

The Highlands Community Association

Board of Directors Meeting, January 19, 2018

At the Highlands Country Club

Meeting Call to Order:

Mr. Matt Cullather, President, called the meeting to order at 2:35 PM. Quorum was established with Directors Mr. Matt Cullather, Mr. Shawn Gitlin and Mr. Brian Davis present. Mr. Donegon was absent due to illness. Ms. Yeager, ACS West, and Mr. Andrew Elmore, Attorney were also in attendance.

Approval of the Minutes: Minutes from the January 10, 2018 were not available for review.

Common Area Update: Mr. Cullather provided an up-date on the status of the Common Area containing the pool, tennis courts, sales center and surrounding property. The developer has received an offer to purchase the property from a third party and has given the Association right of first refusal. The Board has undertaken several initial steps to consider whether to obtain the property for the Association, to include obtaining an appraisal to determine the value of the property, the creation of a Pool Committee to review pool operations and make suggestions on financial and assessment options. The Board has taken no action which irrevocably commits the Association to acquiring the property. The Board recognizes that the community is vitally interested in the process and will continue to update the community and is committed to keeping community abreast of all aspects of the process.

Member Voice:

Thirty-four (34) members of the community present at the meeting. Two members of the community presented written comments to the Board and requested that their comments be added to the record of the meeting. The comments are attached as Exhibits 1 and 2. All members present at the meeting were concerned that the process of the possible acquisition be open and transparent. Mr. Cullather indicated that all steps in the process will include input from community members. The future use of the Sales Center was brought up. The future use of the Sales Center has not been discussed, other than the use of some of the space as storage for pool equipment as currently utilized.

Old Business:

1. Boat Ramp Repairs: Ms. Yeager was asked to obtain at least two estimates for the repair and extension of the boat ramp.
2. Signage Cleanup: The landscape contractor will be requested to cleanup and refurbish the entrance signs as part of the spring cleanup.
3. The community members who had received violation notices concerning trailers parked on their properties were referred to the ARC to establish the necessary conditions to remove the violations.
4. Deer: The community website will be updated to provide homeowners with suggestions to reduce the potential damage from the deer population.

Executive Session: Mr. Cullather made a motion to move to executive session to receive legal counsel from the Association's attorney. Mr. Gitlin seconded the motion. All Board members agreed. Board moved to Executive Session at 3:30 PM. At 5:15 PM, Mr. Cullather made the motion to return to open session, seconded by Mr. Davis and agreed to by all Board member.

Open Session: Upon returning to open session, Mr. Davis made the motion that the Board of Directors authorized legal counsel to respond to the Developer's offer to sell the pool lot to the HOA. Mr. Cullather seconded the motion and all Board members agreed.

Adjournment:

Mr. Gitlin moved the meeting be adjourned, seconded by Mr. Cullather, and agreed to by all Board members. The meeting was adjourned 5:15 PM. The next meeting of the Board will be March 14, 2018.

Respectfully submitted:

Brian Davis

Secretary, Highlands Community Association

## HOA Meeting on Pool Complex Purchase

1/19/18

Sherry and I personally believe the community should have the pool and that it will enhance the desirability of the community. Some believe that it will decrease property values as the requirement to pay towards a pool will remove a substantial subset of buyers who have no interest in a pool, currently about 70 % of the community. This is a valid point,

But the conditions under which it is acquired and the process is a major concern for us,

1st when we built our home we paid \$650 for the pool, This was not optional. With 1300 homes already here, that is \$845,000 already paid to the Developers, Why would we pay twice for it? That should be deducted from the fair value of the pool complex in any purchase. Normally these facilities convey to the community when the Developer is finished.

2nd if we own the pool, new homeowners must continue to pay the \$650 fee to the HOA this time, to acquire their fair share of the pool.

We have not heard about the appraisal. Who did this, do they have any ties to the Developers that might be a conflict of interest? It is very important that we have a fair valuation. A 2nd appraisal may be needed. The County assessment is \$773 K, so no way can it be worth in excess of a 1 million as the Developer is asking

What is the state of the structures? Do we have an inspection of the structural soundness and repair needs for the complex? What is the community likely to need to spend in the next 5 10 years to keep the facilities properly maintained.

