

**GREEN DOLPHIN PARK 9th Fairway CONDOMINIUM ASSOCIATION**  
**Board of Directors Meeting**  
**Monday, April 19, 2021 at 3:30 p.m.**

1) **CALL TO ORDER:** By President Mary Withers at 3:41 p.m.

**INTRODUCTION OF GUEST CHAIRPERSON Kathleen Reres with Shumaker, Loop & Kendrick, LLP**

**QUOREM ESTABLISHED:** Present: Mary Withers, Trifon Michalos, Sandra Holubar, Joanne Flanders, Jim Craig (by telephone), Toucan Property Mgmt. (Kim and Bob Bennett), and Kathleen Reres, Legal Counsel

2) **VERIFY NOTICE OF POSTING:** Postings verified

3) **APPROVAL OF PREVIOUS MINUTES**

Minutes of Feb 15, 2021 meeting were not read, Trifon requested a change to page 2, Old Business, stairwell replacement, add "the next scheduled stairwell replacement will be in 2023. Motion to approve by minutes as written by Mary, 2<sup>nd</sup> by Trifon, carried unanimously.

4) **FINANCIAL REPORT:** Per Trifon for reporting period ending 3/31/2021.

Total Assets	\$ 311,816.63
Total Liabilities	\$ 19,957.77
Total Net Worth	\$ 291,858.86
Total Net Worth & Liabilities	\$ 311,816.63
Total Revenue	\$ 36,503.92
Total Expense	\$ 45,136.44
Net Income	\$ (8,632.52)

Motion to approve the financial report by Mary, 2<sup>nd</sup> by Sandra, carried unanimously.

5) **MANAGEMENT COMPANY REPORT** (by Bob Bennett, Toucan Property Management)

- Critical System Solutions, our fire safety contractor, will begin repairs on the sprinkler system in the garage this June. Watch for signs in the bulletin board for more information.
- We will be getting Uni-Coat out here to inspect and clean the roof as required by our warranty. They employ a light power spray was, so when that is scheduled, we will post notices on the bulletin boards.
- Owners and tenants are reminded that items are not to be left out in the garage-common area.
- Neil will resume cleaning the front façade of the buildings as soon as he has completed making repairs to a couple of units in the 1800 building that are experiencing some water intrusion.
- The hole in the asphalt between the 1700 and 1800 buildings was checked out by our insurance company and an expert from the state. We are awaiting permission to refill it and cold patch the asphalt as it is not a sink hole, just a washout.
- Toucan Property management is closing down shop. We are retiring. We appreciate very much those that have supported us, and we wish you well. Our last day will be June 30, 2021.

## 6) OLD BUSINESS

### a) 1700 elevator refurbishment price change

1700 elevator refurbishment price change Per Trifon the 1700 building elevator is the last to be refurbished, the price increase was due to the expiration of the original quotation (2019). Motion to approve the price increase and proceed with refurbishment with funds coming from reserves by Mary, 2nd by Joanne, carried unanimously.

### b) Updated rules and regulations

The revision from the attorneys only arrived today, this item is tabled until the August 2021 meeting.

## 7) NEW BUSINESS

### a) Reserve Study

Kathleen explained what a Reserve Study and Reserve Account are and our statutory obligations. She recommends we do it as soon as possible rather than put it off until 2022 because we have not had one in the past and because of the DBPR complaint. Note: 2 quotations were obtained from organizations performing reserve studies.

Jim moved to have the reserve study performed by Reserve Advisors per their quotation, as soon as possible, and immediately add the cost for the report as a line item to the budget, 2<sup>nd</sup> by Trifon, carried unanimously.

### b) Spectrum service update

Trifon negotiated an improved contract with Spectrum for our cable service. Our current contract at \$46/mo./unit (expires Dec 31st, 2022) covers: Basic Cable The proposal provides for the following bundle at \$53/mo./door (with 4% maximum increase/year), for 5 years (can be implemented within 60 days of notification). 2 High-Definition Cable Boxes (additional boxes would cost owners \$7.99 ea.) 300+ Digital & HD Channels (Premier Package) Access to On Demand Choices including HD and movies in 3D Stream live TV and On Demand content with the Spectrum TV App. 400 MB Modem Speed with Wireless Router Service included No Data Caps.

This bundle will cost \$7/mo./unit more but will potentially save owners \$58/mo. in bundled cable costs. Owners will be responsible for paying for any # of boxes over 2, and any land line telephones.

