

Bylaws Committee

Weekly Meeting Minutes

December 8, 2020
9:03 am – 10:43 am

- I. Call to Order: The meeting is called to order by Jay McClure at 9:03 am.
- II. Roll Call: In attendance are: Larry Hembree, Kim Macaulay, Jay McClure, Pat Neville, and Daniel Strickland. A quorum is present.
- III. Motion to Change Committee Rule of Order: Dan makes a motion that, because we are missing 2 key members, that any vote for today must be ratified by at least 4 members. Larry seconds the motion. After discussion, a vote is held, and the motion passes with 5 yeas.
- IV. Minutes: The minutes from 12/1/20 are presented by Kim Macaulay, Secretary. Kim makes a motion to waive the reading of the minutes and to approve the minutes. Dan seconds the motion, a vote is held, and the motion passes with 5 yeas.
- V. Old Business
 - a) Article XVI, Section 3 – Fee Recovery

- Kim makes a motion to create a new Section under Article XVI and to accept Beth's wording listed below:

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

a) Member Litigation

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 POA to comply with the ADR requirements of Section 2 may result in the loss of the member's right to sue the POA or another member of the POA.

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 costs.

b) Association Litigation

The POA 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:

- Enforcement of the governing documents.
- Damage to a common area.
- Damage to a separate interest that the POA is obligated to maintain or repair.
- In an action to enforce the governing documents and any matters pertaining to damages to POA property, the prevailing party shall be awarded reasonable attorney's fees and costs.

Larry seconds the motion. After discussion, a vote is held, and the motion passes with 5 yeas.

b) Article (To Be Determined) – Alternative Dispute Resolution

- Kim makes a motion to create a new Article, the number to be determined by the attorneys and to accept Beth's wording listed below:

Section 1: Internal Dispute Resolution (IDR).

When there's a dispute, the POA 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 POA 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 POA 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 POA 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 no less than 21 business 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 equally 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 POA against any party to enforce any assessments or other charges.
- (b) Counterclaims brought by the POA in proceedings instituted against it.
- (c) Actions brought by the POA to enforce written contracts with its suppliers and service providers.

Larry second the motion. During discussion, more issues are raised, and the committee ask for more time to discuss. The motion is tabled. Revisit on 12/15/20

c) Article XVIII: Second Party Use of Property

- Kim makes a motion to ratify Beth's final wording listed below:

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. Only property owners can 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 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.

Larry seconds the motion. After discussion, a vote is held, and the motion passes with 5 yeas.

d) Article XV, Section 2

- Kim makes a motion to add the following wording to the section: “The yearly dues will be composed of: Operating Funds, Road Maintenance Reserve Funds, and Capital Reserve Funds. The Roads Maintenance Reserves will be replenished annually at no less than 15% and no more than 25% of collected dues. The Capital Reserves (including pool) will be replenished annually at not less than 5% and no more than 15% of collected dues. 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. At the end of the of the fiscal year any overages in the operating account that exceed 5% of collected dues will be allocated to the Roads Maintenance Reserves.” Larry seconds the motion. After discussion, the committee decides to wait until the return of the missing two members to vote on the motion. Revisit on 12/15/20.

e) Article XV, Section 2

- Kim makes a motion to add the following wording to the section: “The Association may not charge a total yearly assessment (Annual dues + special assessments + legal assessments) that is more than twenty percent greater than the previous year’s total yearly assessment without a two-thirds of the member of the association.” Dan seconds the motion. After discussion, the committee requests more time to consider the motion, and the motion is tabled. Revisit on 12/15/20.

f) Article XIV – Committees

- Kim makes a motion to add the following section under Article XVI, and to Capital Reserves Committee as a standing committee: “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.” Larry seconds the motion. After discussion, a vote is held, and the motion passes with 5 yeas.

g) Article XV, Section 1

- Kim makes a motion to add the following wording to the section: “The Board of Directors, Association Management, or Association employees may not give a discount or an exemption on dues, fees, or assessments, to any lot or member; except Oconee County, the Oconee Forfeited Land Commission, or settlements reached using the Alternative Dispute Resolution Procedures outline in Article (To Be Determined). Any discounts or exemptions given prior to the passing of these bylaws will be considered null and void.” Dan seconds the motion. After discussion, a vote is held, and the motion passes with 5 years.

h) Article XXVII, Section To Be Determined

- Kim makes a motion to add the following wording as a new section under Article XXVII: “Fiduciary Misconduct: A director or officer charged by credible proof or indictment with a felony theft or embezzlement offense involving the association’s funds or property shall be removed from office. The Board shall fill the vacancy according to the bylaws. 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, and the appointee shall be dismissed as an interim appointee. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer.” Dan seconds the motion. After discussion, a vote is held, and the motion passes with 5 years.

i) Article XV, Section 1

- Kim makes a motion to add the following wording to the section: “A property 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 property owner, and for any past dues that are unpaid by the prior owner. The property 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 property upon which the assessments are made.” Larry seconds the motion. After discussion, a vote is held, and the motion passes with 5 years.

VI. New Business

a) Article VIII, Section 1

- Kim makes a motion to add the following wording to the current section: “A Director or Officer may not serve more than six (6) years in any ten (10) year period, whether by election or appointment.” Dan seconds the motion. After discussion, a vote is held, and the motion passes with 5 yeas.

b) Article XXVII, Section To Be Determined

- Kim makes a motion to add the following wording as a new section under Article XXVII: “Nepotism: No blood or legal relatives may serve as Directors or Officers of the Association at the same time. No employee shall be awarded a position in the Association where they are to be directly or indirectly supervised by a member of their blood or legal family. No member shall be appointed a committee chair if they have a blood or legal relative employed by the Association.” Pat seconds the motion. After discussion, the committee requests more time to consider the motion, and the motion is tabled. Revisit on 12/15/20.

c) Article XVII – Security Force

- Kim makes a motion that all tickets written by security will be handled through the Oconee County Magistrates Office. Pat seconds the motion. During discussion many issues and questions are raised. The committee agrees to table the motion until the full committee is present. Revisit on 12/15/20.

VII. Adjourn: The meeting is adjourned at 10:43 am.