

Betz Landing
Homeowner's Association
P.O. Box 422
Heathsville, VA 22473



<http://betzlanding.org/>

Betzlanding@outlook.com

Annual Members Meeting
Saturday, October 15th, 2022, at 2:00 PM
The Meeting House at the Tavern, Heathsville VA

1. President Church called the meeting to order at 2:08PM.
2. Selection of 4 volunteers to process ballots: Tricia Mrzyglod, Alice Stieve, Sam Frye and Ralph Ivester. Directors Dustin and Moore oversaw. Ballots and volunteers were dismissed to count the votes
3. Verification of Quorum. Secretary Harvey verified the forum with 22 in person ballots and 30 ballots by proxy

In attendance were:

Lauren Church President
Cathy Sarmiento Vice President
Donna Keeney Treasurer
Jerry Harvey Secretary
Kurt Bulger Director
David Dustin Director
Elaine Moore Director
Nannette Smith Director

Members Oct 15th Meeting: Sam and Janice Frye, Phil Landry, Ted and Jerry Jenkins, Joe and Alice Stevie, Debbie Harvey, Patricia Mrzyglod, Ralph and Cynthia Ivester, Matt Church, Geary and Edna Mathews, Jeff Geis, Scott and Kim Laurer.

4. Approval of the minutes from the last minutes conducted on 9/10/22 at 9:30am.
Point of Order on aspects of the conducting of the meeting as well as elements of the election process was made by Phil Landry. (Addendum A Attached)

After much discussion on how to proceed the board authorized President Church to seek an opinion from HOA Legal Council on election process including ballot and proxy as written. All in attendance agreed that BLHOA would follow legal counsel's opinion. (Addendum B Attached)

Annual Meeting recessed at 3:12 pm

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Annual meeting reconvened December 10, 2022, at 9:30 am at the Northumberland County Library in Heathsville VA By President Church.

President Church asked if anyone was taping the meeting, the response was yes.

Annual meeting quorum established on October 15, 2022

President Church gave a ruling on Point of Order from October 15th Annual meeting: "Point Not well taken"

4a. Approval of minutes from last annual meeting conducted October 16, 2021

Motion to accept last annual meeting minutes was made by Director Moore and 2nd by Director Silva all ayes with 1 abstain. Motion carries

Motion to amend agenda for board to appoint nominating committee by Director Moore 2nd by Director Dustin. All Ayes motion carried.

The board appointed Director Smith, Chairperson, and members Debbie Harvey and Matt Church to serve as nominating committee from the close of this annual meeting until the close of the next annual meeting.

8. Comment period: No member comments

9. Announcement of newly elected Directors and ACC member with 22 in person votes and 30 by proxy the Directors voted in will be Lauren Church, Donna Keeney and Kurt Bulger. The ACC committee member voted in will be Phil Landry

10. Adjournment

The meeting was adjourned at 9:42 am

Addendum A:

**Point of Order Madam President
on aspects of the conducting of the meeting
as well as elements of the election process.**

**Good afternoon, My name is Phil Landry
I'm here representing a small group of property owners
who have concerns over perceived current problems and irregularities
with our Annual Meeting and Election process.**

**I will provide the Secretary with a complete copy of this presentation
for the minutes so he will not have take notes.**

**Before specifically identifying the issues
I want to put a few things in perspective.**

**Our objectives are to identify the issues to help get them resolved.
It is not to specifically blame individuals for the problems.
These problems are not unique to the current administration.
They have existed for a number of years and remain unresolved.**

**Should the board wish further information regarding any of this
we will be glad to share it,
only if it will help get the problems resolved.**

**Note: none of this is an immediate problem if we do not have a quorum
and this meeting is cancelled.
The issues presented can be resolved before the Annual Meeting is reconvened.**

Now to the specifics points of the order.

**I will be glad to try to answer any questions you may have when I'm finished if
the President wishes me to.**

First - are the meeting problems

Note Quorum is 25% of property owners and not a Board quorum

The agenda indicates approval of the minutes from the previous board meeting in September.

