

1. The Chair Called the meeting to order on March 19, 2021 at 1:00 pm. The meeting was held virtually via Zoom meeting.
  2. Quorum Established
    - a. Committee members in attendance were Patti Audet; Ellen Bargainer, Secretary; Maureen Kirkpatrick, Bobby Perry, Brenda Norton, Rick Machon, Jill Dempsey
    - b. Other attendees: Bruce Lepore with Harker Lepore, Dannine Consoli with Harker Lepore, Mike Woodell (guest attendee from another condominium HOA in Seattle)
  3. Patti introduced Bruce Lepore and Dannine Consoli from Harker Lepore. Bruce stated the HOA is only being charged for Bruce's time for this meeting.
  4. Bruce gave background information on RCW 64.90, and explained that it is more robust and detailed than RCW 64.32, and more recent Condominium Act. In his opinion, RCW 64.90 is a better law since it answers many previously unanswered questions. HOAs need to decide if it will be more favorable for their own community.
  5. Discussion turned to addressing the questions sent to Bruce Lepore regarding the possible adoption of RCW 64.90, aka WUCIOA.
    - *The documentation written by Condominium Law Group (CLG) which included the process on how to adopt RCW 64.90 as well as favorable/unfavorable consequences was informative and easy to comprehend. We recognized that our association is currently practicing 11 of the 16 unfavorable consequences and some that we aren't practicing make sense for purposes of transparency. Reading RCW 64.90 sections in detail...not so easy to comprehend so leaning on you for guidance. The tone of the CLG document was that adoption of RCW 64.90 was positive. As our association counsel, would you advise us to make the change and if so, for any reasons other than amending schedule C?*
- Patti: It is actually only 3 things not currently being practiced that could be easily adopted: #11, #13, #15
- *One objection noted in the CLG document was administrative burden. Can you expand on this?*  
Bruce thinks this could be good for our HOA, especially for the Schedule C problem. Bruce does believe there is clearly an error, and 64.90 would provide the easiest way to correct it. Other administrative burdens, our HOA is already meeting many of the requirements (i.e., annual audit, open Board meetings).
  - *Do we have a legal duty to correct Schedule C?*  
Bruce does not believe that the Board has a "duty" to correct it, and that there is not a liability to the HOA if it is not corrected. We just have to follow the allocations.
  - *Do we need permission from a lienholder to correct Schedule C?*  
Patti clarified that this question is referring to the loan for building maintenance, and not individual units.  
Bruce will need to review the loan documents. Patti will send them to Bruce.

- *One of the favorable consequences noted was that windows and doors in condos would be LCE. RCW 64.90.210/Unit boundaries, subsection 3 indicates Any fireplaces, shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit. How is a window or sliding door considered to be outside of the unit boundaries?*

Bruce said this will only apply for windows and doors that are outside the units' boundaries. If they are currently part of the unit, they will not become LCE.

- *If the windows and sliding doors transition to association responsibility, RCW 64.90.480/Assessments and capital contributions, section 4 provides that expenses outlined in a-d be assessed against the units on some basis other than common expense liability. For those units facing the golf course who are vulnerable to damage by golf balls could those units be assessed for potential replacement costs and then refunded at year end if not used?*

Bruce said this statute would not change that.

Brenda stated that windows are not mentioned in the CC&Rs.

Bruce said he will review the boundary definitions in our documents. When there is ambiguity, it comes down to contract interpretation and what was the intent. He thinks if owners have been maintaining the windows until now, then he would not recommend changing it to LCE.

- *Another favorable consequence was noted on 64.90.240/Limited common elements which allows limited common elements to be reallocated without all owners voting. Can you provide an example?*

Bruce gave an example of parking spaces; the new statute would allow for Board approval for reallocation, and not membership approval.

- *Favorable consequence on 64.90.285/Amendment of declaration eliminated 90% approval for restrictions on use (rental caps. Can you expand on this?*
  - *Previously we asked if we had to abide by the Village HOA CCR's, your response on March 2 referenced Article 19, Section 19.1 of the condo CC&Rs which falls under the heading for proposed recreational facilities which would make sense regarding use of the clubhouse. When it comes to answering questions with regards to an owner's ability to rent a unit within our association, we get conflicting information due to the Village HOA CCR's which do not allow rentals. What are the condo associations obligation in this area?*

Our documents clearly state we are a sub-association of the master association. There is a conflict with renting between the two HOAs. Bruce may have a conflict of interest; he will seek permission from the Master association before he gives his opinion.

