

BOCA BRIDGES HOMEOWNERS ASSOCIATION, INC.

Minutes of the Board Meeting

July 9, 2024

Call to Order

The meeting was called to order by Jon Schmidt at 6:01 p.m. This is a Zoom only meeting.

Quorum

A quorum was attained with all five Association Board Members present; Brian Doppelt, Jon Schmidt, Mark Schneider, Scott Samuels and Nicole Zoitass.

Proof of Notice

Posted in accordance with Association Documents and FL State Statute.

Previous Meeting Minutes

A motion will be made at the next board meeting to approve the minutes from the meeting held on June 19, 2024.

Vote: N/A

General Business

For the purposes of discussing the following:

1. A presentation given by Steven Rappaport, the Association's attorney regarding the filing of the 558 Construction Defect Claim filed by the Association on June 28, 2024.
 - a. Steven is a Partner in the Community Associations Practice Group of Sachs Sax Caplan.
 - b. Steven received his J.D., from Georgetown University Law Center, in 2001 and his B.A., magna cum laude, from the University of Florida in 1998.
 - c. He was admitted to the Bar in Florida in 2003 and D.C. in 2001.
2. Presentation as listed below.
 - a. **What is a 558 Construction Defect?**
 - i. Five Fifty Eight (558) is a statutory chapter reference to the Florida Construction Defect Statute.
 - b. **What is the Purpose of this Statute?**
 - i. Property Owners under this statute are required to provide contractors and others with a written notice of alleged construction defects and the opportunity to cure or resolve the construction defect claim before filing a lawsuit.
 - c. **Who is the Property Owner filing the 558 Notice in Our Situation?**
 - i. Boca Bridges Homeowners Association, Inc. or the "Association," is a Florida not-for-profit corporation and title holder of multiple parcels of land with improvements
 - d. **What Type of Improvements Does the Association Own?**

- i. The improvements include, but are not limited to, the Clubhouse, Tennis Facilities, Pools, Gatehouses, Entranceways, Lakes, Water Features, Private Streets, Sidewalks, Perimeter Fences and Walls, Street Signs, and Lighting.
- e. **How Did the Association Discover the Alleged Construction Defects?**
 - i. The Association engaged EPIC Forensics & Engineering, to provide professional engineering services. The result of these services produced a Property Condition Assessment 558 Turnover Report, concerning the condition of the property owned by the Association. This report was used to satisfy the 558 Notice requirements.
- f. **What Is A “Construction Defect”? Construction defects as reported include:**
 - i. Incorrect or incomplete work, poor workmanship, design errors, failure to follow industry or manufacturer standards or code requirements.
 - ii. Non-compliance with plans and specifications, field change or substitution from permitted plans and specs including items acceptable by code but of a lower quality or reduced life expectancy.
 - iii. Code Violation: Non-compliance with applicable building codes including referenced standards.
 - iv. Improper Pre-Turnover Maintenance: Failure to maintain elements of the property prior to turnover.
- g. **Has the Association Filed the Required Notice?**
 - i. The Association filed the Notice of Claim on April 29, 2024.
 - ii. GL Homes after receiving the Notice of Claim has seventy-five (75) days to provide a written response to the Association.
 - iii. We are anticipating a response next week.
 - iv. GL Homes has already begun the process of fixing construction defects.
- h. **Why the Need for Filing a Lawsuit if the 558 Claims Procedures Were Being Followed?**

Florida Senate Bill 360 amended existing law:

 - i. With respect to causes of action based on improvements to real property.
 - ii. Shortened the timeframes within which a property owner may bring a cause of action against a builder for alleged construction defects. Specifically, it:
 - a. Revised the commencement of the 4-year statute of limitations by changing the potential commencement dates and causing the statute to run based upon whichever date is “earliest” instead of “latest.”
 - b. Revised the 10-year statute of repose to 7 years.
 - iii. Narrowed the scope of certain statutory civil actions against builders for Florida Building Code violations.
 - iv. Actions or claims that would not have been barred by the prior version of the statute were granted a grace period, with the Association having until July 1, 2024, to commence their claims.
 - v. This lawsuit was filed because of these changes in the statutes regarding the timing of filing a lawsuit to pursue the claims.
 - vi. The Association will hold off on serving the complaint for 4 months to allow GL Homes an opportunity to amicably resolve the claims.
- i. **What Actions Has the Board of Directors Taken?**
 - i. The Board of Directors at a duly noticed meeting on June 19, 2024, adopted the Resolution authorizing the Association to file a formal 558 construction defect claim enforcing the Association's rights and remedies.
 - ii. The Board of Director, in their business judgement, believes that this filing is in the best interests of the Association and all residents within the Association.
- j. **Why is the Board Asking the Members to Vote to Ratify This Action?**

