

6. Frank Weisel won with 44 (or so) votes and Frances Mielach lost with 26 (or so) votes – included among these was approximately 40 proxies.
7. Given that the Association violated a Montgomery County statute, Claimant and Director Setzekorn contested the election results on October 1, 2006, asking for a prompt response from the Board on the following points, including a legal opinion from the Association’s attorney on the validity of permitting general proxies to count in the vote for the election of a director:
 - (a) Why was there no discussion on Code 10B among the directors prior to the voting at the Annual Meeting?
 - (b) What are the election results if the votes are counted without general proxies?
 - (c) If Ms. Mielach is the winner without counting general proxies, should a new election not be held?

Election - Process

8. Claimant and Sandra Setzekorn questioned the Association’s past election procedures several times over the past year, and asked the Board to put this matter on a meeting agenda.
9. The Nominations Committee called for in our governing documents was not formed until the August 31, 2006 Board Meeting, and announced to the community in a letter advising that its first meeting would be held on September 12, 2006, but it was not clear whether that meeting would be open to all members as required, and no minutes have been presented.
10. Just two (2) weeks before the election, with correspondence dated September 15 and 16, owners received a letter with a general proxy form, asking that it be executed and sent to the property manager if the owner was unable to attend the Annual Meeting (there was no mention that a trusted neighbor could be handed the proxy instead of the management agent or the Board).
11. The candidacy statements of the two (2) candidates, which were omitted from the mailing in error, were forwarded to owners a few days later under a transmittal letter dated September 18, 2006.
12. In addition to the late timing, when the Association’s 2006 Annual Meeting was on September 28, 2006, Claimant questions why directed proxies or absentee ballots are not used for the election.
13. Claimant questions the lack of neutrality in the letter dated September 16, 2006 from Board President Shaffer (included in the mailing with the general proxy) using the Association’s funds, when he knew that there were two (2) candidates, why he noted that a sitting director was up for re-election, emphasizing that,
 - “... a strong experienced Board is very important...” and said to
 - “...exercise your right (to vote) by showing your confidence in your Board of Directors ...”
14. It is Claimant’s opinion that the foregoing was a directive to vote for Frank Weisel (a sitting director).

15. While it would be a “best practice” and not a legal requirement, there was no candidate forum scheduled before the Annual Meeting date to get to know the candidates’ positions on the issues.
16. A candidate forum was held at the Annual Meeting; however, by that time the general proxies had already been collected.
17. The weekend of September 16 and 17 (before most people knew who the two (2) candidates were for the election) and up to the time of the election, Claimant heard reports from other owners that three (3) directors on the Board - Messrs. Shaffer, Weisel, and Berman – were canvassing the neighborhood and knocking on doors to collect general proxies.
18. Claimant questions if it is proper practice for Board members to collect general proxies and attempt to use their influence as directors to convince other members of the Association to re-elect a sitting director.

Directors - Number

19. Sometime in 1999-2004, the number of directors on Respondent’s Board of Directors (the “Board”) was reduced from seven (7) to five (5); the Association’s Bylaws at Art. IV, “*Board of Directors, Selection, Term of Office,*” § 1, “*Number,*” state:

“... the number of Directors shall be determined ... by a vote of the initial Directors named by the Declarant; thereafter the number ... shall be determined by a vote of the members at the annual meeting of members and the number of Directors may be changed by a vote of the members at any subsequent annual or special meeting ...”

Claimant asks the Association to prove due process in reducing the number of its directors, evidencing at the same time that it kept proper records of its business pursuant to Art. VII, “*Powers and Duties of the Board of Directors,*” § 2 “*Duties.*”

Directors - Terms of Office

20. A Board member’s term is for three (3) years, pursuant to the Declaration, Art. IV, “*Board of Directors, Selection, Term of Office,*” § 2, “*Term of Office.*”
21. Three (3) directors, two (2) of which are still on the Board (Board President Shaffer and Vice President Weisel), each exceeded their terms in office by more than one (1) year without informing the members that they were due to stand for re-election.
22. When Director Setzekorn presented the above finding to the Board, Respondent’s President Shaffer took responsibility for the errors (at the Board Meeting on September 27, 2006) saying it was due to his “confusion.”
23. The Board obtained a legal opinion that when challenged by Director Setzekorn, was re-written by the Association’s attorney, who supported the Board members’ rights to continue as directors during the holdover periods.

