



Meeting Minutes of the Falling Waters HOA Board of Directors

Executive Meeting October 2, 2023, and October 6, 2023 at 4:15 p.m.

Call to order: Morgan called the meeting to order at 6:25 p.m.

Officers Present: Morgan Brosch, Izabela Bebekoski, Lovie Davis, and Deb Mann. Legal Counsel-Nathan Vis

The new Code of Ethics was signed by all, except Morgan, she forwarded the rest of the responses to 1st American Management.

Reason for Meeting- Morgan requested Nathan to this meeting to discuss a deadlock vote that occurred for the proposed build at 102 Bergamo and the potential conflict of interest with her voting on new construction in the neighborhood.

Nathan requested to see the minutes of the prior meeting where three board members agreed that it was a conflict of interest for Morgan to have a vote on this new construction. Izabella brought them up on her phone and sent them to Nathan's phone so he could see the motion and the vote taken. During this prior meeting, the board took a vote to approve the home. The board was at a stalemate of 2 in favor and 2 not in favor. Board Director, Josh Pagel, resigned. He explained that once there is a stalemate, it is automatically considered a rejection. Nathan further explained that for a variety of reasons, our existing bylaws do not provide authority for what to do in the case of a stalemate, one of which is that the bylaws provide for an odd number of board members on the board. Nathan further explained that we have a set of bylaws that give the board unfettered discretion to reject a proposed home plan for any reason. For example, even if we do not like the proposed color, we can say no. Nathan recommended the board meet and discuss what it would take to get this proposal approved; what changes would the board make to obtain a unanimous vote.

Morgan questioned the point of automatically being in favor of the opposing party. Nathan explained that it is considered "common law" by many subdivisions throughout Lake and Porter Counties that a tiebreaker is a rejection and a vote taken, but not resulting in approval, is viewed as a denial. Based on common law, a lack of consensus is deemed a denial. Morgan also mentioned that in our covenants it states that if approval or denial is not granted within 30 days of submitting plans, it would be considered an approval, and they would be able to build.

Izabela mentioned the Code of Conduct/Ethics once again that states if any member of the board would benefit financially from any transaction, they should recuse themselves to prevent

any speculation from the community as to why votes are cast as they are. Nathan agrees that this is putting the Board in a very difficult spot. He said that when we have a conflict of interest, the question is can this be perceived as a conflict. Morgan mentioned that when the last vote was taken, the board was under the assumption that her husband owned the company, which he does not

Lovie mentioned bringing in one more Director to settle these votes, since where future building commences, we are likely to disagree between the 4 of us. Nathan said we have 3 choices, 1) keep the Board as it is with 4 members until the March 2024 meeting, 2) Board members agree to a 5th board member, or 3) have a special election.

Nathan will investigate this "gridlock" position the board is in for some clarification on the matter. Is "lack of consensus" indeed a denial?

Nathan suggested reaching out to 1st American Management for some advice in similar cases. Nathan inquired of the issues that keep this house from being approved. Deb mentioned that this was plan #4 that the builder presented, as the first 3 plans were rejected by the ACC and this one, after Mark's input to build a ranch-said he would bring it to the board for approval. The board did not approve it, yet. The first time the Board saw it was at Mike Berta's home for a joint meeting with the HOA Board. The builder rejected suggestions made by the ACC- namely size of gables, brick on the interior walls instead of wood, at which time he answered the ACC with the reason was the owner of the home did not want those options. If they had followed the Covenants as written, we may have approved the home. Isabela mentioned that the ACC board asked for the revisions and the builder rejected any other changes to be made.

Deb will investigate any vote by the board to accept changes that Mark suggested and then we would approve it. I do not believe it was recorded anywhere, I think it was a verbal agreement with Mark and Jim Garofalo. The first time the board viewed the plans was when Mike forwarded them to the board for review.

Nathan also suggested that we contact 1st American Management for proceeding in a stalemate situation.

Morgan wishes to appoint a proxy or another Director before the March Meeting, since we're likely to run into this situation again. We need to agree on the individual for either a proxy for Morgan's vote, or a new director to serve.

Nathan will get back to us in a couple of days with information to go forward.

Nathan will contact the Developers of the Board's decision not to renew the Resolution regarding signage by builders.

Additional issues discussed:

- Snow plowing contract is already in place.

- Dave Cullom will reach out to the service provider regarding the shutting down of the fountains.
- Once First Travelers will issue a new check to S&K, we will need to use these insurance funds to replace the gates. Morgan will reach out to S&K regarding this.
- Blackout Seal Coating, Inc. to address the cracked coating
- Morgan would like a welcoming and social committee formed.
- Deb discussed regarding the Financial Advisory Committee addressing the covenant revisions.

Meeting to be continued on Friday evening October 6, 2023, at 4:15 p.m.

We had a zoom meeting with Nathan on Friday evening . Morgan, Lovie, and Mike Berta were present in person at the clubhouse, while Nathan, Izabela and Deb participated in the meeting virtually, by way of Zoom.

