

Mariners Cove Club

Informational Special Bylaws Meeting

March 23, 2016

I. Roll Call:

The meeting was called to order at approximately 5:00 p.m. in the conference room of Palmetto Electric Co. Board Members present were Janet Miller (102); Jim Ludlow (505); Susan Hicks (304); and Donna Winter (306); as well as Doug Skelly and Mark Megliore of High Tide Associates. Todd McGarrity (302) was not present.

Owners present were: Jim Galan (506); Judy Hillis (104); Betsy Hahn (309); Sharon Rusin (301); Rickey Hicks (304); and Jeremy Bratcher (103)

Purpose of Meeting: To review and see if there are questions about the proposed new Bylaws for Mariners Cove Club. The process began several months ago. A draft was prepared, reviewed and approved by the Board and then reviewed by attorney Greg Alford's office to see if they satisfied the requirements of the Horizontal Regime Act of SC. It was returned with very few changes. The Board reviewed those changes and sent the rules to the owners on December 23, 2015. At the owners' meeting in January, the owners were advised there would be an informational meeting after which the owners would be invited to vote on the process.

What is going to be voted on is an entirely new set of Bylaws rather than amend the old Bylaws which are approximately 40 years old. The new Bylaws incorporate the old Bylaws with some revised language and input from Bylaws of other complexes on Hilton Head Island which we hope will satisfy the needs of the owners.

Jim Ludlow, President, proceeded to review the changes. They are written in *italics* and are as follows:

ARTICLE II: VOTING, MAJORITY OF CO-OWNERS, QUORUM, PROXIES

Section 1: VOTING

Addition: *Only Unit owners in good standing shall be entitled to vote on any issue or matter presented to the owners for approval. In order to be in good standing, an Owner must be current in payment of all assessments, including regime fees and outstanding violations levied against the Owner's Unit. An owner must also have the individual insurance required in ARTICLE XII of these Bylaws.*

ARTICLE III: UNIT OWNERS

Section 3: ANNUAL MEETING

Change: Previous Bylaws said annual meeting would be held in May. It has been revised to *January*, which in practice it has been held for quite some time.

Section 8: WRITTEN BALLOTS

Addition: *Any vote of the Owners on a matter that would be cast at an annual or special meeting may be taken without a meeting by written ballot delivered to every Owner in the Regime by the Secretary, Board of Directors or the Management Agent. This would enable the board if need be to conduct an annual meeting or an informational meeting such as this without having a formal meeting in place. The Bylaws would be distributed with the information of what is being voted on but previously unless there was a 51% response, no action could be taken.*

Section 11: CONDUCT OF MEETINGS

Addition: *Meetings of owners shall be conducted in accordance with the most current edition of Roberts Rules of Order or such other procedures as the Board may adopt. This was actually informally adopted at the owners' meeting of 2014.*

ARTICLE IV: BOARD OF DIRECTORS

Section 3: SPECIFIC POWERS AND DUTIES

Addition: *viii. To make available for inspection, upon prior arrangement during normal working hours or under any other reasonable circumstances to Owners, the holders, insurers or guarantors of any first mortgage of any Unit, Bylaws, other rules or regulations pertaining to the regime and the Books, and financial statements of the Regime.*

Section 8: COSTS FOR ENFORCEMENT ACTIONS

Addition: *Any Court Costs, Administrative Fees, Legal Fees (including appellate proceedings), Arbitration or Mediation Fees incurred by or on behalf of the Board which are the result of action taken by the Board to enforce the provisions of the Master Deed or which result from the Board having to defend against an action taken by a Unit Owner or Owners shall be borne by the Owner or Owners in the event that the Board prevails in said action. The fees so assessed shall be treated as an assessment due and owing to the Regime.*

This is SC law which is a "loser pays" law for civil actions. In the case of a non-profit such as Mariners Cove Club, in order to have protection, it needs to be addressed in the Bylaws. If the Board sues an owner and loses, then the Regime would pay the cost.

ARTICLE V: ELECTION AND REMOVAL OF DIRECTORS

Change: The name was changed from Board of Administration to Board of Directors.

