

# Woodlands Winding Brook HOA Called Board Meeting

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## *Minutes*

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June 27, 2019

7pm, Conference Room at Noodles & Co.

### **I. Welcome & Call to Order**

- Those in attendance:
  - Board Members: Elizabeth Starr, Kenneth Shafer, Sarah Taylor, Linda Scott
  - Property Manager: James Eiermann,
  - Members: Aran Mordoh, Steve Wennerberg, Linda Parrott, Allie Ferrerio, Kriste Lindberg, Shelley Taylor, Donna Davis, Joshua Dennis, Valerie Grim, Lisa Meuser, Randy West, Diane West
- Elizabeth called the meeting to order at 7:05pm. She began the meeting with an overview of the events leading up to a Called Meeting to address current maintenance claims related to basements. She explained that the meeting had been approved at a previous meeting of the Board but that since its approval the HOA had received advice from the HOA attorney that any decisions on basements should wait until the approved forensic report had been received. The attorney had reviewed claims submitted by homeowners related to their basement concerns and did not find sufficient evidence in those claims that would adequately support a claim that HOA maintenance was the proximate cause of any of the claimed foundation concerns or basement leaks. Relying on this advice, she explained that she felt it was necessary to cancel the Called Meeting until that report had been received; however, to cancel she would need unanimous support of the Board. All Board members except one approved cancelling the Called Meeting, so it was suggested that there may not be any business conducted without a quorum. Based on her understanding of Board support to cancel the meeting, Elizabeth emailed owners to let them know that no business would be conducted. Following that email, the Treasurer then emailed the owners to inform them that we would be asking for a show of support at the meeting because he was considering resignation. This confirmed that the meeting was not actually cancelled, and it cast doubt on whether or not we would have a Board quorum. The Secretary then emailed the members to let them know about the new Basement Policy Framework that was being considered and to provide context for the conflicting emails.

### **II. Review of Draft Basement Policy Framework**

- Ken Shafer, Treasurer, gave a brief background on the contents of the new Basement Policy Framework. He reiterated that the burden was being placed on Homeowners to provide strong evidence that any foundation damage or basement leaking claims were

related to HOA maintenance of the common area. He explained that this was because we are zoned as a Planned Unit Development, thus owners are considered to own the soil beneath their units as well as the structure. Additionally, the covenants indicate that homeowners have some maintenance duties with respect to floors and supporting walls. The Board has been advised by three different attorneys that this may be interpreted to support the conclusion that any repairs to foundation walls (as “supporting walls”) and basement slabs (as “flooring”), would be the homeowners’ responsibility unless it could be shown to have been caused by HOA duties related to maintaining the Common Area.

### **III. Owner Presentations**

#### **A. Sarah Taylor, 2376**

- Sarah presented a PowerPoint presentation documenting her basement leak, which is still active. She presented that the leak is located directly below a malfunctioning downspout. She also provided language from a Kevin Potter report and a Civil Engineer’s report that improper drainage was allowing water to penetrate her foundation walls and that hydrostatic and earth pressure had caused her foundation walls to slip off of their joint by as much as 1.5” in the most affected areas.
- She then presented on an interpretation of the same covenant that the three attorneys had relied on to support the contention that HOA is not responsible for maintaining “floors” or “supporting walls”. She explained that the same covenant continues to exempt from these maintenance duties any common “system” that is shared between two units. She explained that basement slabs and foundation walls were shared between units and therefore should be included under this definition of Common Area.
- She also explained that there is at least one 7<sup>th</sup> Circuit Court of Appeals case that explicitly declared that basement slabs served a dual propose – both as an underlayment or flooring surface and as a structural system. Because of this, she felt there was enough support that could reasonably dispute the current interpretation of the Board that basement slabs were floors and thus not the responsibility of the HOA to maintain.
- Sarah concluded that in her experience with tax law and landlord/tenant law, maintenance was treated as a separate activity/duty from repair or replacement activities/duties. Because the cited covenant only declares that owners were responsible for maintaining supporting walls and flooring, she did not think that necessarily included a duty to repair or replace them. She urged the Board to consider this argument and to have our attorney evaluate its merits as it evaluates its future course of action.

#### **B. Allie Ferrerio, 2378**

- Allie discussed that she had received an email that explained that the HOA would only be responsible for issues that are directly caused by HOA related maintenance to Common Area.
- Ken explained that even though we have yet to approve the Basement Policy Framework, the Board began asking homeowners to directly allege this connection and support it with sufficient proof of “strong evidence.”

