

**Excerpts from the BPRA Board of Trustees meeting minutes concerning
*Klang v. Bel Pre Recreational Association (2010)***

June 28, 2010, pp. [1-2]:

[BPRA President Dan] Keating updated the board on a complaint filed with the county Commission on Common Ownership Communities (CCOC) by association member and former board member orson Klang. The complaint is over two issues. The first is the board's permission for a non-profit day care run by an association member for her church to bring the children, who are not members of the association, to the pool once a week as her guests. Klang's complaint says it is a commercial use of the pool. The second issue is that he seeks to have the CCOC compel the board to seek legal advice on the board's ability to challenge group homes for the disabled in our community. In its cover letter in receipt of the complaint, the CCOC indicates that it does not consider the matter of group homes to be under its jurisdiction.

Keating recommended that, rather than hiring an attorney to fight the suit, he would write a response. The response will lay out the arguments made by board members in favor of allowing the day care group and in opposition, noting that the board has been essentially ambivalent on the question. Instead of arguing for one position of [sic.] the other, Keating said the response will emphasize that the board is dealing with the matter diligently and in good faith. Both sides have been on the prevailing side and the minority side on the question over the past year, but it has been done without recrimination. The board is working earnestly to resolve the question. The association documents give the board authority to set rules on guests and it is doing so. There has been no abuse of procedure, no acts of bad faith and no attitude of disregard for the rules, so there's no reason for the CCOC to step into the matter.

[BPRA Vice President Ed] Frantz said the board should clarify its position on what guests are legitimate guests. He said some argument has been made that guests have to [be] family or friends and cannot be someone with whom the association member has a financial relationship. But he said there would be nothing wrong with inviting work colleagues or one's boss to the pool as a paid guest, or inviting those people to a party or event at the pool. Frantz moved that the board agree that it delegates on a day-to-day basis to members to decide who an individual guest is, while

still abiding by the rules concerning guest fees and approvals. It was seconded by Arthur Meister.

Keating said the motion would mean that if someone seeks board approval to bring in more than 25 guests, the board would not go guest-by-guest to decide the legitimacy of those guests. It is up to the member to decide whom to bring as guests. He said the motion meshes approximately with the existing rules requiring board approval for groups of guests greater than 25.

In response to a question, Keating said that the \$2 per guest fee is apparently revenue neutral to cover lifeguard costs and other expenses of groups, neither producing a surplus of profit for the pool nor burdening the association members with extra costs.

Association member Linda Dunnigan and board member Lou Ann Rector noted section [sic.] Covenants Section IV 2(a) that says "The Common Areas shall be used exclusively for non-profit recreational purposes, and uses incidental thereto."

Keating and Frantz said that the pool operators are paid, the lifeguards are paid, the landscapers are paid, the people running the snack bar are paid, the clown and magician on 4th of July are paid, so incidental commercial activity is normal. Keating said that if the day care was based at the pool, he would consider it a problem, but each child comes to the pool for 1 or 2 hours per week, which he said he feels comes under the incidental activity.

Frantz asked the proprietors of Cosmic Kids, Beth Lewis and Deedee O'Grady, what proportion of their children are association members. They said children come and go regularly, but it was roughly 12 or 13 out of 35, so about a third.

The board voted unanimously in favor of Frantz's motion of delegating to members the decision on who is a member. Rector abstained.

The board then voted unanimously to have Keating file a response to Klang's complaint using the strategy he had laid out at the meeting.

July 26, 2010, p. [2]:

Keating updated on the state of cases before the Montgomery County Commission on Common Ownership Communities. . . . On the complaint brought by Gordon Klang concerning day care providers bringing in guests, the CCOC has scheduled a vote Aug. 4 to decide whether to accept jurisdiction in the case. Keating had filed a response to Klang's complaint arguing that the BPRA board is explicitly given responsibility for setting policies on guests and should be allowed to carry out that responsibility.

August 23, 2010, p. [1]:

Keating updated the board on the two cases before the CCOC. . . . In the case brought by Gordon Klang over association members who provide daycare services bringing guests to the pool and group homes, the overall CCOC ruled in our favor by declining to take the case, saying there was no dispute under the CCOC's jurisdiction.