

Bylaws Committee

Weekly Meeting Minutes

November 10, 2020

9:10 am – 11:12 am

- I. Call to Order: The meeting is called to order by Chairperson Belinda Belvin at 9:10 am.
- II. Roll Call: In attendance are: Belinda Belvin, Larry Hembree, Kim Macaulay, Jay McClure, Pat Neville, Beth Patterson, and Daniel Strickland. A quorum is present.
- III. Minutes: The minutes from 10/27/20 are presented by Kim Macaulay, Secretary. Kim makes a motion to waive the reading of the minutes and to approve the minutes. Jay seconds the motion, a vote is held, and the motion passes with 6 yeas and 1 not present.
- IV. Old Business
 - a) Article XII, Section 7 - Treasurer
 - Belinda makes a motion to change the sections wording to: “The Treasurer shall be the financial liaison to the Board of Directors, Budget Committee, the POA management, the accounting firm, audit firm and the management company. The treasurer will review and approve, by any acceptable means, all disbursements before checks and other obligations of the Association are issued. All disbursements, including but not limited to, debit cards, auto drafts and other electronic disbursements will be a part of the monthly reconciliation that the Treasurer will review and approve. Any payment requiring a contract or disbursement over the amount of \$2000, unless conducted within the purposes of the adopted yearly budget, will be approved by the BOD prior to disbursement. Deposits of POA funds will be managed by the POA management or entities authorized by the POA management and will be deposited and recorded according to standard accounting practice, and reviewed by the Treasurer at least monthly.” Larry seconds the motion. After discussion, a vote is held, and the motion passes with 6 yeas and 1 not present.
 - b) Article XV, Section 2
 - Belinda makes a motion to amend the wording of Jay’s motion from last week “The annual dues may be increased by no more than 5% per year.” and change to: “The annual dues may be increased by no more than 5% of the previous year’s annual dues.” Larry seconds the motion. After discussion, a vote is held and the motion passes with 5 yeas, 1 nay, and 1 not present.

- Belinda makes a motion to make the complete wording of Section 2 as follows:
“The Association is empowered to impose all lot owners' yearly assessments and dues. Yearly assessments and dues shall be set so as to enable the Association to meet the approved yearly budget and all monies so collected shall be deposited into the operating account of the Association. The annual dues may be increased by no more than 5% of the previous year's annual dues.”
Larry seconds the motion. After discussion, a vote is held, and the motion passes with 4 yeas, 1 nay, 1 abstaining, and 1 not present.

c) Article XV, Section(s) To Be Determined.

- Beth makes a motion to move this to Article XVI, Section 3 and to include the following wording:

Dispute Resolution Procedure

Section 1: Internal Dispute Resolution (IDR).

When there's a dispute, the Association board must provide the property owner an opportunity to meet and confer with the board. Members must be provided with a fair, reasonable and expeditious procedure for resolving disputes with the Association without being charged a fee.

The board will appoint one, possibly two board members, to meet with the homeowner in an effort to resolve the issue. The homeowner can refuse to meet but the board cannot. The parties can choose to have legal counsel present, but at their own expense. If an agreement can be reached it's put into writing and signed by the homeowner and the board member appointed.

Section 2: Alternative Dispute Resolution (ADR).

When the IDR process does not work, the Association board will attempt to resolve problems by using a three-step, problem-solving approach (ADR).

a. Negotiation.

1. This is an informal cooperative process in which the board and property owner identify the issues, discuss settlement options, and establish final terms.
2. A written agreement, outlining final terms, signed by the Board President and the property owner, will be prepared and copies provided to both parties.
3. Each party will bear all of its own costs incurred prior to and during the proceeding, including fees of an attorney.

In situations where a solution can't be found, the second step is mediation.

b. Mediation.

1. This mandatory process involves a neutral, trained mediator who will resolve conflict between the Association and the property owner.
2. The parties involved create their own settlement agreements, which are not legally binding unless everyone agrees to formalize them.
3. Each party will bear all of its own costs incurred prior to and during the proceeding, including fees of an attorney.

In situations where a settlement agreement is not reached, the third step is arbitration.

Section 3. Exempt Claims

The following claims are exempt from the provisions of Section 1 and 2:

- (a) Any suit by the Association against any party to enforce any assessments or other charges.
- (b) Counterclaims brought by the Association in proceedings instituted against it.
- (c) Actions brought by the Association to enforce written contracts with its suppliers and service providers.

Article ?: Litigation

When the Alternative Dispute Process is unsuccessful, civil litigation may be the next step in resolving conflict.

Section 1. Member Litigation

1. A member may not file an enforcement action in the Court unless the parties have endeavored to submit their dispute to alternative dispute resolution. Failure of a member of the Association to comply with the ADR requirements of Section 2 may result in the loss of the member's right to sue the Association or another member of the Association.
2. If a member brings any legal action against the Association, or any officer or Director of the Board, and the member does not prevail, the Association and/or Officer or Director, as the case may be, shall be entitled to recover from the member its or their reasonable expenses of litigation, including attorney fees.

3. The Association may suspend the privileges of membership if the member fails to pay these costs.

4. When a POA member becomes delinquent on the assessments, a lien will usually automatically attach to that homeowner's property, typically as of the date the assessments became due. In some cases, the HOA will record a lien with the county recorder to provide public notice that the lien exists, regardless of whether recordation is required.

Depending on the terms in the CC&Rs, the homeowner might be liable for charges like:

- the unpaid assessments
- late charges
- reasonable costs of collecting (for example, attorneys' fees)
- fines (in some cases), and
- interest.

Not only will an assessment lien cloud the title to the property, thus hindering the homeowner's ability to sell or refinance, but it can also be foreclosed. In an POA foreclosure, as in a typical home loan foreclosure, the property is sold to satisfy the debt.

Section 2: Association Litigation

The Association has standing to institute, defend, settle or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name, without the members, matters pertaining to the following:

- (a) Enforcement of the governing documents.
- (b) Damage to a common area.
- (c) Damage to a separate interest that the Association is obligated to maintain or repair.

In an action to enforce the governing documents and any matters pertaining to damages to Association property, the prevailing party shall be awarded reasonable attorney's fees and costs.

Larry second the motion. After discussion, more amendments are requested. The motion is tabled pending rewrite. Revisit on 11/17/20.

(Pat Neville joins the meeting)

V. New Business

a) Article XVI, Section 2

- Belinda makes a motion to grandfather in partial and full adjoining lots. The motion does not receive a second, the motion fails.

b) Article XVI, Section 3

- Belinda makes a motion to change the wording to: “Special Yearly Assessments: The Association, through the vote of the Board of Directors, is empowered to impose and collect special yearly assessments from each lot owner. These special yearly assessments are imposed, collected and specifically used for road maintenance and repair, the purchase of assets, pool maintenance and repair, building projects, expansion projects, engineering studies and the remodeling of amenities. The amounts charged by the way of a special yearly assessment shall be equally divided among all lot owners. All monies so collected shall be deposited into accounts of the Association designated as the reserve accounts for “Roads”, “Pool”, and “Capital Expenditures”.” Jay seconds the motion. After discussion, a vote is held and the motion passes with 7 yeas.

c) Article XVI, Section 6

- Belinda makes a motion to change the wording to: “The Association is empowered, when an authorized legal endeavor or action is undertaken by or against The Association, or for The Association’s satisfaction of adverse judgments and the like, to assess each member a prorated share of the related costs incurred.” Pat seconds the motion. After discussion, a vote is held and the motion passes with 7 yeas.

VI. Adjourn: The meeting is adjourned at 11:12.