- i. Under Florida Statute 720.303, subsequent to turnover control of the Association from GL Homes on September 30, 2023, the Association may institute a lawsuit regarding construction defects claims.
- ii. Before commencing litigation, the Association must obtain the affirmative approval of a majority of the voting interests at a meeting at which a 30% quorum has been attained.
- iii. For Boca Bridges, this means that the Board Resolution needs to be ratified by a vote of a majority of at least 152 voting members.
- iv. The ratification is necessary to preclude an argument by GL Homes that the claim was not properly commenced.
- v. If GL Homes was able to defeat the claim, then there is no ability to recover monies or services from GL Homes for construction defect claims.
- vi. Your vote is most important to the Association in order to preserve its rights and remedies with respect to these claims.

3. Pre-submitted questions by email:

a. Debra Bickoff: I have three questions for the meeting tonight.

- i. If the HOA is not successful in obtaining a positive vote from the community, can the lawsuit continue or is there a time limit and we would not be able to proceed?
 - a. We will still move forward, but we are optimistic that we will obtain a minimum of at least 152 voting members to ratify this action.
- ii. How much money has been spent on engineering studies and legal fees to date?
 - a. ≈ \$87k in engineering costs, ≈ \$20k in legal fees
- iii. Will the HOA be able to proceed with needed repairs now that the lawsuit has been filed? We were previously told that repairs could not take place as we would be destroying evidence.
 - a. We are actively resolving, continuing to negotiate, and yes- we can start moving forward and allow GL to begin some repairs and negotiate repairs.

b. Bob Sacheli would like the following question posed at this evening's meeting.

- i. Per Article XII, Section 12 of the HOA bylaws, it states: "... the Association shall be required to obtain the approval of three-fourths (3/4) of the total voting interests (at a duly called meeting of the Owners at which a quorum is present) prior to engaging persons or entities for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit "
- How does the HOA Board's filing of the lawsuit against GL Homes, without attaining prior approval, not violate this?**
- a. This is unenforceable and was a self-serving provision for developers.

c. Stuart Shanefield – I have been on 2 prior boards in GL communities and GL always offered a fair settlement without us spending thousands of dollars on legal fees.

- i. **I would like to know why we have not engaged in negotiations prior to trying to sue?**
- ii. **I have been on 2 prior boards in GL communities and GL always offered a fair settlement without us spending thousands of dollars on legal fees.**
- iii. **I guess this is why there are bylaws preventing the Board from trying to take action on their own as they are trying to do now.**
 - a. We have been actively negotiating with GL without the need of excess litigation. You need to spend something though on things such as engineer reports. The need to file now is to satisfy the statute of repose.

- d. Jason Feldman
 - i. I would like to know how much the board has spent on legal fees to date and what the fee arrangements are. (Hourly vs contingency, etc.)?
 - a. Roughly \$20k, and strictly hourly-not contingency based.
 - ii. I would also ask if they expect to amend the lawsuit. (They are asking for \$50k so almost definitely yes)
 - a. We are not asking for \$50k, we need to state a minimum in order to file in circuit court vs county court. Anything <\$50k goes to county court.
 - iii. Are we asking GL for money only or to do the work?
 - a. We are seeking a combination of fixing as many defects as possible and a settlement to hopefully have funds to fix things in the future.
 - iv. What happens if we fail to reach the minimum amount of votes needed or if the vote is to rejected this?
 - a. I don't think we will be in that position and I don't think this is going to be an issue.
 - v. Because I was previously on the board and have privileged information I prefer to protect the community by not asking other questions I have and want to ask. I don't want to compromise our claim.
 - a. Well good, I'm glad you won't discuss or mention anything that is considered attorney-client privilege nor disclose confidential information that could jeopardize our case.

4. Open Forum Questions on Zoom

No questions to report.

Adjournment

By proper motion and support, the meeting was adjourned at 6:27 p.m.

Respectfully Submitted,

Nicole Zoitas

Secretary, Boca Bridges Homeowners Association, Inc.