

April 30, 2008

Board of Directors
Flint Ledge Estates Community Association, Inc.
c/o Mr. Brian Rogers, Board President
2314 McCormick Road
Rockville, Maryland 20850

ATTORNEY CLIENT PRIVILEGED COMMUNICATIONS

RE: LEGAL MATTERS

Dear Board of Directors:

This letter is in response to the letter from Brian Rogers dated April 8, 2008 concerning representation of Flint Ledge Estates Community Association, Inc. ("Association") and the various legal issues that I have been requested to provide my opinion. I look forward to representing the Association and please feel free to contact me with any additional questions or concerns.

Also, consistent with my conversation with Brian Rogers, I plan to appear at the April 29th annual meeting at City Hall. I look forward to meeting with you and to address any general or specific issues involving your Association.

1. **Quorums: Alternatives to our current quorum requirements, since we find it always difficult to have quorum present at annual meetings requiring adjournment to another day with lower quorum requirement. What is necessary to decrease our quorum requirements?**

As you are aware, Article III Section 4 of the Association's Bylaws requires a presence in person or by proxy of 60% of the owners or votes. This amount is reduced to 30% for any subsequent called annual meeting. This provision provides as follows:

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, sixty percent (60%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting and schedule another meeting on another day, without notice other than announcement at the first meeting, and the required quorum at the subsequent

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meeting shall be one-half (1/2) the required quorum at the preceding meeting.

The easiest way to proceed with this matter is for the Association to act in accordance with Section 5-206 of the Corporations and Association Article of the Maryland Annotated Code. A copy of this Section is attached as Exhibit A and in essence it allows for the second meeting of the body (assuming there is not the 60% quorum) to proceed as those individuals present in person or by proxy constitutes a quorum, regardless of the number of owners present.

In order to amend this 60% quorum requirement, it would require an Amendment to the Bylaw provision of Article III Section 4. To Amend any of the Bylaw provisions requires a vote of a majority of a quorum, regardless of the number of owners present.

2. **Requirements to Have Open Board Meetings:** Under what conditions may Board members have discussions or accomplish Board business (e.g., signing a memorandum or letter to a homeowner, etc.) outside of an open Board meeting? May decisions be made outside of an open meeting, e.g., action or advice on architectural control variance requests? Under what conditions may an emergency situation demand immediate action and override the above guidelines?

I recognize the practical difficulties of having regular Board meetings and utilizing that as the only mechanism for decision making. This is especially true for a small HOA like your Association, but the legal requirements apply to all Maryland Homeowners Associations.

Homeowners Associations in Maryland are statutorily obligated to comply with Section 11-B-111 of the Maryland Homeowners Association Act. A copy of this Act is attached hereto and marked as Exhibit B. This Act provides that notice of all meetings to all owners be required and that subject to certain statutory exceptions, that all meetings must be open. This statute provides in pertinent part as follows:

(1) Subject to the provisions of paragraph (4) of this section, all meetings of the homeowners association, including meetings of the board of directors or other governing body of the homeowners association or a committee of the homeowners association, shall be open to all members of the homeowners association or their agents;

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(2) All members of the homeowners association shall be given reasonable notice of all regularly scheduled open meetings of the homeowners association;

(3) (ii) Subject to subparagraph (iii) of this paragraph and to reasonable rules adopted by a governing body, a governing body shall provide a designated period of time during a meeting to allow lot owners an opportunity to comment on any matter relating to the homeowners association;

(ii) During a meeting at which the agenda is limited to specific topics or at a special meeting, the lot owners' comments may be limited to the topics listed on the meeting agenda; and

(iii) The governing body shall convene at least one meeting each year at which the agenda is open to any matter relating to the homeowners association;

(4) A meeting of the board of directors or other governing body of the homeowners association or a committee of the homeowners association may be held in closed session only for the following purposes:

(i) Discussion of matters pertaining to employees and personnel;

(ii) Protection of the privacy or reputation of individuals in matters not related to the homeowners association's business;

(iii) Consultation with legal counsel;

(iv) Consultation with staff personnel, consultants, attorneys, or other persons in connection with pending or potential litigation;

(v) Investigative proceedings concerning possible or actual criminal misconduct;

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(vi) *Consideration of the terms or conditions of a business transaction in the negotiation stage if the disclosure could adversely affect the economic interests of the homeowners association;*

(vii) *Compliance with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure; or*

(viii) *On an individually recorded affirmative vote of two-thirds of the board or committee members present, some other exceptional reason so compelling as to override the general public policy in favor of open meetings.*

Subject to the exception for “closed executive sessions,” this statute would appear to mandate both notice and openness of any meeting. I would also call your attention to Article IV Section 5 of the Bylaws entitled, “Action Taken Without a Meeting” and provides:

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

This Bylaw provision would appear to at least provide some guidance to have the Board make decisions outside of a regular meeting so long as all members of the Board Directors approve unanimously in writing the action. This does not override the statutory requirements, but does have some basis especially for emergency matters where a meeting cannot be held.

