

I 'ON
Board of Trustees Meeting Minutes
March 28, 2013

Members Present: Deborah Bedell, Tony Woody, Martin Hansen, Martha Morgan, Jay Thompson

Members Absent: David Countryman, Frederik Winther

SCS: Trisha Elrod, Dana Cutright

Homeowners Forum:

Guests: John Bigler, Ed Clem, Lea Ann Adkins, Tom O'Brien, Julie Hussey, John Krainin, Annie Bonk

Previous meeting minutes approved:

Motion to approve the February 2013 Board of Trustees meeting minutes as submitted. All were in favor. Motion carried

Review of Creek Club Litigation:

Plaintiffs' attorney filled a motion to enroll the proposed new settlement. Attorneys are exchanging drafts and the Board lacks knowledge about the drafts at this time. Attorney Bouch is waiting to receive the final settlement papers so they can be reviewed by the Board.

Board Training:

The Board will have professional training on April 13th, 9a.m. – 1:00p.m.

Landscape/Infrastructure Committee:

Landscape:

Dave Rosengren again proposed that the raised bed enhancement project in the I'On Square be approved to proceed since money was budgeted for the project in 2012.

Motion to reopen and approve the expense of landscape improvement project not to exceed \$7,300. All were in favor. Motion carried.

Trisha Elrod will contact the ECMCS's principal to request that the children not run in the landscape beds.

Infrastructure

Committee continues to work on design for crosswalks and the permits. They are looking at modifying the crosswalk by raising it which will also serve as a speed table. Two pedestrian warning signs would also go up.

Committee also spoke with the Town to confirm that the Town will be painting new parking spots soon.

The Town has supplied an exhibit to show two additional parking spaces across from O'Brion's. Town will approve but not pay for the spaces and other modifications to the park in the Square. The I'On Square will discuss with the Assembly who will help with the cost.

Finance Committee:

Committee needs a copy of approved board minutes with an approval of two signers to show bank in order to go forward with Signature Cards.

Motion to approve Frederik Winther and Deborah Bedell as signers on the bank accounts. All were in favor. Motion carried.

Revised Collection Policy needed a minor change to become more consistent with SCS policy. Payment plans were originally approved at 25% down and pay over 9 months, but SCS payment plans are 25% down and pay over 3 months.

Motion to revise collection policy from previously approved policy. One opposed. Motion carried.

President's Report:

Annual Meeting quorum: Deborah Bedell explained that quorum was indeed met at the annual meeting in December 2012. First, AMCS incorrectly counted the number of Titleholders represented at the annual meeting. The correct number was 110, not 106. Second, there are two possible methods used to calculate a quorum, both of which require deducting the number of Titleholders not in good standing from the total of Titleholders eligible to vote. Under both formulas, a quorum was met. The Board has obtained legal opinions from two different law firms, each of which used one of the two possible quorum calculation formulas, confirming that in fact a quorum was present at the annual meeting.

In regards to the December 11, 2012 Annual Meeting Minutes: Deborah explained that on the recorded tape, she did declare that quorum was present. Deborah also stated that legally, any quorum challenge must be made from the floor during that same meeting.

Deborah also stated that historically, annual minutes approval has taken place at subsequent annual meetings a year later. The Board wanted to post preliminary minutes in order to be more transparent, and the preliminary annual meeting minutes approved in January were wrong. The recording of the annual meeting minutes is being transcribed by a court reporter.

Motion to approve revised preliminary minutes in order to post on HOA Board website and to have final approval in December. All were in favor. Motion carried

Creek Club access and contract: A contract from Creek Club was presented to the Board reserving 2 days a month for a daily rental fee. The property manager was instructed to respond that two days per month was not the agreement reached with the Board Amenities chair last year, and that other terms were not acceptable. A new contract draft was submitted, asking for one specific scheduled day a month plus 1 extra day in December at \$160.00 each day. Deborah also asked that I'On residents be given same rental rate as the Assembly's rate on a space-available basis and that chairs be cleaned and trash cans added. Mike Russo has given an April and May reserved date for "Pot Luck" group but will get back with the Assembly about change requests after lawyers review the contract.

