

Bylaws Committee

Weekly Meeting Minutes

November 17, 2020

9:01 am – 10:54 am

- I. Call to Order: The meeting is called to order by Chairperson Belinda Belvin at 9:01 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 11/10/20 are presented by Kim Macaulay, Secretary. Kim makes a motion to waive the reading of the minutes and to approve the minutes. Pat seconds the motion, a vote is held, and the motion passes with 7 yeas.
- IV. Old Business

- a) Article XVI, Section TBD

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

Article ?: 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(s) 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 two-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. Copies are to be 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. The parties will share the cost of the fee charged by the mediator.
4. Persons who are not parties to the dispute may not attend the presuit mediation conference without the consent of all parties, except for counsel for the parties and a corporate representative designated by the association. When mediation is attended by a quorum of the board, such mediation is not a board meeting for purposes of notice and participation.

Additionally, notwithstanding the provisions of any other law or document, persons who fail or refuse to participate in the entire mediation process may not recover attorney's fees and costs in subsequent litigation relating to the dispute. If any presuit mediation session cannot be scheduled and conducted within 90 days after the offer to participate in mediation was filed, an impasse shall be deemed to have occurred unless both parties agree to extend this deadline.

Section 3. Exempt Claims

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

- (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. Other actions that may be taken against the member include:

- a. Late charges
- b. Interest
- c. Turning the bill over to a collection agency
- d. Attaching a lien to the member's property

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.

The homeowner may be liable for other 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 seconds the motion. After discussion more changes are requested, and the motion is tabled. Revisit on 11/24/20.

b) Article XVIII, Second Party Use of Property

- Beth makes a motion to add the following wording to the above Article:

Section 1. Property Owner Responsibility

A. Rental of homes and/or lots by property owners not in good standing with the Association is prohibited.

B. Property owners may decide to allow a second party to use their home and/or lot, either by renting, leasing, rent to own, short-term rental, such as Airbnb, provided such rental is in accordance with the Bylaws and restrictions. The property owner(s) is the person(s) listed on the deed registered with Oconee County.

C. The property owner must provide the Association with:

a. The full name of the owner of the property, phone number and email address. This individual will be responsible for the compliance of the Bylaws, CC&Rs and policies of the Association;

b. The lot number and address of the property to be rented;

c. Names of all persons who will occupy the home/lot;

d. Beginning and ending dates of the rental period of the home/lot;

e. Tenant's vehicle(s), make, model and license number;

f. A signature of the tenant that he, she, they have been advised of the requirements of the Bylaws, CC&Rs, and policies of the Association.

D. Property owners must make governing documents and Association policies available to tenants before they move in.

E. Such property owner shall at all times ensure that any tenant is at all times in compliance with the Bylaws, CC&Rs and Association policies.

F. The property owner is responsible for assessments and tenant violations of the Bylaws or CC&Rs. The lease/rental document must contain a clause making it subject to the Association's Bylaws, CC&Rs and policies.

G. The property owner(s) are responsible for any damage their tenants may cause to common areas or trash they may leave behind in common areas.

Section 2. Tenant Responsibility

A. All tenants shall comply with the bylaws, CC&Rs and policies of the Association;

B. Renters must submit all requests to the Association through the property owners.

Section 3: Enforcement

A. Property owners shall be liable for actions of tenants of their homes/lots who do not comply with the Bylaws, CC&Rs, and policies of the Association;

B. The property owner(s) will be notified about the any violation of policies, and the owners must rectify/resolve the violations. handle the issue(s).

C. The Association may assess fines against the property owner if the tenant breaks the rules. The property owner can recoup the fine from the tenant if it's outlined in the lease;

D. The Association may suspend privileges, assess claims, prohibit the use of the home/lot as a rental, and/or take such other action as may be appropriate;

E. Tenants deemed in violation of the Bylaws, CC&Rs, and/or policies of the Association may be denied access to amenities, ejected from Foxwood Hills or subject to other appropriate action;

F. The Association does need to notify the property owners if tenants commit a crime. Law enforcement will be contacted also;

G. The Association may tow renter's vehicle(s) if the vehicle is situated in a location not permitted to the owner of the lot. It is the tenant's responsibility to pay these fines and tow fees.

