

# **Bylaws Committee**

## **Weekly Meeting Minutes**

December 1, 2020

9:01 am – 11:05 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 11/24/20 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 XX – Grandfathering of Variances

- Dan makes a motion to change the articles wording from: “There exist in various sections within the development violations of the applicable restrictive covenants. Subsequent to the adoption of these Revised Bylaws and prior to January 1, 2005, lot owners must petition the Association's Architectural Control Committee for a variance of a pre-existing violation of the applicable restrictive covenants.

A committee from each section will be appointed by the Board. The committee will thereafter inspect his or her section to determine if any violations are frequently repeated throughout their section. The committee will also survey the lot owners in their section to determine what variances the lot owners desire to recognize and permit. The committee should also seek to determine from his or her inspection and survey the exact scope of all suggested variances. Upon completion of the inspection and survey, the committee will report back to the Architectural Control Committee. The committee shall attempt to speak with as many lot owners in his or her section as possible.

Once a committee has reported his or her suggestions to the Architectural Control Committee, the Architectural Control Committee shall inform the members of the development as a whole of the variances, and the variances' scope, suggested for a particular section. Thirty (30) days after the Architectural Control Committee has disseminated suggested variances for a

section to the members of the development as a whole, the Architectural Control Committee may begin to grant or deny petitions from a lot owner in the particular section.

In granting or denying petitions, the Architectural Control Committee shall consider input from lot owners outside a particular section. Any lot owner allegedly aggrieved by a decision of the Architectural Control Committee may appeal to the Board within thirty (30) days of receiving the Architectural Control Committee's decision. The Board shall thereafter affirm or reverse the Architectural Control Committee's decision.

The Architectural Control Committee, and when necessary the Board, shall strive for consistency in deciding upon applications for variances. In rendering a decision, the Architectural Control Committee or Board may include suggested modifications that would result in an application being granted. Once a lot owner proves his variance has been modified in keeping with Architectural Control Committee or Board suggestions, the Architectural Control Committee may thereafter approve the application for a variance. Any variance granted passes with the title of the lot or lots so long as the structure granted a variance is not modified or changed.”

To: “There exist, in various sections within the development, violations of the applicable restrictive covenants. Such violations that remain after court approval and adoption of the revised section Restrictions and these Bylaws will not be allowed to remain if they present a danger to the safety, sanitation, or quiet enjoyment by occupants of the section. Such violations include, but are not limited to, unsafe structures, abandoned structures or vehicles, trash, debris, and setback violations.

The Architectural Control Committee (ACC) shall, in due course of its activities, survey all sections for such violations. The lot owner will then be notified, in writing, of the violation and given a period of time to correct the violation, such time to be determined at the judgment of the ACC.

Any lot owner who objects to a decision of the ACC may appeal to the Board of Directors (BOD) for approval of a variance within 14 business days of receiving the Architectural Control Committee's decision. After discussing the appeal in Executive Session the Board shall thereafter affirm or reverse the Committee's decision.

If the owner objects to the decision of the Board the issue will handled by the procedures defined in Article (Number To Be Determined): Alternative

Dispute Resolution. Ultimately, if the owner fails to correct violations after any appeals that are not decided in their favor, the POA may utilize all means at its disposal to correct the violation, and bill the owner for the correction efforts, which charges will be considered an obligation of the owner, and subject to liens, foreclosure, interest, and collection costs.

The Architectural Control Committee, and when necessary the BOD, shall strive for consistency in deciding upon applications for variances. In rendering a decision, the ACC or Board may include suggested modifications that would result in an application being granted. Once a lot owner proves his variance has been modified in keeping with ACC and/or BOD requirements, the POA may then approve the application for a variance. Any variance granted passes with the title of the lot or lots so long as the structure granted a variance is not modified or changed.

If, however, any further modifications or additions are desired the property owner must obtain appropriate permits, which, at the discretion of the ACC, might require correction of the violation before approval, i.e. the prior variance will be considered in the totality of the permit application.”

Larry seconds the motion. After discussion, Dan amends his motion to correct the wording for the Article for Alternative Dispute Resolution. Jay seconds the amended motion and a vote is held and the motion passes with 7 yeas. The final wording is as written above.

b) Article XVI, Section 3 – Fee Recovery

- Beth makes a motion to add the following wording: “If a member brings any legal action against the POA, or any officer or Director of the Board, and the member does not prevail, the POA 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. Such expenses shall be considered a valid obligation of the owner, subject to collection, lien, or other remedies, including interest and costs of collection.