- *If we can rent a unit, does the tenant have to be at least 55 years of age?*

- *Unfavorable consequence on 64.90.445/Meetings limits board decisions by written consent to "ministerial" actions. What is that referring to?*

Bruce - It is currently possible to make decisions by consent and not a meeting of the Board. It must be unanimous and written. In the new statute, it is not allowed except for ministerial actions (i.e., things that do not require much discretion, such as paperwork for a sale of a condo; no deliberation is needed)

Chat question: Does the Village HOA plan to vote on being governed by RCW 64.90? Bruce had not had any indication from them yet.

- *Would adoption of 64.90 impact how the SE Corner is being used as a community garden?*  
Bruce is not aware of anything that would change this.

Patti referred to 64.90.255 and Bruce stated that a unit may not change the appearance of the common elements without Board approval.

- *The information provided CLG referenced HOA Act, Old Act indicating that RCW 64.90 is better. Is that referring to 64.38, 64.32? It went on to say that there is a lot of overlap with the New Act. Is the New Act 64.34?*

Bruce clarified the Old Act is the Horizontal Property Regimes Act (what currently governs our HOA), the New Act is the Condominium Act (not the newest), and the HOA Act is the Homeowners Association Act.

- *The committee was wondering if counsel had a "ballpark" figure for the cost of transitioning to RCW 64.90. The team discussed the various steps outlined in "How does a Community Adopt WUCIOA?" and understand that there will be legal costs, recording costs, etc. but have no idea what we are looking at for spend. Any idea of projected cost?*

Bruce – they have done this before. He estimates in a ballpark range of \$2,000- \$2,500

Steps: townhall meeting; notice sent to owners (we intend to propose to adopt 64.90, first step is to hold an informational meeting); discuss pros and cons; Bruce can attend for a fee

- Draft the amendment
- How to conduct the vote; management can administer; Bruce can administer for a flat fee ~\$1,000
- Tally vote; certify results
- Record the results; recording fees would be included in the fees

- *We've reached out to our accountant with regards to any tax or financial implications with regards to adopting RCW 64.90. If we don't have a response back from them before our call, do you have any insight into this area?*

Bruce said there should not be any tax implications or financial burdens; audit is already being done

- *In adopting RCW 64.90 we would have to redo our CCR's and Bylaws. Does it make sense (from a time and cost perspective) to use your template (assuming you have one) and then integrate specifics like smoking, pet rules, etc. into the template?*

Bruce asked why do they have to be redone? He said the HOA can adopt an Amendment to the current CC&Rs. The Board can adopt additional Amendments to clarify or remove things that are not in alignment with the new statute. He does not recommend re-doing the entire CC&Rs and replacing with his template. His review will point out areas to consider amending.

Patti asked about the timing if we were to do all of these steps?

Bruce stated it is a 3-4 month process; 30-day notice of townhall meeting; ballot return town; we need to keep in mind that this will be based on support of the members; how to handle townhall meeting; how to receive feedback and give feedback to members (can lengthen the timeframe)

- *In adopting RCW 64.90 how soon would we be able to do something about Schedule C?*

Bruce said we should be quickly if we adopt into WUCIOA (64.90). The revisions to Schedule C will then only need approval of the Board. Bruce can prepare Amendments, and then the Board will vote on it.

Chat Question: If the HOA agrees to 64.90 but the Board does not act under QA311 and the CC&Rs are not amended, but Schedule C is not amended, what percentage of owners would need to approve to change it? Default rule is 67%, unless the Declaration specifies something different. Ours is currently 60%. There is no reason for the Board not to do it themselves. He will research further and clarify the percentage.

### Options other than adopting RCW 64.90

- *Is it possible that the following two sources of information lead to an easier (owner vote not necessary) and less costly method to correct the developer's errors on Schedule C?*

Bruce stated the Plat trumps the Declaration, but it is not the cleaner approach. We must follow the allocation in the Declaration, and not the Plat. Bruce could not find anything in WA case law, and he does not 100% believe the Plat trumps the Declaration. He said it does not speak to the Developer's intention; it seems pretty clear there is an error.