24. The Claimant alleges, however, that there is a pattern of directors not acting in the best interests of homeowners by disregarding the requirements in the governing documents and overstaying their terms on the Board.
25. President Shaffer, for example, set the 2005 Annual Meeting late in the year and then cancelled it for no apparent reason, finally holding the 2005 Annual Meeting in January 2006 – which meant that his term – was extended by a total of one (1) year and seven (7) months.

Timing of Annual Meetings

26. In recent years, neither the Board meetings nor Annual Meeting have been held regularly at the same time every year - in fact, there was no Annual Meeting at all in 2003 and the 2005 Annual Meeting was held in January 2006, and apparently minutes have not been recorded (in fact, there are no minutes for the Annual Meeting in 2004).
27. Claimant wants Annual Meetings held on approximately the same day every year, as is required by our governing documents, according to our Association's Bylaws, Art. III, "Meeting of Members," § 1, "Annual Meetings":

“... annual meeting of the members shall be held on the same day of the same month of each year thereafter or such other reasonably similar date as may be selected by the Board of Directors”;

Record of Acts and Corporate Affairs of Board of Directors at Annual Meeting

28. The Board failed to keep a statement of its acts and corporate affairs and to present a statement of its acts and corporate affairs to its members at its Annual Meeting on September 28, 2006, pursuant to the Bylaws, Art. VII, "*Powers and Duties of the Board of Directors*," § 2, "*Duties*."
29. A group of directors has attempted to whitewash their past actions or inactions with an August 31, 2006 "resolution" absolving themselves of all irregularities. These directors have kept DEHOA homeowners in the dark by controlling what little information is released to the community, and they have refused to approve minutes from Board meetings for months at a time.

Meetings of the Board and Committees

30. In 2004-2005, under the chairmanship of Director Frank Weisel, the Association's ARC held closed-session meetings without minutes, and approved change applications by email, sometimes excluding at least two of its members (Sandra Setzekorn and Paul Heaps), and without a quorum of either the Board or the ARC, approved paint-color changes still present that are not in the Association's approved paint-color schemes for homes (e.g. 6026 Loganwood Drive) in violation:
 - (a) of its Bylaws, Art. X, "*Committees*," which then refers to
 - (b) of its Bylaws, Art. III, § 3, "*Notice of Meetings*," and
 - (c) of its Bylaws, Art. III, § 9, "*Open Meetings*," and,
 - (d) of its Bylaws, where applicable, Art. VI, "*Meetings of Directors*," § 1, "*Regular and Special Meetings*," and
 - (e) State of Maryland Code § 11B-111.

31. The Board excluded from its annual 2005 community inspection in approximately April 2005, members of the ARC who wanted to attend (and who were not also on the Board).
32. In January 2006 when Sandra Setzekorn was elected to the Board, she and Claimant insisted that the Board follow State law and the Association's governing documents and hold open and noticed meetings.
33. Because of "irregularities," the Board absorbed the former ARC in January 2006.
34. The Association's Board declared its annual community inspection on May 18, 2006 to be a closed-session Board meeting and even excluded members of the Architectural Task Force who wanted to attend; however, pursuant to the Associations Bylaws, Art. III, "*Meeting of its Members*," § 9(a), "*Open Meetings*,":

"All meetings of the Association shall be open to all owners or occupants of units of the Association, their guests and any representative of the news media, except that such meetings may be held in closed session for the following purposes: ..."

and the enumerated exceptions that follow above do not include any business of the community pertaining to architectural matters, so the meetings are not permitted to be closed meetings and thus the resolution is invalid.