And connected with these spending needs, it is my understanding that there is a reserve to repair the pool and complex in the event of significant expenses. Will that reserve convey with the pool property? If not, what will the Board do if the pool develops a major problem early in our ownership?

We have been waiting for the Board to hold a meeting to see what the sense of the community is on purchase of the pool. Why has this not been done?

There has been concern that the Board will act without a referendum of the community. Even if you somehow find a loophole that you do not need to do a referendum, it would be unethical for you to move ahead without a referendum on acquisition of this magnitude.

My reading of the ByLaws and Covenants is that you will need to do a referendum. A referendum is required to borrow money for capital improvements that exceeds 10

% of the gross HOA budget (on order of a \$40K loan),

Members have the power of referendum, without limitation for:

Levy by Association of any special assessment

Any Capital Assessment

Increase in Assessments by more than 10 % per year

In any event, we believe you need to do the right thing and include the community in this decision

To that point, we believe in fairness and to not bias the communities wishes, you need to include options that not only include increases in annual assessments or a special assessment to the whole community. You can set up a separate entity - Pool

& Tennis Association to pay for the costs without involving the HOA Annual dues. This needs to be an option,

What is the capacity of the pool and how would that work in the option where all residents could use the pool without additional pool fees? I cannot imagine the pool scene on July 4th in this situation.

Lay the options out in detail and with fairly representative inputs to show the expected costs to the community.

In sum, hold a referendum on an appropriate range of options and be transparent through the entire process on what you are doing, provide the appraisal and potential significant costs expected to these facilities in the next 5 - 10 years. I am opposed to homeowners having to pay twice for this facility. And remember, you are representing the entire community, 70 % of which are not currently pool users.

1119/2018 XFINITY Connect Some input about the proposal that the Homeowners Association might buy the pool complex Printout

Billy Sinclair <wsinclair7907@comcast.net> 1/14/2018 10:45 PM Some input about the proposal that the Homeowners Association might buy the pool complex

To board@highlandsca.com Billy Sinclair <wsinclair7907@comcast.net>

Dear Matt and the Board,

Thank you for your e-mail on 12/1/17 giving us an update on the pool.

I heard that the appraisal has been completed and I was wondering when you will call the next meeting of the pool committee. I want to be sure to have it on my schedule.

You asked for questions and ideas so here are a couple of thoughts:

A pool initiation fee of \$650 is paid when a new home is sold for the first time. This means that the developer has already been paid \$650 x 1198 \$778,700 towards the cost of the pool. Since the Homeowners have already invested \$778,700 in the costs of the pool complex, that sum should be deducted from the appraisal value before making any offer to purchase.

70% of the Homeowners are not members of the pool. The following covenants require a referendum of the Homeowners in this situation:

Article 1. Definitions (n) Referendum

Article 3. Membership and voting rights in the association, Section 5

Article 5. Covenants for assessments, Section 4

Article 6. Functions of the association, Section 4

Thus, it appears that a referendum of the Homeowners is required before any offer to purchase the pool complex can be considered valid.

Thank you for the opportunity to provide this input.

Regards

The following covenants require a referendum of the Homeowners:

Article 1. Definitions (n) Referendum

Referendum shall mean and refer to the power of all or some specific portion of the Members to vote by mailed ballots on certain actions by the Board of Directors of the Association more particularly set forth herein including, without limitation: the levy of any Special Assessment; the levy of any Capital Assessment; the increase of the maximum regular annual assessment in excess of that provided for herein; and the addition and deletion of functions or services which the Association is authorized to perform.

Article 3. Membership and voting rights in the association, Section 5

Members to have Power of Referendum in Certain Instances. Where specifically provided for herein, the Members or some specific portion thereof, shall have the power to approve or reject

certain action proposed to be taken by the Association by Referendum including, without limitation, the levy by the Association of any special assessment, or any capital assessment, the increase of maximum assessments by the Association in excess of that provided for herein, and the addition or deletion of functions or services which the Association is authorized to perform.... The Board of Directors may not undertake any action requiring a Referendum without complying with the provisions thereof.