This is an annual meeting of the members, the minutes to be approved are the minutes from the previous annual meeting. Members cannot approve minutes from a board of directors meeting.

Next is regarding the Nominations Committee.

Per our Bylaws,

The nominating Committee shall be appointed by the Board of Directors “prior to” each annual meeting of the members, such appointment shall be announced at each annual meeting.

Not solicited at the meeting from those present.

There is nothing on our agenda regarding that activity today.

Next, The ballot is not a secret ballot as required by Bylaws as it identifies who the voter is.

A note, proxy document states in handling of the ballot, that “each lot owner casting a ballot is in good standing”

All property owners are allowed to vote unless there is a lien against their property. Their dues paying status is not a factor.

Mentioned as there is no clarification as to criteria stated for this.

The ballots also aren't secret because:

Following the meeting the ballots are typically retained by a board member and taken away where they could be viewed by that individual or others.

Those ballots if retained, are stored with association records which according to our bylaws are kept at the principal office of the association Which is our lawyers office, That however is not reality. As with a number of things to be mentioned today many of these problems have existed for years.

The reality is, if those ballots are kept they are probably in some cardboard boxes with other association records sitting in our storage shed, Where anyone could see them if they looked at them there.

I mentioned all of this regarding records in that it is another issue that ultimately needs to be resolved.

Next Point

Multiple proxy problems exist including:

It does not allow property owners to identify who they wish to be their proxy.

The default proxy should not be someone who is a candidate for election.

The proxy is a limited proxy and only counts towards votes, and therefore mail in voters aren't counted towards quorum.

This also means that mail in voters do not have an ability to vote and thus are disenfranchised.

This essentially means no business may be conducted that requires property owners to vote.

This is the end of the Points that we believe need to be raised at this time relative to the election.

When our Election Committee reconvenes we will address all of these problems and more, and recommend appropriate solutions.

Thank you all for listening and considering the message and not judging the messenger.

I yield back to Madam President to continue as she deems appropriate.

Point of Order presentation.

A point of order
Can interrupt a speaker who has the floor.
Doesn't need to be seconded.
Isn't debatable.
Can't be amended.
Is decided by the chair.
Can't be reconsidered

Addendum B:

MURPHY LAW OFFICES, PLC

TRIAL AND APPELLATE REPRESENTATION

E. STANLEY MURPHY
ATTORNEY AT LAW

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October 22, 2022

Ms. Lauren Church
President
BETZ LANDING HOMEOWNERS'
ASSOCIATION, INC.
P.O. Box 97
Heathsville, Virginia 22473

Re: 2022 Annual Meeting Issues

Dear Ms. Church:

You asked for a written legal opinion to be shared with members concerning a disruption that prevented the Betz Landing Homeowners' Association from concluding its October 15, 2022 annual meeting.

I apologize in advance for the length of this letter, but the meeting disruption involves technical issues that do not lend themselves to an abbreviated discussion. I have tried to keep this letter as short as responsibly possible.

Background

As a preliminary matter, I note with regret that there continues to be dissention over the conduct of association business primarily by two vocal members of the community.

One of these members interrupted the ordinary conduct of your annual meeting last Saturday with a parliamentary "Point of Order" that halted the meeting altogether due to confusion about how to respond. As a result, the meeting will now need to be reconvened at a later date in order to conclude its sole point of deliberative business, which is the election of directors and one member of your Architectural Control Committee.

Your bylaws provide that meetings of the Association are controlled by the "then current edition of Roberts Rules of Order." These rules, grounded in parliamentary procedure of the United States Congress, date back to 1876. They can be cumbersome and

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difficult to administer. Roberts Rules is currently in a 12th edition, consisting of nearly 700 pages of rules and commentary. Because of their intricacy, they are frequently misunderstood and, at times, misused.

