

OFE Board of Directors Meeting - February 2, 2019

1:00 - 2:00 PM

Attendees: Bryan McGann, William Winchell, Jeanne Hammer, Laurence Burke, Janet O’Keeffe

1. Covenant Violation

The violation of the Covenants by the Albimino’s builder. The Covenants require and the Architectural Agreement he signed state that the exterior of a building must be completed within 12 months of commencing work.

It is now 18 months and the exterior is not finished. The lot is a mess with construction materials and debris strewn about, and visible to adjacent lots. The Board cannot selectively enforce the Covenants and needs to discuss options to address this issue.

The president provided the following additional information.

- The Albimino’s house has been under construction for 18 month and the exterior is still not completed.
- Builder claims completion by end of Feb. 2019.
- Builder was extremely unprofessional, bordering on hostile, when the president contacted him about the violation of the agreement.

The Board discussed the issue and agreed that pursuing legal action or fining the Albiminos would not solve the problem. Instead, the Board will take the following actions:

- **We will submit negative review of the Builder to the Better Business Bureau, and other relevant online sites.**
- **We will write again to the Albimnos—and Bill Winchell will speak with them—about the need to pressure the builder to finish the exterior.**

Related Issue

~~We cannot~~ The area around the Albimino’s house is a mess, with mounds of red clay and, nothing to secure the exposed earth between the house and the road. As a result, a tremendous amount of silt has run off into the lake, causing a massive increase in water willow on the waterfront of Lot 22 and Lot 21. The earth must be seeded and covered in wheat straw immediately.

The president wrote the Albiminos about this issue and their need to act, but they have not responded.

After some discussion, the Board agreed to take the following actions:

- **The president will re-send the original email and tell the Albiminos they must respond.**
- **The president will call Code Enforcement of the Warren County Department of Environmental Health and ask them to require the builder to put a silt fence around all exposed earth areas.**
- **Bill Winchell will personally contact the Albiminos to discuss the issue and provide information for a contractor to do the required work.**

2. Elder Architectural Control Agreement (ACA)

The president left hard copies of the ACA in the Elder's mail box last week with a request to expeditiously review it so the BOD can formally approve his submission. They have not responded.

He submitted information last year in dribs and drabs through emails despite being told that he was required to submit a complete package of information ~~for the BOD~~ to BOD for review. The BOD never received a complete submission and so it never approved construction.

A neighbor informed the president that the Elders had signed a contract with David Williams to build the house.

The OFE Covenants specify that specific information must be submitted to the BOD for approval before construction can begin.

The Board discussed the issue and agreed to take the following step:

The president will send the forms that need to be completed to Bryan McGann and he will contact the Elders to ensure that the forms are completed and submitted to the BOD prior to the start of construction.

3. NCDOT Update/ Special Assessment

Before assuming responsibility for maintaining East Pointe Drive, the NCDOT requires easements from all utilities. Halifax Electric does not want to provide the easement because of issues relate to responsibility for the cost of moving utility lines if the NCDOT requires it.

The president has been in contact with both Halifax Electric and NCDOT and is attempting to seek a resolution of the issue.

The total cost of the required repairs for East Pointe Drive are \$3,858.85. The cost for the OFE sign replacement is \$468.92. The total for both is \$4,327.77.

Divided by 31 dues-paying lots, the per lot cost is \$139.60. The special assessment we voted on, included only the NCDOT required repairs, not the sign. But, we did not budget for the sign, and we need to include it in the total.

The Board discussed options for the time frame and manner of payment and agreed on the following steps.

- **The Treasurer will send an email to all HOA members informing them of the amount of the special assessment and the due date for payment. Per the Covenants, it is 60 days after notice.**
- **HOA members will be required to send a separate check for the assessment. They may pay their annual dues at the same time if they wish.**
- **The notification for the annual dues will be sent out a month prior to their due date.**

4. Bylaw revisions

The OFE Bylaws require some changes to facilitate HOA operation. For example, currently, we are required to sign a hard copy of any resolution voted on through email with a short time frame. With two BOD members not living in OFE, and the likelihood that the BOD will always include some members of do not live in OFE, we need to determine which Bylaw provisions could be changed to reduce the administrative burden on the Board.

The Bylaws also contain some administrative provisions that are not always adhered to, e.g., one in-person meeting per year; record keeping, etc.

The Board agreed to review the Bylaws in the next two months and recommend changes for consideration. Once the BOD has finalized them, the president will send the recommended changes with an explanation for the change, to the HOA membership for review and input. Input will be considered, and a final version of the amendments submitted to the HOA for a vote at the annual meeting.

The president noted that many people do not read entire documents sent via email because they view them on their phones. They also very rarely respond. Thus, the Board agreed that important communications should be sent to HOA members via post mail.

This change will require a new line item in the budget for paper, printing, and postage.

5. Enactment of Rules

The president met with Tom Skinner, the HOA's legal counsel to discuss a number of legal issues.

Rules and Regulations. Tom Skinner stated that OFE's Bylaws give the BOD—and the president specifically—the authority to make rules for the HOA, not just for “its properties.”

When the Covenants are ambiguous, rules can be adopted to make them more specific.

An HOA vote to approve the rules that the BOD proposes is recommended, but not required. Tom recommends obtaining HOA approval through a formal vote as a precaution against potential future challenges.

