALL THE BOARD.*

*Bel Fiore Homeowner 0403310835 Congratulations on your HOA web site and success in getting one director to resign. But the Board appears to be ready to appoint one of their cronies, so you’re really no further ahead. You might consider using a Special Meeting, assuming you have enough support in the community, to call for a recall election and elect new board members.*

*non-Marina Hills Homeowner 0401121053 If California can recall Gray Davis, then there should be a way to clean house in this community by changing the Marina Hills Board members as well. I think board member term limits is a very good idea.*

*Bel Fiore Homeowner 0401012004 We successfully recalled our entire board (Pacific Hills in Mission Viejo) because of incidents like commingling that you documented for Marina Hills.*

*Pacific Hills Homeowner 0401081040 ...the homeowners of Marina Hills need to get new board members in place who will act properly and fairly represent the community*

*Marina Hills Homeowners 0401031755*

## March Board Meeting

Continued from page 2

During the homeowner forum Mrs. Marcia Bloom from the Siena sub-association challenged Hans Strupat: “If you want to talk business, lets do it.” Mr. Strupat openly acknowledged that he was glad to do so. After the meeting Mr. Strupat approached Mrs. Marcia Bloom to arrange a venue for the offered cooperation. But there Marcia Bloom bluntly said: “Hans, you are a moron!” *It appears that Mrs. Marcia Bloom and SaveMarinaHills have a different understanding of ‘talking business’.*

Finally Secretary Linda Baker attempted to justify the non-action described in the March 3, 2004, letter to the attending homeowners. Mrs. Baker defended the board’s failure to act by stating that the term limit petition was greatly flawed. She elaborated that this petition was not just about term limits, but also about ‘election of vacancies’ and about the time schedule of such an amendment to become effective, after the homeowners would have approved it in a vote. *Mrs. Baker is correct in stating that the proposed Term-Limit Amendment (which has been posted in its entirety on the SaveMarinaHills web site since early January) includes provisions on not appointing, but electing board member vacancies. Mrs. Baker then stated that this change would be retroactive. There Mrs. Baker is incorrect. The proposed amendment in section 4.1.a. uses the term ‘immediately’ and implements prospective (from this point forward) changes only. The term retroactive and such effect is not even in the amendment. It is the opinion of SaveMarinaHills that Mrs. Linda Baker is misleading the homeowners by making this statement. Lets repeat: If the term limit petition would have been in effect in January, Linda Baker, wouldn’t be on our board, because she was not elected by the homeowners.*

Vice President Chuck Johnston *incorrectly* stated: “Marina Hills already has term limits, they are called elections.” A Terracina homeowner from the audience corrected his mistake and pointed out that elections and term limits are two different things, and that term limits are well-established with our federal government, as well as our state government. Such rules absolutely limit candidates from even running in an election, as a measure of protection to the voters, not just possibly losing an election. ©

# Who does Tinnelly work for?

Linda Baker statement contradicts Tinnelly letter

The 2004 budget, sent to all homeowners in early November, and also available on the SaveMarinaHills web site, enumerates legal expenses, which are mostly payments to Mr. Tinnelly, in the amount of \$40,000.. Mr. Tinnelly is paid all this money from our homeowner fees, yet it appears that his services are used against and not for the homeowners.

After the January Board meeting SaveMarinaHills spoke with the newly appointed Secretary Linda Baker about Mr. Tinnelly not answering correspondence and the Board not answering petitions. Mrs. Baker stated that she felt that the attorney for the association would have the ethical responsibility to 1) follow the law and 2) have the interest of the homeowners in mind at all times.

While these statements seem very reasonable, Mr. Tinnelly has completely different opinion as evidenced in a correspondence from February 23, 2004. ©

LAW OFFICES OF

RICHARD A. TINNELLY

**...the undersigned does not represent the homeowners of Marina Hills, but rather the Marina Hills Planned Community Association, a California Nonprofit Mutual Benefit Corporation. Thus, the undersigned is not in any fiduciary responsibility to individual members of the association...**

**Very truly yours, Richard A. Tinnelly**

# Call for Action

**Help Your Community to re-establish Democracy**

In order to re-establish democracy in Marina Hills, SaveMarinaHills had originally hoped to work with the Directors. We had hoped that the Directors would at least honor our laws and the rules. Since the Board has ignored the democratic requests of the homeowners, and is demonstrating defiance at several levels, and, in our opinion is violating their fiduciary responsibility to the homeowners, we need to create a well-oiled infrastructure to outvote the existing Directors.

Collecting proxies in an upcoming vote from all 1538 homes will take about 400 man-hours. If this task is split between 100 volunteers, each volunteer would need to contribute about 4 hours. There are about 65 streets (some long ones, some short ones) in Marina Hills. We are looking for about one to two volunteers from each street to help educate the community and to collect proxies for term limits and/or a potential recall of the board.

Please sign up as volunteer under the guest book section of the web site. We shall start to organize this volunteer effort in the month of April.

If you have any question or need any additional information to inform yourself about term limits, please call or email us at SaveMarinaHills.

email: info@SaveMarinaHills.org

Phone: 949-218-7408

Talk to your neighbors about the term limits ©