

January 5, 2023

VIA U.S. MAIL

Scott Lake Maintenance Corporation
Attn: Eric Riffe, President
2631 114th Way SW
Olympia, WA 98512

Dear Mr. Riffe:

We have been asked to offer our advice concerning two recently received petitions calling for a special meeting of the members of Scott Lake Maintenance Corporation (the "Association") on January 20, 2024.

Factual Background

On December 27, 2023, the Board received the first petition ("First Petition"). The purpose of the First Petition was to, among other things, recall five (5) of the currently seated directors and to elect five (5) new directors.

On January 2, 2024, the Board received another petition ("Second Petition") accompanied by a cover letter signed by member Sherry Stacy which states that the Second Petition "REPLACES" the First Petition. It calls for, among other things, a vote to recall *all* currently seated directors and to elect new directors to the Board.

Both petitions appear to have been signed by at least ten percent (10%) of the votes in the Association.

I understand that, at the time the Second Petition was received, the Association had already printed ballots and other materials to recall the five (5) directors identified in the First Petition. A meeting of volunteers had been organized on the evening of January 2nd to stuff envelopes and get the materials mailed to members with the legally required notice of at least fourteen (14) days in advance of the special meeting.

You contacted me immediately after receiving the Second Petition expressing concern that the Association would likely not be able accomplish all of the tasks necessary to revise the special meeting materials consistent with the Second Petition and still provide legally required notice of the meeting to the members.

Analysis

1. Replacement of First Petition.

While the Second Petition, itself, does not indicate that it replaces the First Petition, we understand that Ms. Stacy has been instrumental in organizing this petition drive and assume for purposes of this

letter that it was the intent of all signatories to the Second Petition to “replace” the First Petition. Moreover, the Second Petition is not necessarily inconsistent with the First Petition. It is simply more comprehensive.

Thus, I think it is safe for the Board to operate under the premise that the Second Petition does, in fact, replace the First Petition and that the First Petition need not be acted upon.

2. Notice to Members of Special Meeting.

RCW 64.38.035 provides that special meetings of a homeowners association (HOA) may be called by “owners having ten percent of the votes in the association.” The statute also provides: “[n]ot less than fourteen nor more than fifty days in advance of any meeting of the association, the secretary or other officers specified in the bylaws shall cause notice of the meeting to be provided to each owner in accordance with this chapter.”¹

The question that arose is whether the fourteen (14) day notice period refers to the date that the special meeting materials are mailed or delivered to members. Since mail can take a matter of days to arrive at its destination, the interpretation is significant. With the Second Petition received on January 2nd, the new materials would have had to have been mailed not later than January 6th (assuming the 14 days applies to the date of mailing). I am informed that this would have constituted a heavy (and perhaps impossible) lift for the Association. In any event, I do not believe that is the correct interpretation of the foregoing statute.

I am aware of no on-point case law, so it must be conceded that this is somewhat of an open question. Nonetheless, I think the spirit and intent of the statute is for the Association to send out notice in sufficient time for all members to have not less than fourteen (14) days’ notice of the special meeting. Such an interpretation gives all members two (2) weeks to consider the issues to be voted upon and to make arrangements to either attend in person or issue a proxy. If, instead, the fourteen (14) days refers to the date of mailing, then this would seriously disadvantage some members. For instance, if a member resided in Canada or in another state for the winter, mail may take days, and even weeks, to arrive at its destination. Even with local deliveries in Thurston County, you have indicated that it can take approximately three (3) days to receive mail. Thus, if the Association notice were mailed out exactly fourteen (14) days in advance, some members would have a rather reasonable period of time to make arrangements to attend or issue a proxy; whereas, other members may only have a couple of days.

Granted, the Association can never guarantee that a member will receive mail by a certain date, but I think the Board has a responsibility not to disenfranchise or disadvantage members of the Association by sending out the notice on the 14th day prior to the meeting. That is especially true when voting on such an important issue as recalling all directors from the Board.

To ensure all members have adequate notice, I recommend that the Board reschedule the special meeting to a later date, preferably on a Saturday as the two (2) Petitions requested. The rescheduled date should be scheduled as soon as practicable following the January 20th date and should be on a

¹ I acknowledge that the Association’s bylaws only require 5 days’ notice. However, since RCW 64.38.035 is the more protective provision of members rights, it would control in this instance. Fourteen days minimum notice is required by law.

date that is likely to afford members at least fourteen (14) days notice of the meeting. It is my opinion that these steps do not constitute a violation of RCW 64.38 but rather are necessary and proper steps to satisfy the spirit and intent of the statute.

3. Matters to be Voted Upon.

Both of the Petitions called for an immediate election to fill the positions on the Board that would be vacated if a recall vote as to any director is passed by the membership. I understand that when a prior Board was removed by a similar petition process, the Association's attorney at that time endorsed this approach. I disagree. I believe a vote to fill vacancies on the same day as a recall election is inappropriate for a variety of reasons and is "out of order."

First, the vote has been called by signers of the petition even though the bylaws do not allow vacancies to be filled by election. If the motion to recall any director is not successful, those surviving director(s) have the duty and obligation under the bylaws to appoint members to fill the vacancies.

Second, this vote to elect directors has been called in anticipation that the recall vote may be successful as to all directors. The vote is premature because the recall vote has not yet occurred.

Third, because it appears on the same ballot as the recall vote, it could unduly influence the election on the recall vote. For example, a member may vote yes on the recall vote just because they prefer one of the candidates proposed for election over a sitting director. The vote to recall should stand alone.

Despite the foregoing concerns, I agree with the petitioners' implicit concerns that the Association must continue to have a functioning board. Plans must therefore be put in place to deal with a possible full recall. Accordingly, I recommend calling a second special meeting to be held immediately following the conclusion of the first special meeting. The second special meeting would *not* be called to order if one or more directors survived the recall vote because, in that case, the surviving directors would be obligated by the Bylaws to fill the vacancies on the board until such time as a quorum is achieved. Once a quorum were achieved, the newly constituted board could take other actions on behalf of the Association, including filling the remaining vacancies.

If it turns out that all directors are recalled at the first special meeting, the second special meeting should be called to order solely for the purpose of electing directors. I understand that the Association does not have an elections manual describing any process for nominating directors. Accordingly, I recommend that the normal, historical practices be followed for nominating and electing directors. Any director who was recalled is eligible to run for election.

Since no board members would be available to run the meeting in the case of a full recall, I recommend that the Board hire a parliamentarian to be present at the first special meeting and, in the event it is necessary, the second special meeting. I further recommend that the Board adopt a resolution in advance of the special meetings whereby the Board appoints the parliamentarian to act in the place of the president (whose office is at that point vacant) to oversee the second special meeting and ensure that the vote to elect a new board is conducted in accordance with applicable rules of procedure. Once the election is complete, the new board takes office and can hold an initial meeting.

I trust this letter is helpful to the Board in carrying out the demands of the petition while fulfilling its legal obligations to the membership as a whole.

Sincerely,

CSD ATTORNEYS AT LAW P.S.



Richard A. Davis III

RAD/egl
cc: Client