

HOA PRESIDENTS' INFORMATION SHEET – 120218

LLC BOARD OF MANAGERS UPDATE

As I have stated previously, we had scheduled the Election of the Board of Managers for Wednesday, November 28th by email and it was a successful effort with 100% of the HOAs in Grand Harbor and 8 of the 10 HOAs in Oak Harbor participating. Three of the HOAs in Oak Harbor are not participating in the Transition LLC effort and they represent 55 of the 201 units in their community.

The email votes received from the HOA Presidents are printed out and a preliminary vote count is finished. However, on the day before the election, an issue was raised that caused us to delay the audit and certification of the vote. I want to walk through this step by step so that you understand the reason for the delay and hopefully quell some of the rumors that have been started.

WHAT HAPPENED?

On the day before the scheduled election, one of the HOAs in Oak Harbor had received an opinion from an attorney associated with AR Choice Management that stated that the HOA should not sign the Operating Agreement for two main reasons-

- The LLC Operating Agreement allowed for unlimited assessments or capital calls and the attorney felt that there should be a cap on the amount that can be assessed to the HOA
- There was concern about the provision in the Agreement that allowed the LLC to take legal action against an HOA for non-compliance of the Agreement.

I explained that it is impossible at this point to estimate the amount of money that will be required to successfully transition the GHCA – but the amount of the assessments is controlled by the Members- the HOA Presidents. If the Board of Managers determine that they require a capital call at \$x amount – that amount has to be approved by the majority of the Members. If an HOA in Oak Harbor is concerned about the amount of the assessment – I am sure that there will also be Members in Grand Harbor that will also be concerned and they will either vote against it or gain knowledge on why the amount is at that level.

I also explained that the LLC has to have language that protects the Members in the event that another Member does not adhere to the LLC's Operating Agreement. By signing the Operating Agreement, the HOA Presidents agree that they will abide by the

will of the majority of the Members. I cannot imagine that in this transition process that the LLC would ever sue another HOA but without the recourse for non-compliance – there is no downside for HOAs who may choose to sit on the sideline after making a commitment to participate.

My explanation was understood but the HOA President wanted to insure that he would have no risk of legal actions. I explained to the HOA President that by not signing the Operating Agreement – he was forfeiting his right to vote on any issues related to the LLC and he stated that he was fine with that but wanted to continue to support the LLC's efforts by continuing the Association's funding.

On the day of the Election – I received information that another HOA President that controls 114 units in Oak Harbor was considering not signing the Operating Agreement but gave no specific reasons for his position.

In a conversation with our Dean Mead attorney – he stated that it was very clear that an HOA President has to sign the Operating Agreement to become a Member. If they don't sign, they can continue funding the efforts of the LLC but it would be considered a donation but they would not have any voting rights on any issues.

He also stated that there is Florida Law that states in a hazy manner that it could be argued that if an HOA contributes to an LLC, follows the guidelines established and participates in the process – they could be considered a Member without signing the Operating Agreement.

ELECTION DILEMMA

At the end of the day on November 28th - without having a final position on the definition of a Member, I reached out to the HOA Presidents in question and asked them to provide me with their votes as if they were Members of the LLC and I received them the next morning on Thursday, November 29th and included them into the vote count.

At that point, I had documented results that show the top vote getters with every HOA's votes counted but when you take out the HOAs that may not sign the Operating Agreement – the results of the election are different. Rather than try to stay on a timeline that we were committed to – I decided that the Legal Working Committee should meet and come to a firm position of who is a Member and who is not so that when we apply the LLC's standard, the vote will be binding.

On November 29th, I met with members of the Transition committee that had volunteered to audit and certify the vote and informed them of the reasons for the delay and that we would be in a position to certify the elections results in a matter of days.

LEGAL WORKING COMMITTEE

On Friday, November 30th, I met with Roger Andrus and Joe Pojanowski and after discussions it was confirmed that to become a Member of the LLC – the HOA President has to sign the LLC Operating Agreement – full stop! In a later conversation with Bob Gallagher – Oak Harbor’s member of the Legal Working Committee – he confirmed the requirement of having to sign the Agreement.

NEXT STEPS

On Saturday, December 1st, I met with most of the Board of Manager candidates and explained the reasons for the delay and stated that we would have the Board of Managers decided early this coming week. It was a timely meeting as it allowed each of the candidates to get a flavor of the process going forward and the dynamics of working to serve two communities. It was also encouraging to see how committed, capable and willing all of the candidates are to tackle this effort and you can be assured that regardless of the outcome of the election – we are going to be well represented.

I have notified the HOA Presidents that are considering not signing the Operating Agreement that they have until noon on Tuesday, December 4th to agree to sign the document or their votes will be retracted.

I am planning an audit and certification meeting on December 4th and we can announce the results that evening.

An Organizational Meeting will be scheduled later this week and we will be ready to put the new Board of Directors to work.

I hope this explains the reasons for the last minute delays on the Election but I would much prefer to take more time if it means getting it right!

David Warren

“THE SYSTEM IS WORKING JUST AS WE PLANNED” –
Brenda Snipes, Supervisor of Elections – Broward County, FL