### c) Toucan Property Mgmt. Resignation and selection of new property mgmt. company

Toucan Property Management will resign/retire effective June 30, 2021. They have been a huge asset to the 9<sup>th</sup> Fairway and done an excellent job. We wish them well and will miss working with them.

6 management companies were researched, 2 were contacted for interviews and quotations by Mary and Joanne. Each board member was provided information for review (individual, not as a group). The recommendations were unanimous for AmeriTech based on the services they provide, including a professional, informative website for owners. They are an offsite company, in business for 20+ years and still service their original account. The cost the 1<sup>st</sup> year is \$1/per door/month less than we are currently paying.

Mary moved to approve AmeriTech as the new property management company effective July 1, 2021, 2<sup>nd</sup> by Sandra, carried unanimously. AmeriTech will work with Toucan to transfer services seamlessly and will come onsite to do a presentation to owners.

**d) Change of Association Bank**

Bank of the Ozarks has been difficult to work with for years. The new management company requires we utilize a different bank. AmeriTech will work with Toucan to move the account, the transition should be seamless for owners. Mary moved we change the association bank from Bank of the Ozarks to BB&T as soon as possible, 2<sup>nd</sup> by Joanne, carried unanimously.

**e) Process for communicating concerns to Board**

Kathleen recommends we include this process in the Rules and Regulations revisions currently in process. She stated board positions are an unpaid volunteer job, their privacy outside doing association business must be respected. If you have an issue, you should contact the property management company 1<sup>st</sup>. If you do not receive a response within 48 (business) hours, you may send an email to the president, and may request it be added to the next meeting agenda if appropriate. The 48-hr. wait does not apply to real emergency situations, but you are still to contact the management company BEFORE contacting a board member. You should also respect and abide by property management's business hours. Having an onsite management company has been very convenient, their willingness to help outside their posted business hours has repeatedly been abused.

**f) Complaints to the DBPR**

Kathleen overviewed the complaint. The 1st of the month the DBPR notified the association of a complaint by Terry Wischer citing numerous infractions. The only issue they determined worth reviewing is our funded reserves. Anyone can file a complaint, the DBPR then assigns an inspector, and they have reached out to the association for a response within 15 days, we have asked for an extension and received it.

We must explain/report how we have funded reserves appropriately over the years. If they determine we have not funded appropriately for past, present, and future expenses, they can demand a Cease and Desist and/or order Affirmative Action and can assign a penalty fee that would come out of reserves. This could be a minimum \$500 penalty or up to \$30 per door.

The DBPR is not investigating anyone absconding with funds, etc., only whether we have been collecting enough fees to fund our reserves, and if action was taken to provide information expediently. They can issue an order to correct funding the reserves without a fine.

Reserve accounts are governed by the state and must include money for any expense over \$10,000. There are 2 types of reserves. Straight Line Reserves – can only use the money set aside for what it is set aside for (create a “pot” for that item), you cannot take money from one pot and put it in another. To do this type of reserve an additional 15% extra per line item (per pot) is required to cover unexpected expense which would require a higher per month fee per door. Pooled Reserves – what we use – puts all reserve items in a 30-year plan. You must budget to have the appropriate amount of money each year to do everything, but the monies are not put in specific “pots”, so you can move it around as needed. If you do not want to fully fund, the membership would vote to partially fund current year or increase the next year(s) or do an assessment. If a partially funded budget does not get passed by membership, the fully funded automatically goes into effect.

Our current budget calls for an assessment in 2027 if we do not increase fees now. The plan was to incrementally increase fees so an assessment would not be necessary. When the DBPR looks at this, they will say a “balloon” payment in 2027 is not an option and they will come up with a budget for us (we will have no say). The board has a fiduciary obligation to fund reserves, their hands are tied – reserves are mandatory and statutory. Membership does

not approve the fully funded budget, only the partially funded budget. We will respond to the DBPR regarding the complaint and ask them to please not fine us, we are doing a reserve study and will address and correct any budget issues. We can put a fully funded budget in place now – or – have a vote to implement a partially funded one as we did not previously have a vote. Trifon reminded the group that last year the board worked on a budget to fully fund the reserves but received numerous complaints about a \$16 increase in fees, so it was decided not to increase them – that is why we are underfunded.

