

Elisabeth M. Silverthorne, Attorney at Law

PO Box 3002

Kitty Hawk, NC 27949

(202) 352-2107 or EMPiff76@gmail.com

February 4, 2016

To: Colington Harbour Association, Inc. Directors and Members

Re: Response to Homeowner, John Collins', concerns of 11/19/2015 in regards to Board Meetings

For this particular concern, the Colington Harbour Association's organizing documents and the NC Planned Community Act (N.C.G.S. Chapter 47F) are the controlling provisions. Contrary to Mr. Collins' prior assertion, it is not appropriate for the NC Nonprofit Corporation Act (N.C.G.S. Chapter 55A) to come into play in this particular matter at all.

There are primarily two types of meetings for a Homeowners' Association: Meetings of the Members and Meetings of the Board of Directors (also known as the "Executive Board" pursuant to the NC General Statutes). Both CHA's organizational documents and the NC General Statutes specifically contemplate a difference between these two types of meetings. (Further, even though I stand behind the fact that the section does not apply here in this instance, it is worth noting that the very section being argued for here by Mr. Collins, NCGS Chapter 55A, allows for Member meetings as completely separate and distinct from Board Meetings and does not require that Members be noticed, invited and/or allowed to comment at nonprofit Board Meetings generally either.)

There must be at least one Meeting of the Members annually. Certain actions, such as approving a budget for the coming year, must be approved by the Members. There can also be Special Meetings of the Members, called only on an as-needed basis and under certain circumstances. All lot owners, including the Board of Directors, must be given at least 30 days' notice and those lot owners in good standing must be given the opportunity to vote.

The Board of Directors, on the other hand, has always been intended to meet more often. The organizing documents specify that to be at least quarterly. Per your organizing documents, the Meetings of the Board of Directors do not require notice to the Members, and if the schedule is agreed upon in advance at some point, don't even require notice to the Directors for regularly scheduled meetings.

There is also a mechanism for Special Meetings of the Board that can be called on an as-needed basis, under certain circumstances. Again, per your organizing documents, Members are not required to be given notice of these meetings and they only require 24 hours' notice.

To reiterate, your organizing documents do not require Members to be present at Meetings of the Board of Directors. And, the NC General Statutes, which *do* apply retroactively for this particular provision (N.C.G.S. § 47F-3-108) states that meetings of the Executive Board (defined as "the body, regardless of name, designated in the declaration to act on behalf of the association") shall be held as provided in the Bylaws. For you all, that is at least quarterly.

The statute goes on to say that “[a]t regular intervals, the executive board shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues and concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on people who speak.” *Emphasis added.*

A Meeting of the Board of Directors that is held on a bi-monthly basis and allows a portion of the time for the lot owners to be present and to comment is legally sound under the Colington Harbour Association organizing documents and under the NC General Statutes.

However, this does not mean that the Board of Directors cannot also meet at other times that are not open to the Members and/or that the Members are not allowed to comment during such meetings. And, any action taken at such a Meeting of the Board of Directors would legally be considered a valid action of the Board because these are still considered Board Meetings. Again, it is not appropriate that NCGS Chapter 55A would be applied in this instance as your Organizing Documents and the NC Planned Community Act provisions would take precedence in this situation and have already answered the requirements for meetings of the Executive Board (aka, Board of Directors) and whether Lot Owners must be noticed, invited to attend and/or allowed to comment at every meeting.

Further, it should be noted that under past Boards such meetings have taken place with no such concerns being raised. In addition, at those meetings, votes were regularly taken and no reports were deemed necessary to the Members by those past Boards. I applaud this current Board for trying to be more transparent in their governance and allow Members to be more engaged than I have seen at any point in my past experiences with this Association.

It should also be noted that the provision for Action without a Meeting by the Directors is still lawfully available to the Board, should an action need to be taken outside of any of the meetings referenced above. However, even in such a situation, the NCGS would not need to be referenced for this to apply, as this mechanism is expressly allowed by your Bylaws (Article V, Section 8).

I have two final comments:

1) These are formal legal opinions above. Your current Board of Directors is well aware that there is a business aspect that may require some departure from what pure legal opinion might call for. They have tried to be more transparent than past Boards and I expect that the Members will see that trend continue in some way.

2) Numerous times now, I have heard it asserted by some Members that I am “the Board’s attorney”. I just want to remind everyone that while I do advise the Board, I do so on behalf of the Association as a whole. I do not represent any individual Homeowner Members and/or any individual Directors. I represent the best interests of the Association as a whole. As such, if an individual Board Member and/or Lot Owner is doing something that is injurious to the Association as a whole, it is my duty to bring my concerns to the appropriate interests so that corrective actions may be considered against said Board Member(s) and/or Lot Owners.