Section 3: REMOVAL OF MEMBERS OF THE BOARD

Addition: *The Board may, but is not obligated to, remove any Board member by majority vote of the Board members (not including the Board member whose removal is contemplated) in the event any Board member misses three (3) or more regular Board meetings.*

Section 4: DISQUALIFICATION AND RESIGNATION OF BOARD MEMBERS

Addition: *No Board member shall continue to serve on the Board of Directors should he/she be more than sixty (60) days delinquent in the payment as a Unit Owner of any assessment against his or her Unit; and said delinquency shall automatically constitute a tender of resignation, effective when such resignation is accepted by the Board of Directors.*

Judy Hillis said that years ago there were seven (7) members on the Board. Jim Ludlow stated that the original Bylaws stated there were only 5 members. They also stated the only mandatory meeting was the organizational meeting.

Section 2: REGULAR MEETINGS states that four (4) meetings are mandatory, but in reality it is the intention of the Board to hold more than that.

ARTICLE VII: OFFICERS AND THEIR DUTIES

Section 1: ENUMERATION OF OFFICERS

Addition: *The Board may appoint an Assistant Treasurer and Assistant Secretary, and such other officers as in their judgment may be necessary.*

ARTICLE VIII: BOOKS AND RECORDS

Addition: *Section 2: RULES FOR INSPECTION*

The Board shall establish reasonable rules with respect to:

- a. Notice to be given to the custodian of the records by the person desiring to make the inspection;
- b. Hours and days of the week when such inspection may be made; and
- c. Payment of the cost of reproducing copies of documents so requested.

Jim Ludlow said, "Board members may look at documents at any time and make copies at a cost to the regime; however, owners will be charged a fee."

Betsy Hahn asked if Doug Skelly still retained old records. Doug stated he has boxes of records going back years.

ARTICLE X: OBLIGATIONS OF THE OWNERS

Addition: Section 6: ESTABLISHMENT OF WORKING CAPITAL

To establish and maintain a working capital fund to contribute to the common expenses or the reserve accounts of the Regime, at the closing of the sale of each Unit, an amount equal to two (2) monthly payments shall be collected by the Regime. In the event an Owner purchases a Unit and such payment is not made to the Regime, such payment shall be immediately due and payable and shall incur late charges as set forth above and be enumerated as unpaid and delinquent common expenses against the then owner of said Unit.

Section 8: MAINTENANCE AND REPAIR

Codified: (b) *All the repairs of internal installations of the Units, such as water, light, gas, power, sewage, telephones, heating and air conditioning, sanitary installations, exterior and interior doors, windows, skylights, lamps, and all other accessories belonging to the Unit shall be at the expense of the Unit Owner.*

ARTICLE XI: USE OF UNITS

Section 1: INTERNAL OR EXTERNAL CHANGES

Addition: (c) *All structural modifications or alterations, or other changes to the general or limited common elements existing as of the date of these Bylaws shall be deemed to have been approved by the Board or by the Regime Owners as noted above.*

Jim Ludlow referred back to a portion of (b) which states: "Examples of such permanent structural modification include, but are not limited to, such matters as removing or enlarging balconies, terraces or decks to which there is direct access from the interior of a Unit, installation of exterior windows or doors, the changing of exterior lighting on the side of the Unit facing the parking lot, attaching arbors or similar structures to the gate or wall surrounding a Unit, extending the fence line between Units, or raising or otherwise modifying the grade of the land behind a Unit in such a manner as to affect the flow of water either onto or off of the land, removal or erection of gutters, remodeling any room within the Unit by enlarging or reducing the size of a room, removal of, modification of, or addition of interior walls within a Unit."

Addition: (d) *Any structural modification or alteration hereinafter made by an Owner without the approval of the Board or the Regime, as noted above, may, at the option of the Board, be removed at the expense of the Unit owner.*

In other words, requests for changes should be submitted in writing to the Board or to management agent. This is part of original Bylaws. Previous changes to Units have been grandfathered; however, moving forward from the date of the acceptance of these Bylaws, changes will have to be approved. In the old Bylaws, no remedy was stated for infractions.

Section 4: DECKS

Clarification: Maintenance and repair of decks shall be the responsibility of the Unit owner.

Section 5: GUTTERS AND DOWNSPOUTS

Clarification: Gutters and Downspouts are responsibility of Unit owner.

Section 6: RENTAL OF UNITS

Addition: *The use of Units for residential rental purposes is permitted. Rental agreements related to any Unit shall be in writing and shall specifically provide that they are made subject to all provisions of the Master Deed, Bylaws and Rules and Regulations of the Regime. A copy of the executed lease must be provided to the Regime Management Agent prior to the occupancy of the tenant. All tenants must read and sign a copy of the Rules and Regulations. Each Owner has the responsibility of causing the lessee and the other occupants of the Unit to comply with and abide by all such provisions, and failure to do so may, at the sole discretion of the Board, be the basis for the imposition of a charge or fine up to \$200.00 for each occurrence against the Unit Owner. The minimal rental period shall be 12 months unless otherwise approved by the Board. Only Unit owners or their agents shall rent or lease their Units. Absolutely no subleasing will be permitted.*

Jim Ludlow stated that if an existing tenant needed to extend their existing 12-month lease for a shorter period of time, that would be permitted.