Kathleen said if you do not give the association the opportunity to fix a problem you feel exists, go through the property manager first, filing a complaint with the DBPR should be your LAST resort and should not be used as part of a vendetta against specific board members. Filing a claim (regardless of outcome) creates the need for legal representation which costs the association money, they also have to file a claim on our Errors and Omissions insurance policy which could increase premiums in the future. Claims with the DBPR are a costly, time consuming process.

The question was asked how much the association has incurred in legal expenses so far, there was not a number available, but it is in the thousands of dollars (which is not in the budget).

**g) Petitions for removal of board President and board Treasurer**

2 petitions signed by 14-unit owners were presented to Toucan Property Management. The petitions were not legal as the names/signatures are not dated and there is no confirmation of ownership. The petitions call for a vote by membership to remove the president and treasurer. The board does not initiate a vote in this type of matter, the petitioners are responsible for doing this (vote by proxy to all members with a specific number of votes in favor required).

If you wish to remove a board member you have several options, you can do a recall by written agreement and have all (100%) of owners sign it. Or you can do a recall by vote – 10% of the membership must call the meeting, not the board of directors, and have persons willing to step into those board positions.

At this point in the meeting several members spoke out regarding the petition, one expressed immense disappointment in the signers and their lack of respect for the thankless job the volunteers do and wondered if the people who signed the petitions could be forced to pay for the attorney fees to resolve it. Several signers stated they did not sign for a vote (although the petition clearly states it is for a vote), but rather to get clarification of rumors.

Kathleen stated there are tools available to get answers to questions that are much less costly financially and emotionally to everyone.

**8) OPEN FLOOR FOR COMMENTS:** Kathleen elected to let people speak more than 3 minutes if the discussion merits it and ownership approves.

The schedule for stair replacement was criticized as to the contract and how it had been budgeted, criticism was also noted that only 2 companies were contacted for quotes. Toucan responded the scheduling was based on the recommendations of a professional engineer; the budget schedule has no bearing on the order in that situation. Kathleen commented it is the boards' fiduciary responsibility to do it according to professional's recommendation. Toucan also reported they contacted 6 companies to quote the stair project, only 2 came back with bids, we chose the company that would use the materials recommended at a lower cost. The quotes and contract were received/implemented in late 2019 so completing a

stairway in 2019 was not possible, that is why the scheduling had to change, but 2020 and 2021 were completed as scheduled.

An owner was critical of the way the board responded to his complaints about the stair process, that a search committee should be put in place for projects like this. Kathleen responded about criticizing the BOD when they step up to volunteer because no one else wants the jobs, that they would be happy to have volunteers help, but have the right to select from a pool of volunteers who to put on a committee. More people need to step-up if they want things done differently.

An owner questioned why anyone would be in favor of an underfunded budget. Kathleen responded a fully funded budget would involve setting money aside in an interest-bearing account to have it there for projects, a type of up-front assessment then letting it sit until needed – VS - approving a partially funded ongoing budget so people can plan financially each year, this ensures funding will be there for projects in the future without a big up-front assessment to owners for a fully funded budget.

The individual who filed the DBPR complaint questioned who the attorney represents – the association or the board, why the association did not wait until the stairways are condemned prior to replacing them. How the attorney handles violations of rules, violations of signatures on contracts, and what about when the president does not read a contract they sign, etc., etc., etc. Kathleen responded the president does not have to sign contracts; the responsibility can be delegated to another officer of the board. She responded the other items he was citing were issues he included in his complaint to the DBPR, and they disallowed them from the complaint for lack of evidence or truth. The owner continued his accusations at which point Kathleen asked the other owners in attendance if they would like her to enforce the 3-minute rule and ask him to stop talking and leave the meeting. The response was an overwhelming yes, he left the meeting with loud exclamations on his way out.

Several members in attendance expressed their remorse and disgust for what the Board and Toucan had been subjected to and how their time and efforts on behalf of the association are greatly appreciated. Several owners thanked Toucan for their service and wished them the best in their well-deserved retirement.

**9) NEXT MEETING is Monday, Aug 16, 2021 at 3:30 p.m.**

**10) ADJOURNMENT:** Motion to adjourn by Trifon, 2<sup>nd</sup> by Sandra, carried unanimously. Meeting adjourned by Mary at 5:46 p.m.

Respectfully submitted by  
Sandra Holubar, Secretary