The Board agreed to the following actions:

- **The president will send an email to the HOA asking for input on topics to address in the rules, e.g., noise, animal behavior, parking, enforcement, etc.**
- **The Board will develop a draft set of rules and send them to the HOA for review and input.**
- **Input will be considered and incorporated when legal and relevant.**
- **A final set of rules will be sent to the HOA. A meeting will be held to discuss the rules before they are finalized and voted on.**

6. Covenant Change.

Tom said that the opportunity to amend the covenants with only 80 percent of HOA votes is time limited: from January 3, 2020 – December 31, 2021. If not amended, the original covenants rule for another 10 years and require 100 percent of votes during that period to amend.

Given this limited time frame starting next January, the HOA needs to review the covenants to determine if it would like any revisions to be made. One option is to change the percentage of votes required to amend the covenants at any time to 80 percent or less.

The Board agreed to the following actions:

- **The president will send an email to the HOA asking them to review the Covenants to identify provisions that they believe should be amended, and to suggest any new provisions.**
- **The Board will develop a draft of the amendments and send them to the HOA for review and input.**
- **Input will be considered and incorporated when legal and relevant.**
- **Tom Skinner will need to review any proposed Covenant changes before they are presented to the HOA for a vote.**

Other Covenant Clarifications

Tom Skinner said that owner of the Developer rights is only exempt from dues on unsold lots through December 31, 2020.

Phase II of OFE has different voting thresholds for amending the Covenants than does Phase I. If Phase II HOA members amend the Covenants, the amendments apply only to OFE Phase II and Phase III lots.

There is a question as to whether or not the title deeds of the lots in Phase III reference the Covenants. If not, then the lots in Phase III would not be covered by the OFE Covenants. Bill and Bryan and Jeanne said that they will check their title deeds.

7. Conflict of Interest Concern by HOA Insurer

The HOA's insurer is concerned about the potential for conflicts of interest given that two BOD members own the developer rights and investment properties in the community.

The insurer has asked that the BOD enact a resolution stating that directors will recuse themselves from any vote on a matter that involves a conflict of interest. Tom Skinner said that the OFE Bylaws address this issue, as does NC Gen. Statute 55A, the provisions of which are incorporated into the OFE Bylaws.

He suggested asking the insurer for the language to use in a resolution. When the president did so, they declined because they are "not lawyers." The president then researched the issue and the Community Associations Institute offers guidance on drawing up a BOD Ethics Agreement and states that current and prospective BOD members should sign in. It includes provisions regarding conflict of interest.

The president will get a copy of various agreements for the Board and the HOA to consider. Once adopted, all current and prospective Board members will be required to sign in. A signed copy will be sent to the insurer.

8. Records

The HOA's method of record keeping is less than ideal. While many documents are on the OFE website, many are not. The site is not current and needs to be updated. Additionally, it is advisable to have hard copies of information related to annual meetings, adopted budgets, etc.

The majority of the Board's communication is by email, so it would be impossible for future BOD members to obtain a history. Current Board members have thousands of emails on various topics for the past 12 years. The Board needs to adopt policies regarding record keeping in accordance with our Bylaws and the NC Planned Community Act.

The Board discussed the issue and agreed to the following actions:

- The Treasurer will keep receipts/invoices with the banks statements showing payment.
- The Secretary will have separate folders for special issues: e.g., road repair, assessments, dues issues, etc.
- Email communication regarding Board decisions about issues should be retained, but emails including all of the discussions preceding the decision do not have to be retained.
- Bill believes it not necessary to have hard copies of communications because they can be stored in the Cloud to be accessed as needed. Other documents will be available on the OFE website.
- Bill Winchell will work with Janet to update the website and to ensure that essential communications are archived.
- The president will print out any emails from Tom Skinner and file them, to ensure ease of access.

8. Legal fees.

Proposed Rules, Bylaws and Covenant amendments will need to be reviewed by Tom Skinner. The HOA has budgeted only \$700 for legal costs and \$250 has already been spent.

The Board discussed ways to address the shortfall.

The Board agreed that we would obtain legal counsel as needed, and if there are insufficient funds to cover expenses, the Board would have to fund them with a special assessment.

The president noted that once all of the septic repair lots were purchased, the HOA could fund its reserves to cover unexpected expenses.

9. Sale of Lot 55 (septic repair lot)

The owner of Lot 1 is interested in buying Lot 55, which is directly across from his lot.

Bill Winchell and Bran McGann indicated that they do not see a problem with this sale but want to discuss it between themselves before proceeding. They expressed concerns owners who purchase septic repair lots fronting N. Robinson Drive could ask the County to change the designation from septic repair to buildable and thus would be getting the Lot way below value.

One suggestion was to add a restriction to the Covenants that would not permit lots designated as septic repair to be changed to buildable lots.

A related topic was whether the HOA should buy a lot from Sundial in the 2019/2020 year, given that we may have high legal fees that year, e.g., for reviewing Covenant changes.

The Board agreed that that the HOA should continue to a purchase of a lot a year from Sundial until all lots are owned by the HOA.

10. Checking Account

New checks need to be ordered. The check book currently in use was ordered 11 years ago and the checks have the address of the Treasurer at that time. Because the new check book will likely be in use for 10 years, the Board agreed that the checks should not include any street address—only Macon, NC.