ARTICLE XII: INSURANCE

Section 8:

Additions:

(h) INSURANCE BY OWNERS

Each Owner shall be responsible for obtaining, at his or her sole expense, insurance covering the personal property, wall coverings, decorations, and furnishings within his or her Unit and the additions or improvements made to the Unit. Each Owner shall also be responsible at his or her own expense, for insurance covering the liability for the safety of the premises within the Unit. All such insurance policies shall include, however, provisions waiving (i) and rights of agents, servants, employees and guests; and (ii) any right of the Insurer to contribution or pro-rata because of the Regime master hazard policy. Owners shall provide a copy of said policy or policies to the Management office at the beginning of each calendar year, or upon request of the Management office.

This fills in the gap for coverage provided by the regime and that of the unit owner.

(i) An Owner is responsible for any damage to his or her Unit or another Unit caused by negligent action or inaction by the Owner or any occupant of the Unit. If a claim is made against the Regime's policy as the result of such negligence or omission by an Owner, then the Board may make a determination to assess any non-reimbursable expenses such as the deductible, attorney's fees and the like against the negligent Owner.

This means that if an owner does not have insurance, and the Regime has to pay for repairs, the Regime can recoup the expenses from the owner. Rickey Hicks asked if perhaps there should be a minimum amount of insurance for the Unit owner to carry. Jim Ludlow said this is covered under ARTICLE XIV:

MISCELLANEOUS MATTERS

Section 1: RULES AND REGULATIONS

Jim Ludlow stated there is a hierarchy in the Bylaws: Master Deed; Bylaws and Rules and Regulations. In the RULES AND REGULATIONS, changes were made to allow the Board to make changes. Under the old Bylaws, any changes to the RULES AND REGULATIONS required a 2/3 vote. Certain changes such as dog restrictions, parking restrictions and other decisions would hinder application if necessitated by having to obtain a 2/3 Owners' vote. Language may be included to say owners are entitled to orderly use and enjoyment of the common elements, and also that owners must maintain electricity in their unit to keep it from deteriorating.

Rickey Hicks referred back to Insurance (i) and asked what the definition of negligent action or inaction by the Owner or occupant. He cited as an example an older hot water heater that floods the unit but was in perfect operating condition before it blew up. Is that considered negligent? Jim said no because it was sudden or unexpected event. Negligent would be a leaky valve that was ignored.

Rickey Hicks said that many complexes say that after a water heater is a certain age, it needs to be replaced, and if the owner does not do it, the regime does and bills the owners. Jim Ludlow said this could be a consideration for Mariners Cove Club's new Rules and Regulations.

Judy Hillis asked if a purchaser paying 2 months regime fees at closing is new? Jim Ludlow said "yes." It is quite common among other complexes. It is not paying 2 months regime fees in advance. It is a one-time fee. Either buyer or seller may pay. Donna Winter asked Doug Skelly if the 2 months regime fees would be included in the questionnaire to lenders. He said no, but it would be on the website. Donna said calling it a transfer fee would be shown on an MLS listing and make it less of surprise when selling a property. Doug stated it would show up on an Owner Disclosure Form.

Judy Hillis asked that a summary of these changes be emailed to the owners. Jim stated that the owners were asked to participate in the revisions 2 months ago, and only 3 responded.

Jim Galan said Bank of America denied his purchaser a loan because the condo project did not meet their guidelines for a Reserve Fund. Jim Ludlow said this is a budget issue, not a Bylaws issue. Doug Skelly spoke to BOA who said it was a Fannie Mae loan, and they require a certain percentage of each months regime fee to be put into a Capital Reserve Fund. Doug told them the owners have recently spent \$500,000 for a huge renovation project and also have a Reserve Study Plan to address future needs, which they reviewed. This did not satisfy Fannie Mae requirements. Jim Ludlow stated that 10 Mariners Cove Club properties have changed hands since January, 2014, one is under contract, and BOA is the only bank with this issue. The best time to address Capital Reserve issues is at the annual budget meeting. Mark Megliore said the Capital Reserve Fund has \$80,000 in it, and we are putting \$667 a month into it which comes out to \$8,000/yr., and the regime fees for entire year are \$229,500. Mark said BOA was looking for 10% each month which would be \$29,000/yr. Donna Winter who is a realtor and Jim Ludlow both commented that Bank of America has unrealistic expectations with financing home loans.