For example, Roberts Rules recognize 20 different types of motions, ranging from the so-called “main motion,” through “subsidiary” motions (eight of those), to “incidental motions” (7 types), to “privileged motions” (4 types). In turn, each motion has seven types of procedural considerations regarding timing, priority over other motions, interruption of other speakers, debate, amendment, reconsideration and voting.

Altogether, a presiding officer needs to master 140 different procedural twists in order to preside over a simple meeting. Under the circumstances, it is easy to appreciate the opportunity for abuse created by members who randomly fish in the parliamentary pond, almost always with no understanding of these procedural intricacies themselves.¹

That is precisely what occurred on Saturday, bringing your meeting to a halt.

This letter will briefly discuss the correct parliamentary procedure and provide you with guidance regarding how to conclude your meeting without incurring an additional \$500.00+ in meeting expenses.

The October 15, 2022 Meeting

Your meeting was properly noticed. As required by the bylaws, the Virginia Property Owners’ Association Act, and the Virginia Nonstock Corporation Act, its procedures provided for proxy voting. I note that the form of the proxy was prepared by your former counsel and that it has been used by the association for many years.

¹ These highly technical requirements and the general lack of familiarity with them in the 21st Century have led more and more membership organizations to abandon Roberts in favor of simpler alternatives. See, e.g.:

<https://www.lexology.com/library/detail.aspx?g=1748d1c4-0a70-4230-87b8-10bf7106cf3e>

Unfortunately, like many regrettably worded provisions in your bylaws, departing from Roberts Rules is not an option, without amending the bylaws themselves. I strongly recommend that your board consider a review and simplification of your bylaws, replacing Roberts Rules of Order with a simpler form of procedure.

This past Saturday, after the meeting was convened, after a quorum was established, and after votes had been cast, Phil Landry interrupted the proceedings with what he termed a “Point of Order.”² Significantly, no motion was pending at the time of the interruption and no rules were cited in what amounted to a three-page litany of complaints about the regularity of the meeting and conduct of association business in general.

I have reviewed the written speech that Mr. Landry prepared and offered for the record. I base this opinion on his written words.

Particularly because the comments are not directed to a specific and limited item of business, as they were required to be under Roberts Rules, Mr. Landry’s objections are difficult to follow.

Putting aside questions of germaneness, triviality, multiplicity, and timeliness (all important parliamentary considerations under Roberts Rules), Mr. Landry’s principal complaint boils down to the form of your long-used proxy. He claimed that because the proxy names a specific person authorized to vote for specifically named candidates, it prevented the election from being a “secret written ballot,” as required by Article IV of the Association Bylaws.³

Substantively there are a number of problems with this argument:

- First, your bylaws also require the Association to provide a written proxy form which, by law, must direct the proxy how to vote. It is manifestly impossible to provide specific instruction on a written document to be used for voting purposes while preserving absolute secrecy.
- Second, Mr. Landry complained that the ballot and proxy form were on opposite sides of the same printed page, which he viewed as rendering all votes identifiable to individual members. This argument ignores the reality that only proxies are identified with a specific member’s vote; the ballot form itself does not identify the votes of members voting in person.

² Although Mr. Landry claimed to be “representing a small group of property owners,” he did not identify those property owners, nor did he file a proxy authorizing him to act on behalf of these unknown owners. Under the circumstances, this opinion regards Mr. Landry’s actions must be taken as objections on his own behalf.

³ Yet another example of how cumbersome your bylaws are in their current form.

- Third, as required by your bylaws and by Virginia corporation law, the meeting appointed election officers to count ballots, including proxies. These officials are required by your bylaws to preserve the secrecy of individual votes, so there is no reason to believe that that individual votes would be shared with the membership.
- Fourth, if there is concern that that ballots will be preserved and available for later inspection (something which, in fact, is required by Virginia Code Section 13.1-847.1(B) in the event of a statutory election challenge), that problem is easily cured by direction of the meeting chair to preserve the ballots in a sealed envelope until the time for an election challenge has expired.

No such motion was pending at the time of Mr. Landry's "Point of Order," and he failed to request that the chair take this action, which would have been the simplest solution. His request to cancel the meeting was entirely improper both legally and procedurally.