The POA may suspend the privileges of membership if the member fails to pay these cost

a) Late charges

b) Interest

c) Turning the bill over to a collection agency

d) Attaching a lien to the member's property

2. When a POA member becomes delinquent on the assessments, a lien will be recorded with the County Register to that homeowner's property, typically as of the date the assessments became due.

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.”

Pat seconds the motion. During discussion, addition wording and clarification is requested. Beth agrees to rewrite and the motion is tabled.  
Revisit on 12/8/20

c) Article To be Determined – Alternative Dispute Resolution

- Beth makes a motion create the following Article:

“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 property owner in an effort to resolve the issue. The property owner 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 property owner 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.
4. The Board shall not violate bylaws or restrictions during negotiations.

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

b. Mediation.

1. This mandatory and confidential process involves a neutral mediator who will resolve conflict between the Association and the property owner.
2. Any person deemed qualified by all of the parties may serve as a mediator. In the absence of an agreement by the parties, a person must be certified by the court as qualified and taken from a roster of mediators maintained by the South Carolina Alternative Dispute Resolution Program Director.
3. Unless otherwise ordered, the parties must select a mediator within 21 days prior to the deadline for mediation. If the parties cannot agree upon a mediator within this time period, the plaintiff's attorney shall file a motion requesting appointment of a mediator.
4. 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.
5. 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.
6. 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 may be filed 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 property owner'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."

After the reading of the motion, additional clarification is requested. The Committee requests a final clean copy and the motion is tabled. Revisit on 12/8/20.

d) Article XVIII, Second Party Use of Property

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

“Article XVIII: Second Party Use of Property

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. If the rental is more than 30 days, the property owner must provide the POA 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 POA;
- 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 POA rules and 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 POA 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 POA's Bylaws, CC&Rs and policies.

G. Property owners are responsible for any damage their tenants may cause to common areas or trash they may leave behind in common areas.

H. Property owners can only use dispute resolution procedures. Property owners may include the tenant(s) as part of the dispute resolution procedure.

## Section 2. Tenant Responsibility

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

B. Renters must submit all requests to the POA 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 POA;

B. The property owner(s) will be notified about the violation violation(s), and the owners owner(s) must handle the issue(s).

C. The POA 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 POA 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 POA may be denied access to amenities, ejected from Foxwood Hills or subject to other appropriate action;

F. The POA is responsible for notifying the property owner(s), if tenants commit a crime. Law enforcement will also be contacted.

G. The POA may tow renter's vehicle(s). It is the tenant's responsibility to pay these fines and tow fees.

## Section 4: Transferable POA Rights to Renters

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

- a. Using the POA's Amenities – Tenants may use all the amenities. The property owner must submit to the POA the Amenity Access Form listing the tenant(s) before amenities may be used;
- b. Reviewing POA Records - Tenants may not request POA records.
- c. Serving on Board of Directors or Committees - non-members cannot serve on the POA's Board of Directors or committees.
- d. Keeping Pets - Renters must ask their landowners before getting a pet.
- e. In accordance with Article 18: Use Restrictions and Rules Section 4: Pets and Animals, Animal control authorities shall be permitted to enter the community to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law.

#### Section 5: Non-Transferable POA Rights

There are several rights that POA 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. Only another POA member in good standing can serve as a proxy;
- b. Attending Board and Membership Meetings - Only POA 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.”

After the reviewing of motion, there are several amendments requested, Dan seconds the motion, a vote is held and the motion passes with 7 yeas. The final wording is as written above.

#### e) Article XV, Section 1 – Yearly Assessments

- Kim makes a motion to change the section wording to: “The yearly assessment will be composed of: Operating Expenditures Fund, Road Maintenance Fund replenishment, and Capital Reserve Fund replenishment. The Operating Expenditures Fund budget will increase no more than X% annually. The Roads Maintenance Fund will be replenished annually at no less than 15% and no more than 25% of the Operating Expenditures budget. The Capital Reserve Fund will be replenished annually at not less than 5% and no more than 15% of the Operating Expenditures budget. Collected dues must be apportioned to the reserve funds, as listed in these Bylaws, and transferred to the reserve accounts

within 45 days of deposit. Any overages at the end of the year in the Operating Expenditures Fund will be allocated to the Roads Maintenance Fund.” Beth seconds the motion. During discussion, more revisions are requested. Kim agrees to rewrite and table the motion. Revisit on 12/8/20.