35. There is no basis in law for deciding architectural change applications in a closed session, but the Board continues to decide some architectural applications in closed session meetings without informing other members of the community in advance (e.g. by means of notice or agenda item) and the Board even passed a resolution at the May 18, 2006 Board meeting asserting its right to do so in closed-session meetings.
36. In further support of the above, it is noted that Director Weisel, in his statement of candidacy for re-election to the Board in September 2006, stated his position as follows:

"There are two schools of thought as to how this community should be run and those schools are in conflict. On the one hand, we have those who quote chapter and verse from the covenants and guidelines and on the other, we have those who would modernize the community by amending those documents to allow for greater choice in selecting appropriate changes to properties within economic reason. I believe the residents of DEHOA do not want an authoritarian governing body that will not listen to reason and will govern by the book. I believe in a resident's right to deviate from the standard within reason, to have a choice in changing the appearance of their own property, and to have more of a say in the daily operations of the Association. I believe that [this] community does not desire to be bogged down in needless red tape and be subjected to community scrutiny for simple change requests. The Board should act swiftly and privately to assure the confidentiality of homeowners who request changes. I believe the community does not want communication from their Board to be in protracted legal jargon quoting chapter and verse from our "community documents" to explain simple concepts."

Covenant Committees and Task Forces

37. A majority of the Board has resisted the appointment of covenant committees and task forces (e.g. Grounds Committee, Web Site Task Force, and Nominations Committee), unless one of them is in control despite other homeowners' requests and volunteerism. A resolution was actually presented, at the May 18, 2006 Board meeting, to terminate the Architectural Task Force only 3 months after its formation, despite the exemplary dedication of its members and their important contributions. The Buildings and Grounds Committee was suspended (essentially dissolved) at the January 26, 2006 Board meeting.

Capital Expenditures for Road Re-Paving Project, Walkway, and Retaining Walls

38. The road re-paving project in the summer of 2005 (asphalt, seal coating, and painting) - which we are told cost anywhere from \$95,000 - \$135,000 (but we still want to know the actual figure) is unfinished because the asphalt on the Common Area parking areas is still not seal-coated, which preserves the pavement as well as enhances its look.
39. Retaining walls (one of which is behind the home of Director Frank Weisel who was also on the Board at the time the retaining wall was constructed and he may also have been on the ARC) were constructed in 2003-2005.
40. And a walkway was built in 2003-2005 near and between the homes of Director Eugene Berman and Vice President Frank Weisel.
41. In respect to the road re-paving project, retaining walls, and walkway, Claimant asks Respondent to provide details including (i) the actual dates and cost of each such project completed during the stated periods, (ii) what company did the work, (iii) how it was determined that costs were fair and reasonable, (iii) whether the projects were necessary (evidence of professional opinions), (iv) who voted to approve the projects, and (v) how priorities were determined for these projects over other projects in the community, since Respondent knowingly failed to:
- (a) hold opened noticed Board or ARC meetings, as required by its Bylaws Art. III, "*Meeting of Members*," Section 9, "*Open Meetings*," and as required by the "*Homeowners Association Act*," State of Maryland Code, Real Property, Section 11B-111, "*Meetings of homeowners association or its governing body*"; and
 - (b) keep proper records of its acts, pursuant to Art. VII, "*Powers and Duties of the Board of Directors*," Section 2(a), "*Duties*."
 - (c) may not have acted in the best interest of homeowners
42. In respect to the above-mentioned in the previous paragraph #4 road re-paving project, since new asphalt was installed on all driving surfaces, Claimant asks the Association why only the roads and not the Common Area parking spaces were seal-coated.

Parking Policy

43. We have a documented Parking Policy, which does not include many current arrangements for assigned and reserved parking now in use.

