

An Aquarina Voice Emerges with Community Questions and Concerns

Hello Fellow Residents,

The Aquarina Community Services Association (ACSA) Board of Directors have and are carrying out independent actions that arguably may be outside the scope of our By-Laws and without a consensus of community approval, which has resulted in the spending of the residents' funds. Are they acting outside their bounds?

The Community Questions and Concerns

The Board of Directors has decided, without a Community Vote, to use our Residential Reserve Funds to “Change” a common element, the Administration Building, to accommodate the “Move” of a Common Element, the current and established workout/gym room.

Our current By-Laws of the Board of Directors' duties (that will follow) do not state the Board can “Change” and ‘Move’ our Common Elements, resulting in an expensive and possibly unnecessary cost, which will be explained.

The basis of these Community Questions and Concerns are couched in the expectation that our ACSA Board of Directors work for us and are our service center. Their function and responsibility is to maintain are assets and policies to keep Aquarina continually operational and policies adhered, i.e. the Board's duty. There is a pool of determined reserve funds from which the Board can use to carry out this duty.

See the following from The By-Laws addressing the Board's provided powers and the particular use of set aside Reserves to maintain assets and policies for the operation of Aquarina.

Nowhere does it list a power to “change” and “move” Common Elements.

Per the By-Laws Article 5, Section 13 the Board is given power to

- (a) Levy and collect assessments.
- (b) Provide maintenance.
- (c) Reconstruct after a casualty loss.
- (d) Purchase tools/equipment for maintenance.
- (e) Enter units.
- (f) Insure assets.
- (g) Enforce ACSA rights.
- (h) Employ personnel.
- (i) Promulgate rules.
- (j) Contract for maintenance and administration.
- (k) Borrow.

Per the By-Laws Article 7, Section 4 (b) Reserves are established for

- 1) Deferred maintenance
- 2) Replacement
- 3) Added Betterments

It is also expected that the Board is the steward and custodian of our community funds (our quarterly fees). The Board has a fiduciary responsibility that these funds are protected and spent per the stated direction of our adopted By-Laws. The spirit of this responsibility is to save funds, not spend them. Should the Board stray or overreach the specific language of these By-laws to justify spending that is questionable or not provided, e.g. the cost to change and move common elements, based on reasons that certainly are debatable? As a fiduciary agent for our funds, the Board's obligation is to follow the letter of the By-Laws. Shouldn't any other interpretation of these By-Laws to support a Board agenda and not a community consensus require attorney advice and counseling before any spending action is taken?

BOARD OF DIRECTORS' RESPONSE

Fortunately, Aquarina has an attorney, who specializes in homeowner association and condominium law, on the ACSA Board of Directors. Ironically and unfortunately, the current ACSA Board has not heeded the attorney's advice and counseling to reconsider the Board's actions in spite of the attorney's agreement with these Community Questions and Concerns.

Here is the ACSA Board's explanation to their possible problematic actions of what these Community Questions and Concerns have broached; however, the Board's explanation could be contrary to the Board's duties and responsibilities.

The ACSA Board decided to move the current gym/workout facility from its present agreed location at the 450 Aquarina Blvd. Clubhouse to the Administration Building. Why? Here are some matters and questions that arise with this decision.

- Apparently the Board believes that the Clubhouse is too small to accommodate community meetings and does not provide enough space for guest vendors who sell workout classes to our residents and maybe non-residents. The decision was to move the gym/workout facility to the Administration Building to create more space at the Clubhouse. To do this move the both the Clubhouse and the Administration Building need to be renovated to accommodate the move.

AN AQUARINA VOICE'S RESPONSE

- 1) The Clubhouse has never been filled to capacity where folks could not enter for a meeting. An Aquarina Voice can tell you that after two decades here; it has never happened. If a large crowd is expected, then Chapel by the Sea a few blocks down the road is available, which has been used before – though rarely.

- 2) The Vendors need more space? These Vendors that offer classes, which they are paid by the participants, do not pay the ACSA for the use of your Clubhouse. BTW - Have they provided proof of licensing and insurance, and does their insurance indemnify the ACSA for a participant injury? The Board says the Vendors need more space for their classes. The ACSA now has guest Vendors, who make money here at no cost to them, and the ACSA should incur an expansion expense in support of their classes? Would not a more logical approach be to to ask the exercise vendors to simply break up their sessions into two or more groups. This costs us nothing and is preferable and more economically sensible than this great expenditure of tearing out walls in our well designed community center and a complete remodel of our Administrative Building.
- 3) Again, the By-Laws do not spell out and provide the Board power to change common elements, like the present gym/workout facility, which should not be moved, removed, or changed unless there is a community consensus vote. This decision to change and move Common Elements is NOT provided to the Board in the By-Laws, but the Board in its sole discretion seems to have circumvented the By-Laws. Our Board Attorney apprised the Board not to proceed with this questionable and most probable prohibited action, but he was unheeded. See the attached excerpt of Minutes from the Board Meeting where this Common Element vote took place.