Rules changes: Deborah Bedell stated that the current rules do not need to be changed in regard to boat storage. If a resident's boat storage is approved by IDC as an exemption from the current

rules, that approval is sufficient, and no further rules changes are required, provided IDC approval can be documented. Satellite dishes are already permitted; the proposed rules change increased the permitted size, but that is not a critical change. The final proposed rules change simply clarified some aspects of acceptable property maintenance, but is not a critical change. For these reasons, the Board will not continue to review or implement the rules changes proposed earlier. Enforcement of current rules, especially with regard to improper boat storage, will resume. Affected residents may either submit prior IDC approval or request IDC approval of current boat storage arrangements to avoid violations.

I'On Design Committee:

Committee is following up with all requests. There was more discussion on the use of a card to be placed in residence window to let everyone know that the resident has IDC approval. Trisha is to take the lead and make up the IDC approval cards.

Amenities:

Amenity Committee is looking for volunteers to help with the new Waterfront Management Committee which will address issues with docks and boat ramp. These leaders will take the lead in developing rules and policies for managing and maintaining the amenity area and to help solve problems when they arise. Tom O'Brien and John Krainin volunteered to serve on the committee.

Dog Park: A special committee has been created to explore the possibilities of creating a dog park. An additional suggestion of forming a dog free zone was brought up for consideration. Further choices for either of these possible areas will go in the Newsletter for resident input. This is in response to the many complaints of dog waste throughout I'On. In particular, the ECMS principal has frequent problems with children playing at the athletic field encountering dog waste, resulting in not only a dirt but also health concern.

The East Cooper Montessori School--ECMS Use and Indemnity Agreement has expired soon and normally automatically renews for 5 years. The school requested the need to renew for only one year at a time in order to receive insurance bids.

Motion to authorize agreement change to a 1 year automatic renewal instead of 5 year automatic renewal. All were in favor. Motion carried

Communications Report:

The new web host contract with Association Voice is being finalized.

Motion to approve contract with Association Voice and its expenses as new web host . All were in favor. Motion carried.

It was brought to the Board's attention that the Newsletter deadline and Board meeting dates are the same time of month. Issues arise with getting the Board meeting information into the Newsletter.

Motion to change the Board meetings to the third Thursday every month effective next month. All were in favor. Motion carried.

Secretary Report:

Martha has concerns that the property management function is understaffed and would like to address how to get some help to relieve Trisha and organize the Board for better efficiency. With regard to future staffing issues, Dock Management, Amenities Reservations and the IDC will soon increase the current work load.

Concerns about recruiting future Board members and shifting the Board from an operational board to a strategic board were also expressed.

Compliance Report:

ADU concerns: ADU square footage has to comply with Town standards and restrictions. I'On has additional restrictions but the town does not enforce I'On rules or restrictions for ADU's. The rental of an ADU is allowed if the property owner lives in the house. Renting both the ADU and house is against the Town rules.

Meeting Adjourned at 8:12 P.M.



LEATH, BOUCH & SEEKINGS, LLP
COMMERCIAL LITIGATION • CONSTRUCTION • ENVIRONMENTAL

March 11, 2013

VIA EMAIL

Deborah Bedell, President
I'On Homeowners Assoc.
I'On Assembly, Inc.
179 East Shipyard Road
Mount Pleasant, SC 29464

Re: December 11, 2012 Annual Meeting and Election

Dear Deborah:

You have asked us for our opinion to a quorum challenge to the December meeting and election. What follows is our analysis of the facts and law. Based on these facts known, and the current state of the law, we are of the opinion that the challenge is without serious merit.

Pursuant to section 2-106(a) of the Bylaws, the Annual meeting was held December 11, 2012. The meeting was properly noticed pursuant to section 2-106(c) of the Bylaws. Section 2-106(e) states that a quorum exists for the conduct of business at a meeting of the Assembly when "Titleholders entitled to cast at least 15% of the total votes of Titleholders are represented in person or in proxy." Approximately 14 minutes into the meeting, a quorum was declared. There were no objections or challenges to the quorum declaration and the voting proceeded. All of the seats were uncontested.

In spite of the quorum declaration, the minutes from the Annual Meeting incorrectly stated, "106 homes represented in person or by proxy. There was not a quorum." Based on this inaccuracy, a challenge to the election has been made two months later. We are of the opinion that the challenge is without any legal substance for the following reasons.