Insurance and Fidelity Bonds

44. The Board of Directors has not exercised its duty to review the required (i) insurance and (ii) fidelity bonds, required to be in place for the Association's (a) Common Areas and (b) the management agent, respectively, pursuant to:
- (a) the Bylaws, Art. VII, "*Powers and Duties of the Board of Directors*," § 2, "*Duties*," "It shall be the duty of the Board of Directors to: ... (3) procures and maintain adequate liability, flood (if applicable) and hazard insurance on property owned by the Association; (f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate,"
 - (b) Article VIII, "*Insurance*," § 8.02, "*Required Coverage*," of the Declaration,
 - (c) The Association's Bylaws in Art. VI, "*Meetings of Directors*," § 4, "*Fidelity Bonds*," also address the requirement that, "The Board of Directors shall require that all officers Directors, and employees of the Association, regularly handling or otherwise responsible for the funds of the Association, shall furnish adequate fidelity bonds or equivalent insurance against acts of dishonesty. The premiums on such bonds or insurance will be paid by the Association," and
 - (d) Declaration of Covenants, Article XI, "*General Provisions*," § 11.07(f), "*Rights of the Maryland-National Capital Park and Planning Commission*, neither the members, the Board of Directors nor the Association shall, by act or omission, take any of the following actions without consent of the Commission, which consent shall not be unreasonably withheld or delayed: ... fail to maintain insurance in accordance with § 8.02 of this Declaration unless at least fifty-one percent (51%) of the Eligible Mortgage Holders (based upon one vote for each first mortgage owned) and sixty-seven percent (67%) of the Owners have given their prior written approval,"

and has failed to report on insurance coverage and fidelity bonds in an open, noticed meeting with records.

Record Keeping

45. The Board of Directors, and its previous Architectural Review Committee (absorbed by the Board since January 2006), in some instances maintains no meeting minutes and records and in other instances maintains incomplete and inadequate meeting minutes and records.

Inspection of Records

46. Claimant asked the property manager, Ahmed Motawie for an appointment to inspect records on June 1 2006. Instead, Mr. Motawie offered to copy and deliver the requested records. By mid-July 2006, Claimant had received only a portion of the requested documents. Subsequently, in spite of repeated phone calls, email requests, and attempts by Claimant to make an appointment with Mr. Motawie to review and copy the documents herself, and as of the date of this complaint, Mr. Motawie has not produced the rest of the documents or responded to Claimant's request for an appointment.
47. Claimant has asked the Board on several occasions to direct Mr. Motawie to respond to claimant's request and the Board has not responded.

Agreement for Management Agent

48. The Association's management agent presently has a two (2) year contract, whereas, pursuant to Art. X, "*Management*," § 10.02, "*Duration of Management Agreement*," in the Association's Declaration of Covenants, "[T]he term of any such management agreement shall not exceed one (1) year; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one (1) year periods" – and there is no evidence of approval by the Association's Board to renew the management agreement on an annual basis.
49. Claimant asks Board if it is reasonable that management agent is named as an additional insured on the insurance policy of the Association, and whether management agent should not be required to be insured and provide evidence of its own insurance coverage.
50. Claimant asks Board to evidence that management agent's services are reasonably priced by obtaining competitive bids from at least three (3) management companies, including a description of each company, the other communities that it manages, and the qualifications of its principal(s) or executive management.
51. Claimant asks Board to evidence that management agent, a Virginia corporation, is duly incorporated as Liberty Management Corporation (or is it under a different name?) and registered to conduct business in the State of Maryland with a foreign filing, if required.
52. Claimant asks Board to review the performance of the management agent, including a process by which owners can register complaints.

Comments

This complaint does not include architectural matters that pertain to alleged Board non-compliance with our governing documents with regard to architectural change applications, and alleged lack of enforcement and control by the Board and covenant committees of the architectural scheme and design concept throughout the community that will be addressed at a later time.

Furthermore, alleged malicious and defamatory actions and statements by Board members discrediting a fellow director is intended to be the focus of another filing.

Relief Requested

WHEREFORE, Complainant requests the Commission enter a judgment finding that:

- (1) The filing fee, attorneys' fees and expenses, and management agent charges and expenses, if any, be awarded to the Claimant in accordance with Montgomery County Code § 10B-13(d).
- (2) If due process is not evident in the reduction of the number of directors from seven (7) to five (5), the Board shall call an election for two (2) open seats on the Board.