- *According to <https://www.caionline.org/LearningCenter/Education-for-Managers>, Hierarchy of Authority for Governing Documents reflect that Recorded Plat takes priority over Declaration. "...The higher a document's place in the hierarchy, the greater its legal weight in a court of law. Documents lower in the hierarchy cannot conflict with or change the terms of those above them. Whenever there is a conflict, the higher document will prevail. Can this be interpreted to mean the Fairway View plat reflects correct unit values thus those stated values prevail over values stated on Schedule C.*
- *Our CC&Rs, Section 2.2.1 Schedule of Values and Percentage reflect, "The values established in this paragraph for the property and improvements to be added in Subsequent Phases are intended to provide equivalent stated values for equivalent units....To me, this speaks to the developer's intention that like units would have like values, thus like assessments. Providing opting into RCW 64.90 is truly the best option for the Association to move forward to correct Schedule C: 1. What are financial and managerial costs of opting into RCW 64.90?*
- *If Association is successful in amending Schedule C does it have an obligation to correct owner previous assessment payments?*

Bruce believes the cleaner approach is to not look backward and just fix it moving forward. He does not believe a property owner would win in court.

- *Does our insurance provide coverage for the Schedule C errors?*

Bruce will review the policy; the HOA has been following statutes in good faith, and the HOA should have insurance for this.

- *Regarding owner vote to either remain with RCW 64.32 or opt into RCW 64.90, can no response to vote request be counted as a "Yes" vote?*

Bruce stated that no response equals a "No" vote. It was clarified that the no response only equals a "Yes" vote for the budget. Bruce said that under 64.90 the HOA will need 30% of lots to participate, and 67% of those that participate have to vote Yes.

Brenda asked if our insurance policy give us any relief to correct the financial errors?

Patti said she had heard back from the insurance company, and the HOA does not have the errors and omissions coverage. Patti will forward the email to Brenda and Bruce, and Bruce will review the policy.

**Miscellaneous**

- *One question that came up, is the condo association a sub or in tandem with the Village HOA? Our last property manager convinced the governance committee that we needed to be in tandem with the Village but never provided any explanation. Does it matter?*

Bruce did not understand what tandem means; Brenda clarified that the previous management always stated that we were parallel and equal; we were not a sub of the other HOA.

Bruce stated that condo owners are subject to both sets of rules, and Fairview Condos is a sub to the Fairway Village HOA.

- *If we can amend Schedule C, can we also change the voting rights to be 1 unit = 1 vote, instead of the percentage that is assigned? Section 4.5 of the CC&Rs would also need to be modified, but I would like to know if the attorney sees any legal reason(s) to continue with the current "percentage of ownership" method.*

Ellen clarified that this was not being treated as an error in Schedule C, but rather to help with future voting; is there any reason not to make the votes equal, if members agree to it?

Bruce said he would want to change it. Administratively, it would make voting simpler; do not need to calculate the weight of each vote. However, some may argue that if they pay more, their vote should count more.

**Action Items for Bruce:**

- Send insurance policy; will review for remedying previous assessments that may have been done in error
- Rental issue – have our manager talk with Fairway Village manager to make sure it is not a conflict of interest to discuss this issue with us.
- Percentage of vote – if we adopt 64.90, what percentage of vote would be needed to correct Schedule C? Bruce will research.
- Question for Jill regarding questions about percentage of votes needed; Bruce said we will need to add up the percentage of voting interest, to see if 30% has been met (it is not 30% of units, but membership percentage)
- Patti asked Bruce to look into 60% vs 67%. Bruce will confirm in case it becomes an issue.
- Patti asked about the timeline for reviewing our CC&Rs? Bruce will finish and send to Patti next week.

***Patti asked if there any other questions?***

Mike – if we have a vote and the owners agree to 64.90, and the BOD does not correct Schedule C, what is the advantage to changing Schedule C by adopting 64.90? 2a5 statute is confusing; #4. Bruce said 64.90 allows the BOD to correct, including a mistake or scrivener error. It is not changing something, but rather correcting a mistake. Mike stated there is a 5 year limit which is long past. Bruce said #10 applies to the Declarant, and the Board can do it as it applies after turnover by the Declarant, without the 5 year limit. Mike asked for clarification regarding no notice to mortgagees. Bruce stated this is correct, since there is not a required vote by the unit owners. Mortgagees only need notice when there is a vote.

Brenda – if we adopt 64.90 then the Board is required to reflect a formula of assessment; how complicated is that? Bruce said the allocation of interest equals the method used; for us, it is Schedule C. Patti pointed out it was done by assigned value and not square footage. Brenda said we could reflect that when we redo Schedule C.

Rick asked for clarification regarding condo owners needed to follow two sets of governing documents; which governing document overrides? Bruce said we must abide by both, but must follow the one that is more restrictive.

Brenda – We cannot rent since theirs say we cannot rent, but to turn it around, theirs say we can have two pets, but our says we can only have one pet. Following the more restrictive one will put us in compliance with both. Bruce agreed.

6. Next meeting will be held April 13, 2021 at 1:00 pm.
7. The Meeting was adjourned at 2:12pm