Article 5. Covenants for assessments Section 4

Special Assessments for Improvements and Additions. In addition to the Maximum Regular

Annual Assessment authorized by Section 3 hereof, the Association may levy Special

Assessments, for the following purposes:

- (a) Construction or reconstruction, repair or replacement of capital improvements upon the common Properties including the necessary fixtures and personal property related thereto;
- (b) For additions to the Common Properties.
- (c) To provide for the necessary facilities and equipment to offer the services authorized herein;
- (d) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein;
- (e) Such assessment before being charged must have received the assent of two-thirds (2/3s) of the votes of the Members, responding to a mail Referendum within thirty (30) days of

mailing...

#### Article 6. Functions of the association, Section 4

Obligations of the Association. The Association shall not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. Special Assessments shall be

submitted for referendum as herein provided, The functions and services which the Association is authorized to carry out or to provide, may be added or reduced at any time upon the affirmative vote of two-thirds (2/3s) or more of those voting in a Referendum within Class "A" Members conducted by the Board of Directors under the same procedures as for a Special Assessment.

The following by-laws require a referendum of the Homeowners:

#### e Article 3. Board of Directors: Number, Election, Powers, Meetings. Section 18

Borrowing. Board of Directors shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Common Properties and such other areas of Association responsibility expressly provided for in the Declarations without the approval of the Members of the Association. The Board shall also have the power to borrow money for other

purposes, provided the Board shall obtain Member approval in the same manner provided in the Declarations for special assessments in the event that the proposed borrowing is for the

purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or

would exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year.

#### Draft of Referendum

The Developer wishes to sell the pool, tennis courts and sales center complex. He has received an offer for \$1.5 million but wants to give the Homeowners an opportunity to buy the property. The Homeowners Association has established a committee to consider this opportunity. The following three options have been discussed:

please note that the \$ values are a first estimate provided at the pool committee meeting on 10/25/17. The numbers will change as we get more details

Option 1. The Homeowners Association buys the pool. Assume that the same number of people will maintain their membership of the pool and will continue to pay the same membership fees for the pool. in this scenario, every Homeowner will pay \$100+ annually for 15 years. The only people allowed to use the pool will be those who pay the annual membership fee.

Option 2. The Homeowners Association buys the pool. Assume that there will be no membership fees and every Homeowner will pay \$200+ annually for 15 years. All Homeowners will have the right to use the pool; no one will pay membership fees.

Option 3. The Homeowners Association does not buy the pool. The pool could be sold to a third party, or the people who use the pool could form a "Pool and Tennis Association" and they could buy the pool.

Please indicate your preference by checking one box below:

Option 1. Homeowners Association buys the property and ever Homeowner pays \$100+ annually for 15 years. The only people allowed to use the pool will be those who pay the annual membership fee.

Option 2. Homeowners Association buys the property and ever Homeowner pays \$200+ annually for 15 years. All Homeowners will have the right to use the pool; no one will pay membership

Option 3. The Homeowners Association does not buy the pool.

Signature : Date :

Address :

## Board Meetings and Executive Session

### ARTICLE 3 BOARD OF DIRECTORS: NUMBER ELECTION POWERS MEETINGS Section

#### 13. Open Meetings.

All meetings of the Board shall be open to all Members. Subject to reasonable rules adopted by the Board, the Board shall provide a designated time during a Board meeting to allow Members an opportunity to comment on any matter relating to the Association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the Board may limit the comments of Members to the topics listed on the meeting agenda. Other than the comment period mentioned above, Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, excluding Members, but only in strict conformance with the procedures specified in Section 55-510(C) of the Virginia Property Owners' Association Act, Section 55-508 e.t\_sgg of the as -amended.

Code of Virginia 55-510.1. Meetings of the board of directors.

C. The board of directors or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.