Initially, it is important to note that once the president makes a quorum declaration, the

continued presence of a quorum is presumed unless the president or other member notices a quorum is no longer present. *See Siteman v. City of Allentown*, 695 A.2d 888, 890 (Pa. Commw. Ct. 1997); Robert's Rules of Order § 39 (1981); See also *S. Louisiana Bank v. Williams*, 591 So. 2d 375, 379 (La. Ct. App. 1991) *writ denied*, 596 So.2d 211 (La. 1992) ("There is always a presumption in favor of a quorum and regularity of proceedings."). The burden of proving the absence of a quorum is on the party bringing forth the challenge. *Poole v. Miller*, 211 Md. 448, 454, 128 A.2d 607, 611 (1957) ("The appellants have not offered actual proof of the lack of a quorum at a meeting of the stockholders; and in the absence of proof to the contrary, the presence of a quorum at a stockholders' meeting will be presumed.").

Further, it is fundamental that a party waives its right to challenge or contest a matter by failing to object at the time or by participating and acquiescing. *See Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 324 (D.C.1988) (concluding that the parties' failure to raise the quorum issue before the Board was an acquiescence and waiver of the right to later challenge the issue); *see also Will v. View Place Civic Ass'n*, 61 Ohio Misc.2d 476, 482, 580 N.E.2d 87 (Ohio Com. Pl. 1989) (concluding that failure to raise issue of whether quorum was present during meeting constituted waiver of issue); *Pellerin v. 1915 16th St. Co-op. Ass'n, Inc.*, 980 A.2d 1234, 1236 (D.C. 2009) (Same); *Croaff v. Evans*, 130 Ariz. 353, 358, 636 P.2d 131, 136 (Ct. App. 1981) ("We therefore hold that plaintiff waived her right to have a hearing before a quorum of the board, and proceed to the final issue raised by plaintiff."); *c.f. Jarosz v. Spano*, 65 A.D.3d 991, 992, 885 N.Y.S.2d 102, 103 (2009) (discussing waiver of parties' challenge to proxy votes and alleged lack of quorum therefrom). Because there was no objection to the quorum declaration, a party making a future challenge has waived the right to so.

In any event, a review of the documents and numbers establishes that there was in fact a quorum at the time of the President's quorum declaration. The Controlling Documents set forth when a quorum exists for the conduct of business. Section 2-106 of the Bylaws provides:

§ 2-106 [Assembly Meetings]

(e) A quorum shall exist for the conduct of business at a meeting of the Assembly when Titleholders entitled to cast at least

15% of the total votes of Titleholders are represented in person or by proxy.

Therefore, whether a quorum exists ultimately depends on "the total votes of Titleholders." It is from this figure that the 15 percent is derived. This number fluctuates depending on the number of "Titleholders" that are presently eligible to vote. Section 2-103 of the Covenants, Conditions, and Restrictions state, in pertinent part:

§ 2-103 [Voting Rights]

Titleholders must be in good standing with the Assembly to vote on matters before the Assembly. To be in good standing, a Titleholder must be current to within 30 days of the due date of all financial obligations to the Assembly.

(a) Titleholders. On any matter requiring a vote or the Approval of Titleholders under the Governing Documents, a Titleholder is entitled to one vote for each lot as to which he or she is a Titleholder . . .

Based on the plain reading of this section, a Titleholder who is not in good standing does not have a vote and is therefore not included in "the total votes of Titleholders" pursuant to section 2-106 of the Bylaws. According to the Assembly's records, at the time of the December 11, 2012 meeting in question, there were 25 Titleholders that were not in good standing pursuant to § 2-103. Therefore, "the total votes of Titleholders" at the time of the election was 761 minus 25, or 736. A review of the sign-in sheets establishes there were a total of 67 Titleholders who signed in at the meeting, and a total of 41 Titleholders whose votes were represented by proxy. Additionally, at least 2 Titleholders were represented that failed to sign-in, Chad Besenfelder & Martha Morgan. The total number of Titleholders entitled to vote that were represented at the meeting was 110. Because 110 is 15% of 736, a quorum existed at the time of the President's declaration.