- After Allie obtained reports from Kevin Potter and Bill Riggert (civil engineer), she was told that her documentation was insufficient to prove proximate cause. She asked why?
- Elizabeth explained, the Board had been advised by the Association’s attorney that we needed a report detailing all of the underlying causes that could be contributing to basement leaks and foundation cracks to determine the “proximate cause” for interior damage liability.
  - [Secretary’s note: In essence, proximate cause is the direct link between the damage and the act. Contrast this with the cause in fact or the “but for” cause. Many things can be a “but for” cause without being the proximate cause. So, “but for” the poor drainage conditions, the basements would not leak. However, the cracked mortar joints that were installed without reinforcement and that have shifted due to natural forces (such as erosion or settling) could be the direct cause of why the water is able to penetrate the basement.]
- Elizabeth also explained that because Kevin Potter was unwilling to attest to any such statement out of concern for future litigation, the Board sought out three different forensic structural engineering firms who would be willing to testify, provided they were able to detect and document proximate causation, should such expert testimony be needed.

### **C. Shelley Taylor, 2293**

- Shelley gave a brief history of her claim that was originally reported to the current Board in March 2019. Shelley had concerns with a leaking basement and outdoor storage closet roof. Her unit had been tested for mold several times and had revealed unacceptable levels of different species black mold. Because of the air scrubbers and remediation efforts, she has been temporarily displaced from her unit. She expressed exasperation at the delay in addressing the outside causes of her damage, the lack of process or guidance from the current Board on how to proceed with her claim, and the current litigiously oriented perception she has of the Board’s position. She acknowledged that she had hired an attorney to represent her because she felt that her rights as a homeowner and Association member were being violated. She also notified the Board that she had contacted the Attorney General’s office with her complaints.
- Based on her observations that the Board was not functioning for the good of the community and could not handle the scope of the issues facing it, she encouraged the Board to look into hiring some form of a professional recovery team to assist us in addressing all of the major concerns facing our neighborhood. Shelley was very concerned that the forensic report was wasteful and was not in the best interest of the community.

### **D. Kriste Lindberg, 2354**

- Kriste reiterated that the Board had her claim packet and so she did not have much to add regarding her claim. She focused her discussion on her desire that the Board start engaging community members and focus on working together with owners to solve our common problems. She encouraged them to work with other

neighborhood associations who were dealing with similar issues and to reach out to community organizations who may be able to help. She also supported the idea of a professional recovery team.

#### **E. Aran Mordoh, 2393**

- Aran began by presenting on her opinion of how PUD status is interpreted in other condominium communities. She stressed that because slabs are shared between units, repairs to slabs should be handling on a building-by-building basis. She encouraged the Board to consider how difficult it would be for an entire building of owners to coordinate on such a repair individually. She felt that this was within the purview of the Association because proper fixes to slabs were not isolated by units and should be dealt with as a common expense.
- Aran was also very concerned about how any policy to refuse basement liability would affect the re-sale value of her unit. She explained that her home inspection had revealed the basement settlement as a potential threat to the unit. She considered not purchasing the unit because of this; however, when she inquired from her realtor about responsibility for any fixes to the foundation, she was told that the realtor had confirmed with the Board that the HOA is responsible for maintaining the foundations. (The Board could not confirm at the time whether or not the realtor did in fact receive this information from a member as it was a couple years ago.) Aran was concerned that if the new policy made it much more difficult to get the HOA to cover these types of expenses, it may reduce our property values. She felt that at least having an overall master plan that would address shifting or cracked foundation walls or slabs on a building-by-building scale would be sufficient for owners to be able to assure future buyers that the HOA was addressing this as its responsibility.
- Aran then presented on how her foundation crack was similar to those shown in Sarah's photos and that she was not needing it repaired currently but that she wanted the HOA to address her entire building as a whole as it develops a plan for mitigating continued foundation movement and leaks. One of the units at the end of her building was recently "sealed" around the foundation, and she believes that subsequently her crack has gotten worse.
- Her slab has also raised up around the basement drain, and during her flood this winter from a burst pipe, the only dry space in her basement was the drain. She had asked the HOA to address this prior to the flood, but she was unsuccessful. As a result of the flood, her unit and her neighbor's took on several inches of water causing thousands of dollars in property damage.
- Aran was concerned that her questions to the Board were not getting answered and the Board was not practicing "best practices" by addressing these on a unit-by-unit basis. She concluded by encouraging the Board to engage the property manager more and to come up with a master recovery plan.

