

Executive Summary: Conference call re Bylaws, Article 4 and CC&Rs, Article 7, Aug. 26, 2014

A conference call with the law firm of Vial Fotheringham LLP was scheduled in order to gain legal clarification in response to concerns from the Rules and Regulations Committee that rules and regulations were not being enacted properly according to Bylaws Article 4.5(l). With time permitting, a related question of whether the ARC can make rules within the ARC Procedures, Standards & Guidelines without Board approval, as implied by CC&R's Article 7.1, was to be covered.

The meeting was convened on August 26, 2014, 2:00 PM PST. Participants included Kurt Powell (WCM Manager), Steve Napack (SVOA board president), Kendall Clapper (SVOA Board member and Stoneybrook Lodge representative) and attorney Jason Grosz (Vial Fotheringham Lawyers). Jan Napack was present as note taker.

Discussion: Bylaws Article 4.5 (l)

The attorney (Jason) was apprised that there are two different understandings of Article 4.5 (l). The Rules & Regulations Committee views this segment as requiring that in order for the Board to adopt, modify, or revoke any rules at a regularly scheduled Board meeting, they must indicate in the published agenda that they will be doing so, then conduct a vote that requires the approval of 75% of the voting rights of members present in order to pass. The way the Board has been operating since 2007 is that rules and regulations are adopted, modified or revoked by a simple majority of a quorum of Board members, not requiring any vote of association members present.

Jason asked a series of questions concerning the process the Board now uses to establish rules and regulations (1), after which he affirmed that the current SVOA board practice is in accordance with the text of Article 4.5(l), that it is the correct and customary procedure, and that it is consistent with the state statute governing HOAs (2). Jason stated that simply put, the Board may adopt, modify or revoke rules and regulations which are then enacted by publication and notification to the community. Only after that point are they enforceable. Once the rule or regulation is enacted Owners may modify or revoke the rule or regulation by calling for a special membership meeting and using the procedure stated in the Bylaws Article 4.5(l) [and Article 3.5]. Jason emphasized that modification or revocation presumes a rule or regulation is already in place. Jason provided additional context in interpreting Article 4.5 (l) in that the meeting mentioned in the second sentence refers to "proxy" votes, which through inclusion of the term, designates this as an Owner meeting; that is, proxy votes cannot be exercised by directors at board meetings (3).

Discussion: CC&Rs Article 7.1

Article 7.1 clearly empowers the ARC to adopt changes to the ARC Procedures, Standards and Guidelines (PSG). This can, and does in some cases, involve rules and regulations that all of Stoneybrook Village are to follow. The question asked of Jason was whether the fact that it effectively includes rules and regulations means that it requires Board approval in order to be enacted. Jason confirmed that the ARC can make these changes independent of the Board, but that the ARC, like other committees chartered by the board, "serve at the pleasure of the board". Hence, the ARC has authority as designated by the CC&Rs to effectively adopt rules and regulations but the board has the prerogative to override them, replace ARC members, or even disband the ARC. He recommended that it would be best for there to be a cooperative relationship whereby the Board is notified and approves ARC document changes in order to avoid later conflicts.

References:

- (1) Introduction, discussion, motion, vote and recording of proposed rule, followed by publication.
- (2) ORS Chapter 94.625 - 94.650 [ORS 94.625 - 94.700](#)
- (3) ORS Chapter 94.641 (3)

SVOA Amended and Restated Bylaws 10/08/2011; Benton County, OR; document # 2011-483477

ARTICLE 4
DIRECTORS: MANAGMENT

4.5 **Powers.** The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Owners. The powers and duties to be exercised by the Board of Directors shall include, but not be limited to those set forth in Section 8.5 of the Declaration and the following:

- (l) **Rules and Regulations** From time to time adopt, modify or revoke such rules governing the conduct of persons and the operation and use of the Lots and the Common Areas as the Board of Directors may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Such action may be modified by vote of not less than seventy-five percent (75%) of the voting rights of members present, in person or by proxy, at any meeting, the notice of which shall have stated that such modification or revocation of Rules and Regulations will be under consideration.

Amended and Restated Declaration of Protective Covenants, Conditions, Restrictions and Easements for Stonybrook Village 10/06/2011; Benton County, OR; document # 2011-483476

ARTICLE 7
ARCHITECTURAL REVIEW COMMITTEE

7.1 **Architectural Review.** [...The procedure and specific requirements for review and approval of residential construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee....]
