



## Special Board Meeting

February 11, 2023

### Minutes

President Paul Bradley called the meeting to order at 8:30 AM

**Attending:** Paul Bradley, Margie Cyr, Kerry Hall, Jerry Kafka, Holly Fluty Dempsey, Ron Thomas, Don Deraska, Bob Wood, Hope Wagner (CAS), Mary Schrider-Fox, Esq.

**Community Members:** George Rayburn, Joe Woolman, Marty Shecter, Greg Pichler

Paul moved and Don seconded that recording of any type of the meeting except for the Board initiated Zoom recording is not allowed. All were in favor.

Paul invited Mary Schrider-Fox, Esq., MBA's attorney to meeting with the Board to review Board members' responsibilities and obligations. She will only go over general basics about Delaware Law and DUCOIA as both related specifically to MBA.

#### **Mary Schrider-Fox:**

MBA is a corporation is a non-stock membership corporation. The basic fiduciary obligations are care, informed, deliberative and loyalty. This means acting or non-acting and that decisions are made in the best interest of the association. There can be no personal stake or interest. There must be an honest belief that a decision is in the best interest of the entire community.

The business judgment rule is that the Board is acting in the best interest. This can be challenged. Mary has a cheat-sheet from Harvard Law that she will share. Recordkeeping is very important.

Don asked if he has identified a personal conflict, does he recuse himself or just reveal it? Mary says this is a personal decision – can you make this decision? Need to avoid the perception of misbehavior. It is legally cautious to recuse yourself. Don asked if he should not participate in the discussion. Mary advised he not participate unless there are specific questions about facts.

DUCOIA – MBA pre-dates the 2009 law. There are thirty sections of DUCOIA that apply to MBA. The process is to look at MBA's governing documents then look at DUCOIA. DUCOIA generally takes precedence over MBA documents, but you have to analyze it. If neither has the answer to a question, then DUCOIA allows for going outside of the thirty sections to look for the answer.

DUCOIA – Bylaws provision does apply to MBA but the subparagraph about reviews and audits does not.

Reserves: Reserve funding in DUCOIA only applies to condominiums. For Reserve Studies, look at the governing documents. MBA can have a working reserve account. There is nothing specific about how to use these funds. The decision how to use the funds is up to the Board. What is best for the organization? The Reserve Study can be used to guide decisions. Use of reserves should also be guided by prior Board decisions and what the community has been told regarding the intended use of the funds.

A question was whether the reserve fund can be used for projects not included in the Reserve Study? In regard to the Beach Reserve, funds earmarked for the beach may be used for the beach.

Can we create a reserve funding policy? Yes, it's a great idea to do so. Legally the Board can make these decisions.

There was a question about what Board members can do outside of a regular meeting. Any convening of a majority of Board members is a concern. Section 81-301a: can't gather to pre-determine or pre-decide decisions.

In Board meeting, there is no legal requirement to allow non-Board members to interrupt or participate in the meeting. This can really interfere with the process of the business of the meeting.

Committees: Use your committees. They can and should meet and then advise the Board. There is no requirement that committee meetings be open. Minutes need to be kept.

Random Board members may not get together and pre-discuss and pre-determine issues facing the Board.

Budget Committee: If four members of the Board wish to gather to discuss Budget Committee business, they can do this but only if they are members of the Committee. Four Board members cannot convene to discuss a topic that another committee is responsible for.

Minutes should reflect who is present, the topics of discussion, decisions that are made and how members voted. Can or cannot include extensive discussion.

Emails, texts, etc. are Board records. They are subject to disclosure.

Way to make Board decisions: Corporate law allows for unanimous written consent. This is maintained like minutes. Don't want to use this all the time. But if there is a need to act quickly, it must be unanimous.

Executive Sessions May be held to discuss legal/lawyer/litigation; labor/personnel/ contract negotiations; complaints or alleged violations.

In regard to decisions that are made in Executive Session, come back into the open meeting to record the results of decisions in the open meeting. Don't reveal sensitive issues or potential litigation. Keep in mind privacy issues.

Don asked to affirm that use of reserve funds is at the Board's discretion. It is our authority to make decisions about how to use the reserve funds outside of the Reserve Study? From a legal perspective, the Board can do this but must pay attention to previous Board decisions. If the Board wishes to change this, must do research, and have discussion. Jerry reminded that precedent must be looked at and what prior representations have been made to the community.

George Rayburn asked if the Board has discretion to decide what is paid out of capital or reserve? Yes, in theory, but Mary doesn't know what the Board has represented and made decisions about previously. Need to be consistent with what has been said and previous decisions.

Paul thanked Mary for her time and her expertise.

Bob moves and Don seconds to adjourn. All in favor.