3. **Determining What is HOA Property:** Do we need a survey to define the boundary between HOA-owned property and that of the City of Rockville, and HOA property and that of homeowners: If so, what level of detail? The HOA owns no structures other than playground equipment. It maintains the common area and is responsible for certain parking areas and sidewalks. It is not clear where the HOA boundary lines begin and end. This may affect who is responsible for certain expensive repairs to concrete and maintenance of trees.

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The property which the Association owns would be those properties that were deeded to the Association and would be the Common Areas. According to the Declaration, there are 2 Common Areas which were identified as Schedules D & E. I have obtained the Deed from Land Records, a copy of which is attached as Exhibit C. Please note that Land Records shows that there are six separate panels which are listed on the Deed that was recorded in 1983. Please review this Deed and confirm same at your earliest convenience.

4. **Capital Reserves. Recommendations on how to determine adequate reserve levels in light of near-future sidewalk and curb repair and/or replacement. This is relevant to Item 8 below.**

The Board of Directors has a fiduciary duty and good business practices warrant assurances that the Association has adequate monies or reserve to make future repairs.

The mechanism to determine the adequacy of reserves is to hire a reserve professional. This would provide the Association guidance on the life expectancy of the item, its cost of replacement and how much money should be placed in the reserve account each year. Moreover, this study will advise the Association if the amount currently in the reserve account is adequate.

You have requested names of possible reserve specialists and you should feel free to contact the following to request a proposal:

1. Peter Miller – Miller Dodson Associates, Inc.
(410) 268-8483
2. William Hasselman – Becht Engineering, Inc.
(410) 461-3904
3. William Grines – Property Diagnostics Inc.
(301) 261-8473

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5. **What May the HOA spend money on: Is this restricted to only things owned by the HOA? May HOA funds be spent on non-HOA things that the Board deems will benefit the HOA? If so, what is the standard to determine if it so “benefits” the HOA? May HOA funds be spent to maintain trees that are close to the edge of the street, overhang the street and sidewalks, yet are located on private property.**

The Association’s ability to expend monies is usually fairly board. In the case of your Association, guidance is provided in the Articles of Incorporation at Article IV(b) to pay “all expenses in connection incident to the conduct of the business of the Association including all licenses, taxes or governmental changes levied or imposed against the property of the Association.” Additionally, the Maryland Corporate statute has a general catch all provision to allow a Maryland Corporation to do every other act not inconsistent with law which is appropriate to promote and attain the purposes set forth in its charter.

Accordingly, the Board of Directors has discretion to spend monies related to the Association and all business or welfare concerning same.

6. **Whether the City of Rockville can be “forced” to continue the maintenance of trees and the entrance area.** Since the community was built up, and until a few years ago, the City of Rockville has maintained/trimmed the trees next to the street in the community. About six years ago the City stated that since the trees belonged to the individual homeowners, the city was no longer going to maintain these trees. Again, since the community was built, the City has maintained the railroad ties in the berm area of the entrance (contained within the Wooton Parkway right-of-way). Last year, the City announced that it no longer would be so and would remove the railroad ties, and thus create a less attractive entrance to our community. Are there equitable estoppel arguments that might be successful in convincing/forcing the City to retract its announcements and continue maintaining these items? See Item 7 also.
7. **Front Entrance Area – whether the HOA may enter into a revocable licensing agreement with the City of Rockville whereby the HOA is allowed to maintain the entrance area. What legal liability issues are presented, e.g., liability for injury, responsibility to rebuild if City or easement owners need to move improvements in order to access the easement area. Since entering into such agreement would obligate the community in the future, can the current Board sign this agreement?**

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Whether the HOA may enter into a revocable licensing agreement with the City of Rockville whereby the HOA is allowed to maintain the entrance area.

The only document that I have is a document entitled "Revocable License and Maintenance Agreement" and according to Brian Rogers this document was proposed by the City in 2007. The Agreement is waiting for the Association response. I am assuming that throughout the history of this property that the City has maintained this entrance way, which I am further assuming is located on City Property.