- (3) If general proxies are not permitted in an election for a director, that a re-election also be called for Frank Weisel's seat on the Board.
- (4) That if a pattern of willful disregard for directors' terms on the Board is found that the directors who engaged in this practice resign from the Board and their votes be retracted during the past holdover periods.
- (5) All names of the directors and officers of the Association shall appear on the letterhead of the Association, along with their official titles, if any, and terms of office, and that such letterhead be used for any official communications to the Association members.
- (6) The Association's Board of Directors has not kept adequate records of its business activities, and needs to assure proper records are maintained going forward.
- (7) The Annual Meeting is to be held in early or mid-May every year going forward (before school is out and families leave on vacation) on approximately the same day each year.
- (8) The Association shall (i) provide its members with written information that answers the above questions on capital expenditure projects, and (ii) finish the re-paving project by seal coating the new asphalt in Common Area parking spaces.
- (9) Stephen Shaffer, Frank Weisel, and Eugene Berman be required to resign immediately as directors and agree to refrain from standing for election or accepting an appointment to any voting office again in this community (including as a member of any committee).
- (10) The "irregularities" resolution is illegal or improper and thus invalid.
- (11) The "acting outside of Board meetings" resolution is illegal and thus invalid.
- (12) The closed-session Board meeting for the annual inspection is illegal and thus invalid.
- (13) The existing "assigned-numbered" and "reserved-for-permits" parking arrangements be clarified and documented in writing, noting in the same document whether or not each such arrangement reconciles with any approvals in place as well as what is on file in the depository, and whether anyone wants to object to a particular individual's assertion of his or her unit's parking privileges.
- (14) The Board appoint a task force to study the Common Area issue of parking and seek homeowner opinions throughout the community to present factual data, with the Task Force's findings shared openly with all residents and their comments be solicited to facilitate a community-embraced solution.
- (15) Board will review the performance of the management agent, cancel the two (2) year contract, bid and award the contract to a management company in a competitive process, and include a process by which owners can register complaints and participate in the review process.
- (16) We ask that Board meetings be open and noticed to all residents and members (as has been the recent practice only since January 2006), including an agenda detailing the items that will actually be brought up for vote at the Board meeting (presently we don't receive a "real"

agenda if we receive any agenda at all), and that directors discuss all pertinent business matters at the Board meetings, including financial budgeting and a review of major expenses incurred or anticipated, adopt by resolution and operate by “Robert’s Rules of Order” so that all meetings are conducted in an orderly and business-like manner, which includes not proceeding to discuss any new issues until the minutes from the previous meeting are approved, and that all architectural change approvals be decided on at open noticed meetings, whether by the Board or its duly appointed covenant committee.

- (17) We ask that our community finances be disclosed to all homeowners, with periodic (e.g. quarterly) and fiscal-year-end financial statements available to all homeowners by March of the following year.
- (18) We ask that sound financial planning be implemented, including an up-to-date engineering study to determine the amount needed for our capital reserves (such studies are recommended every 5 years, and the last study done here in DEHOA in 1999 is considered out-of-date).
- (19) We ask that directors explain how our fees are determined: If they do not know the targeted capital reserves figure, how can they accurately arrive at this important component of our monthly fees?
- (20) We want the directors to review our community's general liability insurance for Common Areas – it is their fiduciary duty to the community to assure that we are properly insured, particularly for personal-injury liabilities.
- (21) We ask that directors review the key contractors every other year and re-bid them (not necessarily to replace them, but to know the competitive service and pricing terms), e.g., grass cutting, snow removal, external year-end audits, and property management.
- (22) For years, the Board has mismanaged the election process to the extent that homeowners are not fully informed about the candidates and the issues, and the election processes be reviewed and evaluated – we need a timely announcement of the names, qualifications, and statements of Board candidates and the community issues to be brought to a vote, with a candidate forum to discuss the issues in advance of the Annual Meeting; and we want to use absentee ballots (and directed proxies) so people do not lose the power of their vote, whereas general proxies should not be sought by the Board of Directors to vote for Board candidates.
- (23) We ask that the Board establish covenant committees as directed by our governing documents and actively encourage community residents and homeowners to volunteer to serve on task forces and covenant committees with real consideration given to their leadership, input, and decisions.
- (24) We ask that the Board produce and deliver to homeowners, a statement of its acts and corporate affairs for 2006.
- (25) We ask that the Board to respond to homeowners requests to review Association documents on a timely basis and direct the property manager to do the same.