Sharon Rusin asked what is the difference between Fidelity Bonds (page 5) and public liability insurance (page 14). Jim Ludlow said it is extra coverage that is required under the public liability coverage which is mandatory. Public Liability Insurance covers the same thing. Jim said in his opinion they are duplicates. Sharon asked if the Management Company pays their own insurance. Doug said the MCC regime covers them because of the variety of condominiums they handle. Jim also said if the management company covered their own insurance, it would certainly be passed on to Mariners Cove Club. Sharon wants to know how much the insurance is. Jim said that is outside the parameters of this meeting. What we are talking about is the Bylaws and protection for the owners. If your concern is about who pays for additional coverage, that is something we talk about when we are discussing our contract with the management company.

Sharon Rusin (page 12) Re External and Internal Changes: She wanted to know if all changes needed to be brought to the Board's attention such as adding a wall to make a closet if it is a not a load bearing wall. Jim responded that it is still a modification and should be brought to the attention of the Board.

Jim Ludlow said once the Bylaws are passed, they will be put on the website. Ballots will then be sent to the owners for them to vote yes or no.

Betsy Hahn suggested updating the website with current photos since the renovation. This was agreed upon.

Sharon Rusin asked about Section 7: SECRETARY. Page 8. The Secretary shall record the votes and keep the minutes at all meetings and proceeding of the Board, etc. Jim said that in Section 1: ENUMERATION OF OFFICERS states the Board may appoint an Assistant Treasurer or Assistant Secretary and such other officers as in their judgment may be necessary.

This refers to the fact that there is a paid assistant to record and transcribe minutes of meetings. This person is paid \$50 per meeting and \$100 for the annual meeting. Janet Miller, Secretary, stated that many times both note taking and participating as the Board Secretary is arduous.

Rickey Hicks asked about SECTION 8: COSTS FOR ENFORCEMENT ACTIONS. It says you can recover expenses if Board prevails in said action. "What if it never went to court." Jim Ludlow said the legal definition of **prevail** in said action is whenever the Board wins. EG. If you take an owner to court and before a trial or hearing the owner agrees to make payment the board has **prevailed**. **Prevail** does not mean there has to be a trial.

Rickey Hicks asked about Section 3: REMOVAL OF MEMBERS OF THE BOARD. Jim Ludlow said it does not mean if a member misses (3) meetings they are automatically dismissed. It says the Board may, but is not obligated to, remove any Board member. It will be used if the member is a chronic truant and will be discussed before removal.

Jim Galan still has not received minutes in an email form. They are, however, posted on the website.

Rickey Hicks. Under QUORUM, Section 4. Why does it say 2 are a quorum? Jim said, "It says a **majority** of the Directors, but not less than 2 constitutes a quorum." In other words, if there were only 4 Board members, 2 would be a quorum. Because Mariners Cove Club has five (5) Board members, a suggestion was made to change it to say that 3 constitutes a quorum. The suggestion is that three (3) should constitute a quorum because Mariners Cove Club has 5 Board members, and these are Mariners Cove Club Bylaws.

Donna Winter pointed out typographical errors:
ARTICLE VII: OFFICERS AND THEIR DUTIES
Section 1: ENUMERATION OF OFFICERS
....change to all of whom shall be elected to the Board.

ARTICLE V: ELECTION AND REMOVAL OF DIRECTORS
Section 3: REMOVAL OF MEMBERS OF THE BOARD
...to be heard at the meeting. (too many spaces between sentences) The Board may.....

Rickey Hicks. Re INTERNAL OR EXTERNAL Structural changes, Rickey thinks it should say any kind of structural change rather than giving examples. Jim said that is what it says.

Betsy Hahn asked re water pipes, if a blast happened, who would be responsible. Jim said the Regime policy would apply, but there is a deductible. The Regime coverage is explained under ARTICLE XII: INSURANCE, (a) HAZARD INSURANCE.

Doug Skelly will make the changes to the existing documents and put together a ballot with a modification date that will ask whether the owner is in favor of changing the Bylaws.

At 6:45 p.m. the meeting was adjourned.

Respectfully submitted,
Janet Miller, Secretary

gdr