Based upon this proposed document, it appears that the Association is considering agreeing to take on responsibility for the entrance that was apparently previously handled by the City of Rockville. I do not know how this proposal came about, but I am again assuming that the Association has been unhappy with the City's maintenance. The business rationale to take over the maintenance is to improve its appearance, and it would appear to be within the Association's power to enter into same. Although there is no specific authorization in the Articles of Incorporation, I believe that the Association has the power and authority to enter this Revocable License and Maintenance Agreement.

The Association Bylaws specifically authorize and include in the Board's powers the power to exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws of the Articles of Incorporation. The Articles of Incorporation go on to provide:

(g) have and to exercise any and all powers, rights and privileges which a non-profit corporation organized under Title 5 of the Corporation and Association Article of the Annotated Code of Maryland by law now or hereinafter have or exercise.

The Maryland Corporate Law at Section 2-103 (8) provides in the Board's power to as follows:

(8) Acquire by purchase or in any other manner, and take, receive, own, hold, use, employ, improve and otherwise deal with any interest in real or personal property, wherever located.

Accordingly, assuming that my assumptions are correct, it would be my opinion that the Board of Directors has the authority to enter into this document and the business decision would be appropriate. I would however advise the owners before entering into the agreement

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and confirm with the City that they are not voluntarily willing to take on this responsibility and/or improve the quality of work. This may be more of a political problem.

8. **Allocation of Costs for Sidewalk and Curb Repairs and/or Replacement in Townhouse Area:** Do the governing documents or current law allow a special assessment against just the townhouse members for these costs and, if so, what procedures need to be followed? Can the townhouse: single family home annual assessment ratio be changed from the current 2:1 to something other than that, based upon historical spending which benefits only one or the other of the two communities?

As drafted the Association documents have this 2:1 ratio for the single family: Townhouse lots that creates assessments for all common charges. The only way that the Townhouse owners can be allocated additional costs for the sidewalk is by way of an Amendment to the Declaration. Pursuant to Article XIII Section 3 of the Declaration to Amend the Declaration requires an instrument of Amendment signed by not less than ninety percent (90%) of the Lot Owners. This percentage is decreased from ninety per cent (90%) to seventy-five (75%) in August of 2013. I understand that the sidewalk and curb repair benefit only the Townhouse owners but this was addressed in the concept and Declaration by way of the 2:1 ratio. Moreover, Article V Section IV provides as follows:

Section 4. The Association may levy, subject to the provisions hereinafter stated, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Common Area, including fixtures and personal property related thereto, provided that any such assessment, including the due date of payments on account of such assessment, shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose; provided, however, that only townhouse lots shall be assessed for capital improvements on Common Area B and only single-family lots shall be assessed for capital improvements on Common Area A.

9. **Personal Liability of Board Members:** What is the exposure if the governing documents, statutes, rules, etc. are not followed? Does out insurance cover such exposure?

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In order to provide protection, it is essential that the Association have a Directors and Officers insurance policy in place. It may make sense that now that the Association is reviewing various issues, to contact your insurance company to see what coverages you have in place. It may be a good time to review your policy to not only confirm adequate coverage on directors and officer claims, or directors and officer claim, but to confirm that the premiums are appropriate with industry standards.

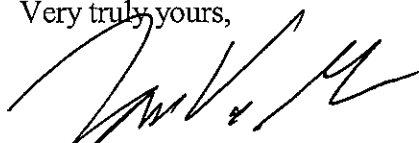
More importantly, if the appropriate insurance is in place, the individual Board members are provided immunity so long as their actions are not in bad faith or with ill will. I also attach to this letter and mark as Exhibit D, a copy of Section 2.405.1 of the Maryland Law for Corporations which is entitled, "Liability of Directors, Standard of Care."

10. **Conflict of Interest for Board Members: Needs to be defined, especially when dealing with financial issues since members of the Board are also dues-paying members of the HOA. Also, there are instances when Board members are to vote or express official opinions on matters that affect them individually.**

Many Association documents include a detailed provision that specifically address potential conflicts of interests, but there is no similar provision at your Association. I would however advise you that Section 2.419 of the Corporation's law does address interested directors. A copy of this law is attached as Exhibit E. Simply stated, any potential conflict needs to be fully disclosed and voted on by the Board of Directors.

Lastly, on a separate matter, Cliff Blones, Esq. is still listed as your resident agent. Although I have no problem with this you had indicated that you had a service that was paid to act in that capacity.

Very truly yours,



Jeffrey Van Grack

JVG:jet
cc: Cliff Blones, Esq. [via email]
Enclosures: (As stated)