

BRICKYARD CREEK COMMUNITY ASSOCIATION (BYCCA)

A BRICKYARD CREEK UMBRELLA AND CONDOMINIUM ASSOCIATION(S) PARTNERSHIP

Background and Overview

With the merger of the Brickyard Creek Condominium Associations (Condo Association), the Brickyard Creek community is now challenged to move forward with consolidating the governance and operational roles of the Brickyard Creek Condominium and Umbrella Associations to create a functional Brickyard Creek Community Association serving both condo and lake homeowners.

ORIGINAL PLAN: The original plan contemplated amending the declarations of the Umbrella Association (Umbrella) so as to authorize it provide needed administrative, financial, and operational management services for both condominium and private home communities. While this seems like a simple and logical extension of the Umbrella's already broad authority and responsibilities our attorney advises that such an amendment would require a vote of approval by condominium and lake homeowners and passive review and approval of all first mortgage holders.

AN ALTERNATIVE: A formal operating or partnership agreement could be executed between the Condo and Umbrella Association which achieves the same result. Currently (and for low these many years) the Brickyard Creek Expandable Condominium Association, popularly known as BYC I, has been informally playing the role of business manager and management services organizer of a broad array of financial, administrative, and operational services authorized by the boards of the Condo and Umbrella Associations informally acting as one. Formalizing this current practice would avoiding the cumbersome, costly, and time-consuming declaration amendment process. The community would be formalizing the successful way that things are currently operating. It appears that nothing prevents the two organizations from entering into such an agreement.

ANALYSIS and DISCUSSION

The Umbrella Association (Umbrella): Brick Yard Creek is a self-contained community of private homes and condominiums in which essential infrastructure and amenities are used in common. The Umbrella Association is responsible for the maintenance and improvement of these common amenities and infrastructure elements while also serving as the legal home for the Roy's Point Shores (RPS) and Brick Yard III (BYC III) Lake home properties.

- By Declaration, the owner of each Brickyard Creek Condominium, RPS and BYC III Lake Home property holds one (1) voting membership in the Umbrella Association.
- By Declaration, the Umbrella Association has responsibility for maintenance and improvement of infrastructure and amenities which are used in common by all residents of Brickyard Creek. These include common access roads, hiking trails, bridges, beach/picnic, and parking areas. It also holds associated road, beach area and utility easements and has the authority to acquire and own property.
- The 14 Roy's Point Shores and Brickyard Creek III Lake Homes are attached by addendum to the Umbrella Association. The Umbrella Association, however, is not a homeowner's association

for the lake homes and the lake homeowners have not formed an independent homeowner's association.

- The Umbrella Association acts as fiscal conduit through which the lake home property owners' annual assessments are collected, and proportional payments are made in support of the Boards approved BYC annual budget.
- Lake homeowners are invoiced semi-annually for "association" assessments. These are set at 75% of the condo assessments in recognition of the fact that the homeowner is not responsible for maintenance of roads which do not provide access to their homes. For example, lake homeowners are not charged for the graveling of Sophie, Olivia, and Madeline or any of the roads in the Brickyard Creek Phase two area south of Roy's Point Boulevard. Additionally, on their properties lake homeowners are personally responsible for hazardous tree removal and forest maintenance, snow plowing and graveling of their driveways. The Condo Association fees cover these items for condo owners. Lake home assessment revenues accounted for 17% of all assessment revenues collected in 2020.
- These assessments are deposited in the Umbrella Association checking account. By "agreement" and historic practice the BYC Condo Association, acting as fiscal agent and business manager for our combined condo and lake home community, "charges" the RPS and BYC III homeowners a proportionate share of the costs of expenses for administrative, financial, and operational services authorized in the annual "boards" adopted budget. Charges are assessed based on a cost allocation formula developed by the BYCCA manager and bookkeeper.
- The Umbrella is required to maintain separate books and make required tax filings. It holds small, reserve accounts and a checking account which is used to pay BYC Condo Association Invoices and make annual contribution reserve accounts. Typically, the Umbrella Association checking account "breaks even".
- Beyond maintaining separate checking and reserve accounts and filing required tax returns the Umbrella Association performs no operational functions.

BYC Condominium Association: By tradition and historic practice (initially set-in motion by Bob Davidson during his time as declarant) the Brickyard Creek Expandable Condominium Association (commonly known as BYC I) established the practice of using BYC I Association as the business and financial "hub". As the community evolved and Davidson's periods of Declarancy ended the practice continued and evolved. When the community adopted the "Associations" model of operations and governance the following "state of play" emerged in which the BYC I Condo Association continued in the role established by Davidson as follows:

- Functions as the single fiscal agent, business manager, and management services provider for the multiple condo and Umbrella associations Although its role is not spelled out contractually it functions like the management services contractor for the community. It hires the manager, contractors, pays taxes, purchases needed insurances, handles preparation of bank and real estate required closing and financing materials and forms, develops and maintains a BYC Community website, staffs the Architectural Control Committee, manages all reserve accounts, and manages the checking accounts for the Condominium and Umbrella Association etc.
- Supports the development of a single, integrated community-wide budget which is adopted annually by the combined boards of the Condo and Umbrella Association (historically known as "The Associations"). This budget also sets the annual assessments and details all services to be authorized and provided.

- It is worth noting that historically the BYC I Association handled all administrative, financial, and operational services for the BYC II and III Condominium Associations. All condominium assessments are held in the BYC Condo Association checking and savings accounts and all reserves were held in BYC I Condo Association CD's or savings accounts. As BYC II and III are now merged into BYC I it continues in this role and function.
- Supports the integrated operation of the three Architectural Control Committee established by the declarations of the BYC Condo, RPS, and BYC III lake homes.

Governance

- Legally Brickyard Creek has been “organized” as 4 separate associations – the Umbrella and 3 Condominium Associations– each with the legal requirement to annually elect a separate Board of Directors.
- By agreement and tradition, the Brickyard Creek community as has operated as one entity – electing an at large Board of seven (7) Directors who technically serve as dually elected members of each of the 4 above referenced boards.
- With the merger of the condominium associations governance responsibility now rests with the Boards of Brickyard Creek Expandable Condo Association and the Umbrella Association and their commonly elected Board members.
- As described above, these “terms of engagement” have worked successfully for low these many years. There exists, however, no formal agreement between the Umbrella and Condo Associations formalizing a commitment to or the operating the terms of the working relationship between the two Associations.

CONCLUSION and RECOMMENDATION -

Following Golden Rule #2 – *“If it ain't broke; don't fix it” it is recommended that we pursue the “Alternative” suggested above.* A foundational requirement would be for Boards of the Brickyard Creek Condo Association and the Umbrella Association to adopt a resolution which formally commits each organization to a partnership agreement which commits the associations to electing a single, common board of directors, to jointly providing for all needed Administrative, Financial, Operations services, and which organizes appropriate governance structures and rules. This entity would operate under the name of **The Brickyard Creek Community Association.**