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ESCROW DEPARTMENT

SUSAN BOAT, LPO

December 7, 2015

Via e-mail and regular mail

Board of Directors
Grand Firs Homeowners Association
c/o Lorne Martin
Post Office Box 731029
Puyallup, WA 98373

Re: **Grand Firs Homeowners Association**
Opinion Letter to December 4, 2015 E-mail

Dear Board:

Lorne Martin of JC Higgins, on your behalf, has requested that I respond to several questions as set forth in his e-mail to me of December 4, 2015. I will respond to each of those questions in the same order as they were proposed.

1. It would appear that the only items that can be considered for business requiring a vote of the homeowners at the annual meeting is the election of any directors and approval of the budget. It is my understanding that there is no other items of business requiring member approval that was put on the agenda, therefore proxies for items not on the agenda would have no value.
2. The form of the proxy that was given would be adequate since there is no statutory or specific form prescribed in the Articles or By-Laws. The only reference to proxies is in the By-Laws and Article III, Section 4 which states that a voting agent (proxy) may be designated by the owner by a written notice signed by the owner with the ownership interest and it must be filed with the secretary of the Board of Directors. Also, although the By-laws do not state a specific form of the proxy, it does require that it is void if it is not dated or it purports to be revocable without notice. Unless otherwise stated in the proxy, it is terminated automatically eleven months after its issuance. Therefore this proxy purports to give to James Eichorn the authority to vote


on various matters however it must be dated and specifically given to the secretary of the Board of Directors prior to the meeting in order to be valid.

3. The question concerning the amendment to the By-Laws and its proper adoption is clear that the state statute states that the By-Laws can be amended in any manner as set forth in the Articles or By-Laws. In the case of this association, the Articles and to the best of my knowledge the Declaration, says nothing about By-Laws being amended. However the By-Laws themselves specifically state in Article XI that the By-Laws may be amended only with the written approval of a majority of the directors. The amendment must be signed by the approving directors and then copies delivered to all the members within 30 days of its adoption. Therefore the By-Law in question, if approved by a majority of the directors, signed and then copies delivered to all of the members within 30 days of the adoption, then is valid. However if in fact it wasn't mailed within 30 days does not affect its validity, it just means that it should be mailed to all the members within 30 days. The only requirement for its validity is written approval of a majority of the directors.
4. The Open Meetings Act under RCW 42.30 does not apply since this is not a public body and therefore it does not apply to private Homeowners Association Board workshops.
5. There is nothing either in the homeowner's statute, the non-profit corporation statute or your Articles or By-Laws that refer to attendance at non-director meetings. There is nothing to prohibit directors from meeting informally as long as at any such gathering no action is taken and therefore: a) members do not have to attend to such meetings, and b) no notice of such meetings must be given to the members. It is only meetings where actions may be taken by the directors that will bind the Association that such notice must be given and the meetings then open to the members. However there is an exception for an executive session meeting which states that the Board of Directors may convene in a closed executive session to consider personnel matters, to consult with attorneys, or consider communications from attorneys or discuss likely or pending litigation or matters involving possible violation of the documents by a member or matters involving the possible liability of an owner to the association. Therefore the HOA Board workshops are not official Board of Directors meetings and therefore no notice must be given to the members and they do not necessarily need to be open to all of the members, however of course there is probably no reason not to have any member who wants to attend.
6. With regard to increasing the amounts to the reserve fund, as long as this does not involve an increase in the assessments, the Board during the course of the year certainly has the right to make adjustments to increase the contribution to the reserve fund if necessary however it that is done at the next meeting since this was technically an amendment of the budget not to be included in the budget. In other words, if the budget that is submitted to the members requires for an example \$10,000 to be paid for maintenance and because of a severe winter or other conditions, it is necessary to spend an additional \$5,000 or \$10,000 the Board certainly has the power to do so without getting a vote of the membership as long as it doesn't require an increase in the assessment.

I trust that this answers all of your questions and if you have any further, please advise. I remain . . .

Very truly yours,

**CAMPBELL, DILLE, BARNETT
& SMITH P.L.L.C.**



Bryce H. Dille

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