

Bob Wilbur

From: "Dustin Frederick" <dustin@local519.org>
Date: Thursday, August 08, 2013 4:57 PM
To: "Bob Wilbur" <bbwilbur@broadstripe.net>; "Gwyn Staton" <gwynstaton1@msn.com>; "Mary Riggins" <smriggins@earthlink.net>
Subject: FW: pool ballot

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From: Dustin Frederick
Sent: Thursday, August 08, 2013 3:02 PM
To: Dan Jones (dan_serv@hotmail.com); Ed Delahanty; Elsa Palmer; Jean Salls; karen shaak; Maria Chamberlain; rapeetz@gmail.com
Subject: pool ballot

Board members,

The following has been prepared by a group of ACBC members intent on ensuring that the rights of all members of the club have been heard and that any actions taken by the Board comply with all the attendant laws and protocols governing the operation of ACBC. It is our hope that this will preclude need for a lawsuit. Our group requests that it be posted on the Admirals Cove official website and be added to the agenda for the August 10 Board meeting.

TO: The Board of Admirals Cove Beach Club (ACBC) and members

The recent ballot regarding the pool was not an assessment ballot, but was instead a vote on whether to retain or remove the pool. As explained in the bases below, a vote to remove the pool would alter the purpose of ACBC and would therefore require a 2/3 majority vote at a meeting. Accordingly, the mail ballot, while advisory, did not give ACBC any authority to decommission or remove the pool. We therefore demand the Board and ACBC **not** take any steps towards decommissioning or removing the pool.

The advisory vote lacked checks and balances and controls. Safeguards to preclude vote tampering were grossly insufficient. The vote of 166 fell well short of a 2/3 vote.

If the Board intends to pursue any action other than maintaining the pool and facilities, it must comply with RCW 24.03.215, the Articles of Incorporation, the Bylaws, and Robert's Rules of Order, as explained in the bases below.

Our intent is to ensure that the Board proceed with developing a valid pool assessment ballot compliant with the Motion unanimously approved by the membership at the annual meeting in October 2012. That motion required that the Pool Operations and

Maintenance and Long Range Planning committees and Board work together to prepare the assessment ballot. If this assessment ballot fails to secure a majority vote, then the question of decommissioning could be raised, but not before.

This request and the supporting bases below have been developed with legal counsel, and a large number of club members are prepared to seek an injunction and proceed as necessary and appropriate to ensure that all laws and protocols have been properly followed to ensure the viable continuation of ACBC per its charter. Although we hope with this letter to avoid a lawsuit, if a suit becomes necessary, it may include personal claims against individual members of the Board that cannot be tendered to ACBC's insurance.

Bases for this Request:

1) Bylaws V.4.c indicates that special assessments must be conducted by mail-in ballot. The by-laws do not address how mail ballots should be conducted, hence Roberts Rules are to be followed. That is, bylaws XV.1 requires the club to follow Roberts wherever they are not inconsistent with the bylaws and AOI. Roberts outlines the process to be used for mail-in ballots, stating, "Voting by mail cannot be a secret ballot, as it is necessary for the tellers to know by whom each vote is cast." The process used did not follow Roberts and left the vote readily open to manipulation and vote tampering. Especially in this situation, as controversial and important as it is to the community, the voting process must be free of any question of illegitimate votes.

2) Bylaws VIII.9 indicates that any unusual expense exceeding \$4000 requires authorization by a majority vote of the members present at a meeting called for that purpose. It does not speak of being approved by mail-in ballot, just in a meeting. This seems to conflict or obfuscate #3 below.

3) Bylaws XIV.3, however, indicates the special assessment *proposals* "must be presented to the membership at least 30 days prior to [a duly called meeting]...and shall require by approval by a majority vote" of the members at the meeting, provided a quorum (10%) was present. *If the proposal* passed those meeting requirements, the proposal would then be submitted to the membership as a mail ballot consistent with sections V.2 or V.4 of the bylaws.

4) AOI Article V, sec 1 states that the purpose of the club is to construct and maintain athletic and recreational facilities for the members.

5) AOI Article VII says, "The purpose for which this corporation is created...may be altered, modified, enlarged, or diminished by a vote of two-thirds of all the members at a meeting duly called for such purpose." Removal of the athletic centerpiece --the pool, around which the club was constructed and is the only athletic component except for a rarely used basketball court--would represent a de facto alteration of the purpose of the club, unless replaced with a facility of equal or greater athletic use potential. So, to make

a change in the club's purposes, per this Article, requires a 2/3 vote at a meeting. This is supported further by RCW 24.03.215.

6) The original deeds address owner's membership: "Together with one family membership in Admiral's Cove Beach Club, Inc., a Washington non-profit corporation, which will own and maintain certain beach rights, recreational areas, swimming pool, and other tracts..." The language is noteworthy: that ACBC "will own and maintain...[a] swimming pool." That indicates both the pool's prominence as an asset and profiles ACBC's duty to maintain, consistent with the AOI purpose (Article V, sec 1), and it reinforces the minimum requirement of a 2/3 vote to remove that asset.

7) The ballot the board sent out can only be viewed as advisory in nature because it was fatally flawed by failing to focus on a single assessment question: pool repairs--yes or no? Instead there were two questions asked yet only one vote was possible. For example, if someone favored decommissioning the pool, they did **not** have a choice to vote yes or no on the decommissioning assessment. Likewise, those wanting to retain the pool had to approve the assessment or vote to decommission. Neither assessment question presented voters a choice to accept or reject that assessment. Had the ballot simply been, "Do you approve the stated assessment to repair the pool: yes/no" there would have been 319 votes on that question instead of 153 and the tally may have been quite different because a member may want to retain the pool but not favor the particulars of the assessment. They are two separate questions on a similar subject and, as such, each needs a separate response. Yet the ballot allowed but one vote: check pool repair assessment (YES) *or* check pool decommissioning assessment (YES). Without a "no" vote on both questions, the voter's choice is disenfranchised. Phrased another way, of the 153 members voting on the pool repair question, all (100%) approved the assessment, so the pool assessment passed unanimously, hence rendering the pool decommission question moot.

8) Finally, the Motion unanimously approved by the membership at last October's annual meeting (quorum present) required that the Board work with the Pool Operations and Maintenance and Long Range Planning committees to investigate funding options (which would include loans) for pool repairs and together develop an assessment ballot. Instead, the Board blocked the committee's efforts, refusing their participation in funding considerations, discussions with local banks, and crafting the ballot, which the Board did in total seclusion, even excluding input of two or three board members supporting the pool. Their actions violated the members' trust and obstructed the Motion-ordered process, which specifically required the two committees' direct and complete involvement in ballot development. In wresting control, the Board usurped the committees' role and function in certain disregard of the membership's Motion-approved instructions and clear wishes. We have hundreds of pages of documentation to support this illegal action by the Board.