

Association Meeting – July 26th, 2023

Background

Normally after a hearing, the lawyers write the order for the Judge; however, they first must agree on what the Judge meant. In the election lawsuit, case 21-173, The RBCAI Board (the Board) and Rarity Bay Partners (RBP) lawyers could not agree on what the Judge meant from the court hearing on February 1st, 2023. They should have gone back to the Judge for clarification at that time. However, one of the lawyers protested and instead, they just used the transcript as the order. Self-governances' (SG) lawyer and RBP's lawyer interpreted that the Judge allowed for a Special Election when she was asked by RBP's lawyer: "So, if there is a special election, am I to understand that LLC cannot vote those lots in phase 16 and 17". The Judge answered, "**They cannot vote the lots in Phase 17**". She did not say you cannot have a special election; just that the LLC cannot vote the lots in phase 17. So clearly, she understood the question because she allowed the lots in phase 16 to be voted. Self-governance agrees that the Judge would allow a Special Election, but not an Annual Election. Members elected in a Special Election are only seated until the next Annual or Special election which would have to occur before the end of September 2024. At that time, all 8 positions on the Board are up for election. We believe that the Judge knew any Directors elected in a Special Election would be 'short-term' Directors.

The Judge also stated in the transcript that the Board should have had a special election for the two open Board positions instead of inappropriately seating Steve Veale and Candice Worobe. Neither of them was elected by the community in the November 2022 Special Election. The Board did not follow through on having a Special Election back then and they did not seek clarification from the court.

Current Status

Fast forward, after Chad announced that there was not going to be an annual meeting and that the current Board would probably stay in place until 2024 and possibly later, I informed the Board that Tennessee Law requires a corporation, and yes, the HOA is a non-profit corporation governed under Title 48 of the Tennessee Code, to have an annual meeting within 15 months of the last annual meeting.

Once the annual meeting was announced and in early May of this year, I informed the Board that per our By-Laws, 4 current Directors on the Board terms expire with the annual meeting and per our By-Laws, the 2 appointed positions cannot stay on the Board until their successors are seated. I also informed them that they should have a special election to replace those 4 positions as well as the 2 open Board positions. Those Board members whose terms expired are Chad Story, Cristeen Floyd, Terry Foremen and Kris Schuh. To date, I've heard nothing back from the Board.

Tennessee Law does not allow Directors to stay on a Board forever unless they are voted back into office. That is why Tennessee has a provision in the law for the association to act on its own, outside the control of the Board, if the Board refuses to act on a request by the members of the association.

Path Forward

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So, Tennessee Law allows the association to hold a Special Meeting if the Board refuses to hold a Special Meeting after the Board has been given a Demand Request asking for a Special Meeting. That Demand Request was delivered to the Board on June 27th. The Board has one month to give written notice of the Special Meeting from the date the Demand Request was received. To date, the Board has not given written notice to the community of the Special Meeting for the purpose of a Special Election to elect members to the Board for the 6 positions that have expired or were not filled; thus, SG is prepared to move forward with the Special Election. **Members will have to vote in-person or by proxy at the Special Election. July 31, 2023, will be the record date for both the notice of the meeting and for voting.** Unlike the last three elections by our Boards, Tennessee Law, TCA 48-57-205 states “...a member may vote in person or by proxy”. There is **no provision in Tennessee Law for electronic voting of Directors.** Some states allow electronic voting for Directors to a Board, Tennessee does not.

A lot of you probably are wondering why not wait until the Judge rules on August 7th. The same question could be asked of the Board. Why not hold a Special Election and allow the community to vote for their representatives? Who would challenge the Board? The only parties to the election lawsuit (21-173) are the Board and RBP. And RBP signed the Demand Request, so they are not going to challenge it. The question on voting the lots in Phase 16 and 17 in a special election has already been addressed by the courts. So again, who would challenge the Board to hold a Special Election to select our representatives? SG’s concern is that delays in decisions frequently occur, and our concern is the possibility of another delay in this motion. The August 7th hearing date was originally scheduled to be heard on July 27th. Who’s to say it will not get delayed a second or third time.

Our position is that the Judge would be pleased that the association has finally decided to handle matters on their own. It makes her job easier, and we believe she will rule that a special election can occur. Since the community has already scheduled one, it makes her decision well-received.

Respectively yours,

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