Section 4: Transferable Association Rights to Renters

The property owner transfers some rights when renters lease their property. These include:

a. Using the Association's Amenities – Tenants may use all the amenities. The property owner must submit to the Association the Amenity Access Form listing the tenant(s) before amenities may be used;

b. Reviewing Association Records - Tenants may not request Association records.

c. Serving on Board of Directors or Committees - non-members cannot serve on the Association's Board of Directors or committees.

d. Keeping Pets - Renters must obtain permission from ask their landowners before getting a pet.

Section 5: Non-Transferable HOA Rights

There are several rights that HOA property owners cannot transfer to their tenants. These actions include:

a. Voting Rights - Tenants do not have the right to vote on behalf of another member. Another Association member in good standing can serve as a proxy;

- b. Attending Board and Membership Meetings - Only Association members have the right to attend these meetings. Property owners may not name tenants as proxies. Only Another member in good standing may assume these duties;
- c. Suing the Association - Only the owner of the property can file a legal action against the Association. Since the tenants are not property owners, they have no authority to sue.
- d. Using Dispute Resolution Procedures – Only Association members can only use dispute resolution procedures. These rights don't extend to renters.

Larry seconds the motion. After discussion, more changes are requested, and the motion is tabled. Revisit on 11/24/20.

c) Article XVII – Security Force, Section 1

Belinda makes a motion to change the wording from: “All security personnel must pass a SLE D and Federal background check prior to employment.” to: “All security personnel must pass a SLED report, previous state of residency criminal back ground check and a Federal background check prior to employment.” Jay seconds the motion. After discussion, a vote is held, and the motion passes with 7 yeas.

V. New Business

a) Article XV, Section 3

- Kim makes a motion to change the sections wording from “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”” To: Special Yearly Assessments: The Association, through the vote of the Board of Directors, is empowered to impose and collect special yearly assessments per lot. These special yearly assessments are specifically billed, 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 lots. All monies so collected by the Special Yearly Assessment, shall be deposited as billed into the specific reserve account of the Association “Roads”, “Pool”, or “Capital Expenditures.” Belinda seconds the motion. After discussion, more changes are requested, and the motion is tabled. Revisit on 11/24/20.

b) Article XVIII – Use Restriction and Rules, Section 2

- Belinda makes a motion to change the wording from: “If the Architectural Control Committee fails to approve or disapprove submitted plans and specifications within forty-five (45) days after the plans and specifications have been submitted to it, the plan will be deemed approved.” To: “If the Architectural Control Committee fails to approve or disapprove submitted plans and specifications within forty-five (45) days after the plans and specifications have been submitted to it, the plans will be submitted to the Board for approval or disapproval.” Larry second the motion. After discussion, it is requested that an amendment be made to add time frame. Belinda agrees add time limit of thirty (30) days and to change the time initial time limit from forty-five (45) to thirty (30) days. Kim seconds the amended motion. After further discussion, a vote is held, and the motion passes with 5 yeas and 2 nays. The final wording is: “If the Architectural Control Committee fails to approve or disapprove submitted plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, the plans will be submitted to the Board for approval or disapproval within thirty (30) days.”

c) Article XIX – Forms of Notice, Section 3

- Belinda makes a motion to send a note to the attorneys to update this section’s language to reflect electronic communication and other forms of written communication. Pat second the motion. After discussion, a vote is held, and the motion passes with 7 yeas.

d) Article XXI – Road Construction and Maintenance

- Belinda makes a motion to strike this Article from the bylaws. Beth seconds the motion. After discussion, a vote is held, and the motion passes with 7 yeas.

VI. Adjourn: The meeting is adjourned at 10:54 a.m.