

Ad-Hoc Document Review Committee

Report on committee conclusions,
at the Board Meeting of March 21, 2015

In the November Board meeting, A motion was approved for an ad-hoc committee to perform a review of our documents, which include our Bylaws and our Declarations, this may include engaging legal counsel, develop any suggested amendments and other conclusions of the committee than report those recommendations to the Board of Directors by the July Board meeting.

The committee consisted of me, Barbara, Ed OConnor, & Jim Knupp.

The committee first met on December 3, 2014 for our task orientation.

We all got a copy of the Va. Common Interest Community Laws, 2014

We discussed the method for the review & the documents to be included.

We determined that the Articles of Incorporation could not be changed.

We needed to review: Declarations of Covenants, Conditions & Restrictions, the Bylaws, the Architectural Control Procedures & Guidelines, the Rules and Regulations, and the Disclosure Package, for any needed changes, additions, deletions, clarifications or updates. Our focus was on strengthening the Boards ability to govern the association better and to clarify the lawful penalties for non-payment of assessments.

We further concluded at that meeting that a starting point should be to have the Documents reviewed by a qualified HOA attorney for basic soundness and compliance to Va. law and to provide us with any required changes.

We decided to engage Ms. Sarah Palamara of Virginia Beach.

Barbara will present her credentials for the record.

I first talked with Ms. Palamara in mid December about our task.

She agreed to review our Declarations and our Bylaws and to report on their legal soundness and compliance with current Va. Law. We established her rates for this review and the committee agreed to proceed.

We talked again after her review on January 6th. There was one issue within the Declarations and one in the Bylaws that we discussed in detail.

I ask her to document her thoughts on the review she had performed. All emailed documents and conversation summaries were shared among all the committee members as they happened.

She provided a 3 page e-mail report that I include in the Committee file. There were three points made and some wordsmith corrections suggested.

She stated; "In Article 6 of the Declarations", Architectural Control Committee, "I would add a provision #4, that expressly states the Association has the authority to inspect Lots for compliance with the Declarations, Architectural Guidelines and Rules and enforce the provisions of these documents". "And, as I mentioned to Ric, my comment here is a stretch. The declaration is very clear on each owner's responsibilities, and the Board is empowered by the Declarations and the Bylaws to enforce the provisions of the Declarations, the Guidelines and the Rules." Her conclusion was that this is not a required change to the documents but she recommended it be done.

She added “There is only one provision in the Bylaws that is contrary to law, Article 9, Section 1”. Informal Action by Members and Directors. “The provision, as drafted, authorizes decisions to be made by written consent outside of a Board or owners Meeting. The Va. Property Owners Association Act, (PPOA) requires Board Meetings to be noticed and opened to all Owners. That said the Non-stock Corporation Act (NCA) which applies to The Coves since it is an incorporated association, authorizes the Board to take action outside of a Board Meeting by *Unanimous Consent* which is signed by all Board Members. So the Unanimous Consent provision of the NCA conflicts with the PPOA. However, it is a concept approved in an association context by practice and by case law. Therefore, I advise clients to use the provision sparingly, and only in emergencies”. “The provision can remain in the Bylaws until the Board decides to ask the Owners to amend the Bylaws”.

The committee met for 5 hrs. on January 26th to discuss Ms. Palamara’s review and to do our own review of all documents in detail. Our intent was to analyze provisions that we thought need clarification, modification or additions that would be considered “Needed or nice to have”.

The committee decided on 4 changes to the Declarations and 4 to the Bylaws. Our ideas were sent to Sarah on January 30th for her comments.

I talked with Sarah a third time on February 2nd to discuss her thoughts about our suggested changes. Her comments were that several of our suggestions were very good and valid ideas as clarifications to our documents and if the committee decided to make any changes she would be willing to formulate the language for her suggested modifications and our ideas to be made a part of the documents.

The committee met again on Monday, March 2nd to discuss all the findings of the committee and the recommendations of Counsel.

For her third point, Mrs. Palamara concluded her original review by saying, “while the language in these documents is not ~state of the art~, it is legally sound and it is working for the association. So my recommendation is to leave the documents alone until they no longer work for you”.

In consideration of the requirements of the Bylaws in order to change or amend the Association Documents, that is by the affirmative votes of not less than 2/3’s of the members, the risk reward equation does not show a favorable balance for that effort: Therefore,

The committee concluded, with all due diligence, and in consideration of the advice from counsel, there being no required changes for compliance with Va. Law we, the committee unanimously agrees that we recommend not making any changes to our Declarations and Bylaws at this time.

The committee will continue evaluation changes to other documents.

Respectfully Submitted by:

Richard Bauer, Chair of the Document Review Committee