#### **IV. Board Feedback**

- Elizabeth thank the owners for their presentations. She acknowledged that our association is facing huge issues and that we do not currently have the assets to meet the needs of all capital improvements.

- At this point there were two community resource officers who were in attendance who asked to jump in prior to concluding the meeting. They had been invited to introduce themselves as a resource for residents who had non-emergency concerns. They asked neighbors to email them with any concerns related to suspicious activity or other public welfare related concerns that were not a true emergency. Their email was provided: [bpdnrs@bloomington.in.gov](mailto:bpdnrs@bloomington.in.gov)

#### **V. Treasurer's Comments**

- Ken reported that there was currently about \$25,000 in the budget earmarked for current year basement issues. He explained that although the Board would like to put any Special Assessment to a vote of all the members, the HOA was not required to do so. He explained that he has been working on several scenarios and had previously presented an analysis of any impact taking out a loan to cover major expenses would have on homeowner monthly dues.
- Ken expressed an interest in having homeowners provide feedback on what they would be able to afford - a lump sum assessment or a significant fee increase that could increase gradually over time.

#### **VI. Forensic Specialist Proposal**

- Elizabeth moved to approve the contract with the firm Wiss, Janney, Elstner Associates, Inc. (WJE) evaluate the foundation walls of Buildings 3, 6, and 14 for a contract price not to exceed \$10,000. The scope of services include a Document Review (of submitted claims and other inspection reports, HOA covenants, etc.), Visual Evaluation during a one-day site visit by two WJE professionals, Non-Destructive Testing, and a Final Report. Ken seconded the motion. During discussion, Sarah reiterated that she believed she had sufficient information provided in the claims to make a reasonable decision with how to move forward and thus believed the report was superfluous and promoted litigation. Elizabeth called the vote. Elizabeth and Ken voted in favor. Sarah voted against. The motion carried, 2-1. (Linda Scott had been present previously but had left because of a personal scheduling conflict. She was not present for the vote and did not participate.)
- Ken moved to have a Special Meeting of the Homeowners for the purpose of determining whether the Association members wish to treat all basement repairs as Common Expenses through an official resolution which would resolve any ambiguity in the Covenants regarding responsibility for these expenses. He further proposed that he be permitted to work with local property attorney, Michael Carmin (whom the Board has previously solicited an opinion from and who had originally suggested this as an option), to draft the language of the resolution that would be included with the Official Notice and Proxy. He asked for an allocation of up to \$1000 for Mr. Carmin's advice. Sarah seconded the motion. During discussion, Elizabeth opposed the measure in part because of the legal burdens associated with sending out notice of a Special Meeting (Ken had originally requested an expedited meeting). Homeowners who were interested asked whether there would be a financial impact analysis presented at the Special Meeting so that owners could better understand the consequences of the decision. Other homeowners felt that we

should wait to hold a Special Meeting until we get the data from the forensic report. Elizabeth made a motion that we table this motion until the regularly called meeting on July 11th. Ken seconded her motion. Discussion was called. Ken reiterated that if the resolution were to carry, the forensic report would not affect liability. Elizabeth called the question on whether to table. Elizabeth voted in favor of tabling. Ken and Sarah voted against tabling the motion. During continued discussion of the original motion, whether to call a Special Meeting called for the purpose of asking Homeowners to adopt a resolution that definitively treats foundation repairs as a Common Expense, Elizabeth preferred that any proposed resolution is developed in coordination with our current attorney rather than Mr. Carmin. Sarah and Ken both expressed reservation about the current firm's propensity to take an aggressive stance against HOA responsibility for foundation repairs. Ken called the question. The vote was unanimous in favor of the Special Meeting and allocation of up to \$1000 for assistance from Mr. Carmin to develop and the resolution and send notice to the owners.

#### **VII. Homeowner Feedback**

- Linda Parrott reported that she was new the neighborhood and that she did not know the proper procedure but that she wanted to report her basement was leaking at 2290. She asked what she needed to do to get the process started for looking into her issues. Board members directed her to put in a maintenance request with the property manager first to start the process.

#### **VIII. Adjournment**

- The meeting adjourned at 9:24pm.

Respectfully Submitted,

/s Sarah Taylor, Secretary