Total number of Lots (1 vote per lot) = 761

Total number of Titleholders ineligible to Vote = 25

Total votes of Titleholders = 736 (761 - 25)

Quorum = 110 (15% of 736)

Indeed, AMCS's statement in the minutes "106 homes represented in person or by proxy. There was not a quorum" has several inaccuracies and ambiguities. First, the statement itself is not an inaccurate description of how a quorum is calculated pursuant to the Controlling Documents. Contrary to the statement, it is the number of "Titleholders" represented in the equation, not the number of "homes." Second, the statement is silent on how the determination itself was made. In order to accurately determine the number of "Titleholders" that were required to constitute a quorum, there must have first been a determination of the total number of On Titleholders that were entitled to vote. It is not clear whether this was done. Finally, it is not clear from the statement whether the "106 homes" figure came from the total ballots cast or the sign-in register at the meeting.

Moreover, once a quorum exists and the declaration is made, individuals leaving the meeting or failing to cast a vote do not necessarily affect the quorum's status. Section 2-106 of the Bylaws provides:

§ 2-106 [Assembly Meetings]

(e) . . . If a quorum is initially represented at any meeting of the Assembly, the departure of persons during the meeting leaving less than a quorum shall not prevent business from continuing, so long as any action taken is approved by at least a majority of the votes required to constitute a quorum.

Section 2-102 (a) of the Bylaws states, "the vote of Members entitled to cast more than 50% of a quorum of the total eligible votes on any matter shall constitute the decision of the members on such matter." Once a quorum is declared, therefore, whether the actual votes needed to constitute a quorum are actually cast is irrelevant, so long as the vote's cast constitute more than 50% of the quorum at the time it was declared. See also *Atterbury v. Consolidated Coppermines Corp.*, 26 Del.Ch. 1, 15, 20 A.2d 743, 749 (DEL.CH.1941) ("[A] quorum once present cannot be destroyed by subsequent withdrawals or revocations of proxies."). At the December 11, 2012 annual meeting, a quorum existed and was declared without objection. If the number of votes cast in favor of the duly elected board constituted a majority of the votes required for a quorum, the election would likely be upheld.

Based on the foregoing, we do not believe that the challenge to the election will prevail. The documents and numbers establish that a quorum was in fact present at the time the declaration was made, demonstrating the AMCS statement in the minutes is incorrect. Regardless, the declaration was made without objection, and is presumed valid until sufficient evidence establishes otherwise. This burden falls on the challenger. Given the inaccuracies and ambiguities surrounding AMCS's statement and the substantial evidence supporting the existence of a quorum, it appears the challenge is without merit.

This opinion is based on the facts as presently known and the current state of the law. Any changes in either the facts or law may ultimately change this opinion. Please call if you have any further questions.

With best personal regards, I am

Yours very truly,

LEATH, BOUCH & SEEKINGS, LLP



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CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION

May 10, 2013

VIA EMAIL

Deborah Bedell, President
I'On Assembly Inc.
179 East Shipyard Road
Mt. Pleasant, SC 29464

Re: Opinion Letter Regarding Annual Meeting and Election held December 11, 2012

Dear Deborah:

You have asked me for a legal opinion regarding the validity of the December 11, 2012 I'On Assembly meeting based on quorum challenge. I have reviewed the governing documents for I'On Assembly, and it is my opinion that a quorum was present at the December meeting and any challenge to the validity of this meeting would fail.

As a preliminary matter, § 2-106(e) of the Bylaws states "A quorum shall exist for the conduct of business at a meeting of the Assembly when Titleholders entitled to cast at least **15% of the total votes of Titleholders** are represented by person or by proxy. . . ." Based on the information I have been provided, there are 738 Titleholders in I'On. However, § 2-103 prevents delinquent Titleholders (those more than 30 days late on payment of assessments) from voting. I am informed that 25 Titleholders were delinquent as of the December meeting. This brings the total votes of Titleholders to 713.

I am also informed that *at least* 108 Titleholders were present at the December meeting either in person or by proxy. Based on these figures, there would have been a quorum of **15.15%** of the Titleholders represented in person or by proxy.

The I'On Assembly minutes from the December meeting state that "106 homes represented in person or by proxy. There was not a quorum." This statement is inaccurate based on the calculations I have provided above. I would advise the Association to revise the meeting minutes to properly reflect this percentage and the establishment of a quorum.

Please contact me if I may be any further assistance in this matter.

I'On Assembly Opinion Letter
March 28, 2013

With regards,

A handwritten signature in blue ink, appearing to read "Hal L. Beverly Jr.", written in a cursive style.

Hal L. (Chip Beverly) Jr.

HLB/ahw