f) Article XIV - Committees

- Kim makes a motion to add a Capital Reserves Committee as a standing Committee letter (f) and to add the following section to Article XIV: “Capital Reserves Committee: The Capital Reserves Committee shall annually review any capital reserve studies and conduct a visual inspection of all The Association’s facilities. If committee members are unable to ascertain equipment or structural conditions, they may hire qualified inspectors with Board approval. Based on reserve studies, ongoing inspections, and community interest, the Committee will manage anticipated maintenance and replacement schedules. The Committee will recommend repairs, reconditioning, or removal of any facilities as they see fit. The Committee shall interview qualified contractors and review bids for any work that cannot be completed by The Association’s maintenance staff. The Committee will present bids to The Board of Directors for approval.” Dan seconds the motion. During discussion, several changes are requested. Kim agrees to rewrite and the motion is tabled. Revisit on 12/8/20.

g) Article XV, Section 1

- Kim makes a motion to add the following wording to the section: “The Board of Directors, POA Management, or POA employees may not give a discount or an exemption on dues, fees, or assessments, to any lot or member; except Oconee County and the Oconee Forfeited Land Commission. Any discounts or exemptions given prior to the passing of these bylaws will be considered null and void.” Dan seconds the motion. During discussion, more revisions are requested. Kim agrees to rewrite and the motion is tabled. Revisit on 12/8/20.

h) Article XXVII, Section To Be Determined

- Kim makes a motion to add the following section to Article XXVII: “Fiduciary Misconduct: A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association’s funds or property is removed from office. The board shall fill the vacancy according to the bylaws until the end of the period of the suspension or the end of the director’s term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or

nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer.” Larry seconds the motion. During discussion more revisions are requested. Kim agrees to rewrite and the motion is tabled. Revisit on 12/8/20.

i) Article X, Section 1, Letter g

- Kim makes a motion to add to add the following wording to the item: “This limit may be waived to cover cost associated with purchase need to cover damage caused with ‘Act of God’ emergencies.” Larry seconds the motion. After discussion, a vote is held, and the motion passes with 7 yeas.

j) Article XII – Officers

- Kim makes a motion to add the following wording to Section 1: “The Board may appoint an interim Officer for a Board member who is in need of a temporary medical or family leave.” Larry seconds the motion. After discussion, a vote is held, and the motion fails with 3 yeas and 4 nays.

k) Article XXVII, Section To Be Determined

- Kim makes a motion to add the following section to Article XXVII:  
“Enrichment Disclosure or Emolument Disclosure: If the Association enters into a contract or other transaction with any of its directors or a corporation, firm, association that is not an affiliated homeowners’ association, or other entity in which an association director is also a director or officer or is financially interested, the board must:  
a) Enter the disclosure into the written minutes of the meeting.  
b) Approve the contract or other transaction by an affirmative vote of two-thirds of the directors’ present.  
(c) If the Board finds that an officer or director has violated this subsection, the board shall immediately remove the officer or director from office. The vacancy shall be filled according to the bylaws. If fraud is determined, the Board will aid in any criminal investigation and restitution may be sought.”

Larry seconds the motion. During discussion, a correction requested to wording on the filling of vacancies. Kim agrees to amend the motion and Pat seconds the amended wording. A vote is held and the motion passes with 7 yeas. The final wording is as listed above.

1) Article XV, Section 1

- Kim makes a motion to add the following wording: “A parcel owner, regardless of how their title to property has been acquired, including by purchase at a foreclosure sale or Quit Claim Deed, is liable for all assessments that come due while they are the parcel owner, and for any past dues that are unpaid by the prior owner. The parcel owner’s liability for assessments may not be avoided by waiver or suspension of the use or enjoyment of any common area or by abandonment of the parcel upon which the assessments are made.” Pat seconds the motion. During discussion more revisions are requested. Kim agrees to rewrite and the motion is tabled. Revisit on 12/8/20

V. New Business

a) Article XV, Section 6

- Belinda makes a motion to remove the word “final” from the section. Dan seconds the motion. After discussion, a vote is held, and the motion passes with 7 yeas. The final wording is: “The Association is empowered, when an authorized legal endeavor or action is undertaken, and when that endeavor or undertaking is for benefit of the membership as a whole as opposed to the Association, to during the process of said endeavor or action, assess each member a prorated share of the attorney fees and costs incurred in pursuit of the endeavor or action.”

b) Article XV, Section 6

- Pat makes a motion to remove the wording “as a whole as opposed to the Association” from the section. Dan seconds the motion. After discussion, a vote is held and the motion passes with 7 yeas. The final wording is: “The Association is empowered, when an authorized legal endeavor or action is undertaken, and when that endeavor or undertaking is for benefit of the membership to during the process of said endeavor or action, assess each member a prorated share of the attorney fees and costs incurred in pursuit of the endeavor or action.”

VI. Adjourn: The meeting is adjourned at 11:05 am.