

Report on Alleged 2003 Amendments

Nisqually Estates Homeowner's Association [HOA]

Submitted by Rob Mendel to the Nisqually Estates HOA Board on
November 7th, 2011 for acceptance and incorporation into Meeting Minutes

Purpose: The purpose of this report is to make a determination based on the best available evidence as to whether Bylaws amendments passed with a proper member vote at the annual meeting of homeowners in November of 2003.

Background: In July of 2011, a newly seated Board discovered the physical and electronic records of the HOA to be in disarray and incomplete. The records consisted of a two-drawer filing cabinet, two boxes of unfiled and unopened correspondence and several disorganized loose-leaf binders. The website contained links to documents that were corrupted and disorganized. A homeowner challenged actions of the newly seated Board based on alleged 2003 amendments. The Board specifically discovered after its transition that the original minutes and all supporting documentation from the 2003 annual meetings were missing. There were no detailed or approved meeting minutes showing a record of the required number of homeowners for either a meeting quorum or a sufficient number of "yes" votes to amend Bylaws. Thus, there is no record that alleged 2003 amendments were duly passed at a legitimate annual meeting of the HOA. The Board sought to find evidence of these amendments by re-looking through all the files and requesting previous Board members to provide information or documents pertaining to the 2003 annual meeting. The Board also obtained a legal opinion on the proper way to determine the validity of any alleged amendments. This report summarizes the extensive efforts of the Board to look at the evidence of whether or not alleged amendments passed by a proper member vote (two-thirds of the membership) at the 2003 annual meeting.

Investigation: Board members searched the physical records of the HOA as well as conducted a forensic review of the old website to determine if there were any records at all pertaining to the 2003 annual meeting. We only discovered a newsletter, a copy of unsigned December 2003 Board minutes, and what appeared to be a draft or unofficial version of the 2003 annual meeting minutes. The newsletter referenced the alleged amendments but didn't indicate a vote count or how the amendments came to be. The unsigned December 2003 Board minutes

also did not indicate a vote count of how many homeowners voted in favor of the amendments, rather they only indicated that 42 homeowners were present (members and proxies combined). The draft or unofficial version of the 2003 annual meeting minutes also did not indicate an actual vote count. The minutes failed to show the actual language of the proposed amendments, what homeowners attended the meeting, any proxies that were given, a sign-in roster or ballots from the meeting. They did, however, indicate that six amendments were passed separately by only a **"majority"** vote as opposed to the required two-thirds vote of the homeowners. Article XV of the HOA Bylaws states that amendments must be passed by a two-thirds vote of the membership. Even if one interprets this to mean a two-thirds vote of the membership present at a meeting as opposed to two-thirds of the entire membership, these minutes themselves would indicate that the amendments were **not** properly passed.

The Board checked with the Washington Secretary of State, the Thurston County Clerk and Auditors offices to see if any Bylaws amendments were filed to the existing records of the Nisqually Estates Homeowner's Association. There were not any such filings.

The Board also contacted two past presidents of the HOA (one who was asserting that the amendments were valid) and asked them to provide either original documents or verifiable copies of documents showing that the amendments were passed by a proper vote of the membership. Neither person provided anything of consequence. In fact, one past president failed to provide anything at all despite saying that she had information and having over two months to provide it. The other past president did provide some material but nothing that showed that the amendments were passed by two-thirds of the membership at the annual meeting. Much of what she provided the Board already had knowledge of and the rest was not relevant to the question of whether or not amendments were properly passed in the first place.

Findings:

1. There are no original documents in the official records of the HOA pertaining to the 2003 Annual Membership Meeting.
2. No documents have been provided to the HOA showing that amendments were properly passed at the 2003 Annual Membership Meeting.
3. No Bylaw amendments are filed with the Washington Secretary of State or any other government office, to the best of the Board's knowledge.
4. The old HOA website did not contain any material showing that amendments were properly passed. In fact, the unofficial minutes for the November 2003 meeting indicate that amendments only achieved a **majority** of votes as opposed to the required two-thirds.

Conclusion: This report of investigation concludes based on the best available evidence that amendments to Bylaws were not passed with a proper member vote at the 2003 annual membership meeting. Unless conclusive evidence comes to light in the future that amendments were properly voted on and passed at the 2003 annual meeting, the HOA should continue to operate based on the original Bylaws.

Recommendations: Recommend that the HOA Board formally accept this report and incorporate it as a part of the November 7th, 2011 HOA Board meeting minutes. Also, recommend that the Board conduct an official vote, as recommended by legal counsel, to make a determination upon the best available evidence as to whether or not Bylaws amendments passed with a proper member vote at the annual meeting of homeowners in November 2003.

Submitted by: Robert A. Mendel

Rob Mendel

Date: 11-7-11

Approved by: 4-0

Vote of the HOA Board

Rob Mendel, President

Rebekah Cade-Jordan, Vice President

Alison Brackett, Treasurer

Denise Smith, Secretary