Consider the fact that when a community is developed, common elements are put in place to give value and attraction to the community to draw residents. These common elements can be the main reason why folks bought into the community, or at a minimum, a partial reason why the folks decided to take up residence.

Isn't it reasonable and logical that if there was a notion to move, remove, or change these common elements that it would a community decision and not a sole decision by a Board of Directors, when you consider the importance that these common elements are to the folks who use and enjoy them as they currently exist?

- 4) Also ignoring Board Attorney Advice, the Board signed a nearly \$90,000 agreement with a contractor to renovate the Administration Building to provide space for the moved gym/workout facility. The \$90,000 comes from the pool of reserves to maintain the assets and policies to keep Aquarina operational per the By-Laws, not a seemingly Board overreach to “change”, “remove”, or “move” Common Elements. BTW – this \$90,000 probably has exceeded the Board’s threshold for capital improvement spending, which is set to be \$75,000. Any amount over this spending cap requires a community vote. See attached Contractor Proposal for the \$90,000.

THE BOARD’S INDEPENDENT ACTIONS

- The Board decided to implement their independent and non-community based decision by applying for a County Building Permit under the pretense of storm repair and not a renovation to the Administration Building for it to be suitable for the gym/workout facility, and valued the work at \$11,000 and not the \$90,000 per the signed renovation agreement with the contractor. See the Permit Application enclosures.
- Before the Permit was approved and issued, which is still under review, the Board had the contractor begin the work. The results of this work can be seen in the photo enclosures. Concerned residents discovered this covert construction (interesting how it all seemed to occur over the Memorial Day Weekend with no day activity visible) and notified the County. The County came out to investigate, which resulted in **finer and a cease and desist to the construction.**

Because of County concerns now with required Fire Retention, Handicap accommodation, and sufficient Parking Space, at a minimum, the conversion of the Administration Building to a virtual additional Clubhouse will cause more stringent Permit requirements, all of which should dramatically increase the cost of the renovation, already at \$90,000.

What will happen now or next as a result of these Community Questions Concerns?

You, an Aquarina Resident, will decide. We are a democracy; a Board was voted in to serve the community and its residents per our adopted By-Laws. Has that occurred based on this Community Questions and Concerns? It certainly appears that the Board has become an Autocracy and is not functioning in a Democratic fashion. BTW –There are procedures to deal with a questionable Board within the By-Laws. Among other issues, can it be said that our quarterly fees are being overseen by the Board with a fiduciary responsibility, and is the Board acting as the steward and custodian of our community funds?

The Reality of what has been disclosed is that nearly \$90,000 of our reserve pool intended for repair and replacement of Aquarina’s assets to keep Aquarina operational has been, it could be said,

TAKEN. SPENT. WASTED?

from the residents by the Board in addition to the following possible **illegal activities.**

- **Commencing the process to move and change common elements (gym/workout room and Administration Building) without, it can be argued, a required community vote.**
 - **Submitting a somewhat fraudulent building Permit Application to the County.**
 - **Commencing work on the Administration Building without a Permit.**
 - **Causing and signing an agreement to perform a possible **non-permitted action** (moving and changing common elements) **at a cost above a limited spending amount.****
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TO REACT OR NOT

These Aquarina Community Questions and Concerns are meant to foster a meaningful community revisit and reconsideration of what the Board has wrought. You, the Aquarina Resident, will react as you will. Contact information is listed below for those that may want to discuss and maybe pursue this matter further.

Alternative voices have once arose in the past to a rogue developer who had owned Aquarina and ran Aquarina as an Autocracy, similar to what we may be experiencing now with the current Board of Directors. Is it time for another Voice other than the voice of our current Board, in light of the problematic conduct demonstrated? Unfortunately, Aquarina may have a Board that cannot police itself for the community's wellbeing, but might require alternative oversight.

OTHER MATTERS COMING

We, as residents, made a decision when we bought into this community, that there were a golf course and a tennis facility as part of the community amenities. These facilities, like the other community amenities require maintenance, which is obviously an ongoing cost. Each resident may have a favorite amenity and not be interested in all the amenities. However, it is the community's responsibility that these amenities are ALL maintained equally, BUT NOT having one amenity garnering the bulk of resident funds to make that amenity have more value than for which it was intended. Since the amenities of the tennis facility, the golf course, and the restaurant are businesses, funds for them should be strictly based on business model decisions and not impulse and political decisions.

Your thoughts for the Aquarina Community?

Go to the Blog www.anaquarinavoice.com

Current Status of Un-Permitted Work at Admin Building