Mr. Landry's other objections were so minor that they do not merit discussion. If raised again, they can be dealt with easily, one at a time.

The Correct Procedural Response

As noted above, Mr. Landry's "Point of Order" provided no legal or parliamentary reason whatsoever to cancel the Association's annual meeting.

Under Section 23 of Roberts Rules, a "Point of Order," may only be addressed to a pending motion or other procedural irregularity with the meeting. The "point" generally must be raised at the time the breach of procedure occurs or else it is waived. Many of Mr. Landry's multiple "points" fall into that category.

Significantly here, a point of Order is directed only to the chair of the meeting, who is authorized to rule that the "point" is either "well taken" or "not well taken." If the point is "well taken," the chair is then authorized to correct the disputed procedure. Mr. Landry failed to perceive this point and he did not ask for appropriate corrective action. He asked only that the meeting be cancelled.

A point of order is not debatable and is not subject to reconsideration. The chair's ruling can be appealed to the meeting membership if certain procedures are followed.

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Most significantly though, under Roberts Section 23, the chair may determine that there “cannot possibly be two reasonable opinions,” and disallow any appeal, which I believe would have been the correct response relative to the form of the proxy.

Not one of these procedures was observed on October 15, 2022 and I do not think you can be faulted for not having a thorough understanding of procedural arcana. Mr. Landry’s “Point of Order” itself was procedurally irregular and it was not reasonable to put you in the position of having to litigate these complex procedural issues on the spot.

Fixing the Problem

As I understand it, your meeting was recessed but not adjourned.

Under the circumstances, I believe it can be reconvened at the call of the chair, without the need to re-advertise or re-notice the meeting. Nevertheless, for purposes of transparency, I recommend that you provide members with at least 15 days’ notice that the meeting will be reconvened. Under Virginia Code Section 55.1-1832, you may give this notice by email. I attach a form for use by your organization.

At the reconvened meeting, you should resume the agenda where it was interrupted. Relying on this letter, I suggest you rule that Mr. Landry’s “point of order” is not well taken. In the event your ruling is appealed using the correct procedural steps, I also recommend that the meeting consider each of his individual objections separately, observing Roberts preference for deciding one issue at a time.

As soon as you settle any further procedural challenges, you may proceed with counting the votes that were already cast, and with certifying the results. Satisfaction of the quorum requirement was determined on October 15th and, under your bylaws and Virginia law, that quorum continues to be effective at the reconvened meeting regardless of the number of persons in attendance.

Procedural challenges should be resolved by a majority of votes from members present in person or by proxy at the reconvened meeting.

In light of all these circumstances, it also may be desirable for you to appoint a Parliamentarian to advise the chair on the intricacies of Roberts Rules of Order at your meeting. I have been asked to attend the next meeting and will be happy to serve in this capacity.

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Final Thoughts

I encourage all members of your association to remember that you are neighbors with a common interest in preserving limited association resources. Although differences in policy may arise from time to time, members should bear in mind that under your governing documents and binding Virginia law, the board of directors is designated as the sole managing authority of association business. Your board acts by majority vote.

Nothing is accomplished by constantly re-litigating and criticizing the board's discretionary actions. This is, after all, a community organization run by volunteers. It is in everyone's interest to keep things simple, as long as you observe fundamental fairness.

I also encourage members to bear in mind that association documents are construed as whole in light of numerous binding state statutes that may alter or supplement the stated requirements of your governing documents.

Members and directors should be careful to understand the entirety of these documents and statutes before cherry picking provisions out of context. This approach is particularly important before unlimbering the nearly 700 pages of Roberts Rules of Order, which may not be used to alter requirements of your governing documents or substantive Virginia law.

Finally, I again encourage you to consider a rewrite of your bylaws in order to simplify things and to avoid more disruptions of association business similar to what occurred on Saturday.

Please let me know if you have further questions.

Very truly yours,

E. Stanley Murphy

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