Mike Berta explained to Nathan that the original application for the proposed home at 102 Bergamo, was submitted approximately eight (8) weeks ago. The ACC reviewed it and determined that it was unacceptable because it appeared to be a proposal for a "cottage home" to be located on a lot not designated for a cottage home. The prior Board's liaison to the ACC, Mark Langbehn, informed the ACC that the Board rejected it because it was a cottage home. The ACC then recommended that the builder redesign the front elevation. The builder then provided a second draft, which was also rejected by the ACC as it was not much different than the first. The third proposal was also not acceptable. The ACC then communicated to the builder that if specific items were corrected, this proposed plan may be more compatible and harmonious with the surrounding homes. The 4th and final one presented Mike claimed was "acceptable" they were not necessarily "enamored" with it, but they deemed it "acceptable." When Mike relayed to Jim Garafolo to please re-submit the final house plans back to the ACC Committee, and Mike then forwarded them to the HOA Board September 8, 2023. Before the builder provided the 4th proposed complete packet, Mike and Mark Langbehn had a conversation with Jim Garafolo and his assistant Michelle, that with additional changes, the ACC thought would make the home get accepted by the HOA. There was 4-5 changes Mike suggested to the builder and his assistant. However, in the end, 2 or 3 of the recommended changes were acceptable to the owner, but 2 or 3 others were not acceptable to the potential owner. Nathan wanted the list from the ACC regarding these contingent changes. It seems that the builder agreed to 3 of the five , however the homeowners objected to some of them. The ACC recommended that the HOA Board accept the plans contingent upon the builder/owner agreeing with all the revisions suggested by the ACC. Morgan forwarded the e-mail to Nathan listing all the changes. Mike expressed that this project has taken way too long, and the issue is polarizing the new board and others in the community. He suggests that the board go back to

the drawing board and request the changes necessary for this home to be approved. Mike said that until there is consensus by the board, nothing should be done with this plan, and that we simply tell the builder that for this plan to be accepted and approved, the board requires additional revisions, as previously required by the ACC. Izabela thanked Mr. Berta for his thorough explanation of the history of this home. However, the most pressing item is expressing to the builder that the board has not reached an agreement yet and request an extension from the Oct. 8th or 9th deadline to approve or deny so that he does not commence construction under the assumption that the plan has been approved.

Morgan also stated that 2 of the board members did not want that home on that lot and that if it were somewhere else, it would be fine. She also mentioned that we had one month to review these plans and we should be able to come to some agreement. Izabela reminded her that most of us had not seen the proposed changes to #4 submittal until the viewing at Mike Berta's home on Sept. 25 or 26th when the new Board had a combined meeting with the ACC. Morgan mentioned that an email of the plans was given to the board on September 8th and resent via email on the 15th. Morgan again suggested we go back to the drawing board to discuss what it would take to make this home acceptable for the board's approval. Nathan rephrased Morgan's question and asked how long the board thinks they would need to look at the proposed home and come up with some ideas. Izabela replied she would like about 15 days to make an informed decision.

Izabela stated that Morgan reclused herself at the last meeting, Morgan then interjected stating that she never reclused herself and even stated that she believed she was not a conflict of interest before the vote occurred. Izabela suggested that Morgan review the meeting minutes and audio recording of the meeting so that she can clearly hear what was said at that meeting, including Morgan not objecting to Josh Pagel's statements that Morgan's husband derives a financial benefit by installing insulation for the builders' homes.

I. . She answered that when this vote occurred, she did not realize that the board was working under the assumption that her husband owned the company, which she indicated is not the case.

She states that her husband is salary based and is not eligible for bonuses. His salary is not contingent upon how many houses are built in any community. So, she does not feel that there is any conflict at all. Hence the 2-2 vote on this home. A stalemate situation which our covenants do not address.

Nathan suggested contacting the builder to notify him that the board has not reached a decision and is asking for an additional 10 days before any further action. We need to come to an agreement and have not reached it yet, so until we do we need extra time. Nathan stated that the ACC committee approves and the question for the board is are we confirming it, modifying it, or reversing it. The legal question is how do you interpret when you're at an

impasse? His interpretation is that it is not approval. He again recommended the board go back to the drawing board to come to a consensus.

Nathan suggested that the board contact the builder regarding our dilemma and for us to have an additional time to come to a decision, Deb seconded, Morgan said no. Nathan then offered to speak with outside counsel that he respects and that would be totally impartial on the matter of "Conflict of Interest". Morgan stated that he (Nathan) was a third party and he answered that he would give his opinion but would do it in writing so that nothing could be misconstrued. Morgan suggested the board find its own third party, Nathan answered that is fine so that all the members of the board agreed. Izabela moved to make a motion that a correspondence be sent to the builder stating that this proposal is denied. Deb seconded the motion Lovie opposed; Morgan opposed. The motion was not carried. Izabela expressed that she cannot understand why we can't send a letter to the builder explaining our situation. Nathan's suggestion is to hit the "pause button" and agree to third party counsel.

Lovie claimed to not understand why we would approve the house across the street from her which is a cottage home, and not approve the one we are questioning now. Deb explained that that home was granted approval under another board back in 2021-it was approved by Sherri, Lovie, Mike Berta, and Rhonda who were on the board at that time. Several homes were approved and built during that time. Deb explained that just because they were approved and built, that going forward it would be done right which will follow the covenants. Nathan strongly suggested that we reach out to the builder with a request for an extension, to prevent the legal counsel of the builder from finding that the board's silence or inaction somehow gives permission to this builder to proceed with construction.

Morgan suggested we, as a board, meet in the middle and send a correspondence that directly relates what the bylaws state and offer a specific timeframe as to which a decision should be made so this cannot be extended any longer than it already has. Morgan will send Nathan her recommended language for the correspondence with the builder.

Nathan left the meeting at 5:22p.m.

Izabela made a motion to adjourn, Deb seconded: vote taken all in favor, none opposed, motion carried.