

# **THE FALLS OWNERS ASSOCIATION, INC.**

## **Minutes of Meeting of the Annual General Meeting Friday, February 28, 2014**

Pursuant to the bylaws of The Falls Owners Assoc, Inc. (FOA), the annual meeting was held on Friday February 28, 2014 in The Conference center at 1740 N Falls Dr New Ulm, Tx 78950 at 10:00 A.M.

### **Presiding Officers:**

Dr Billy C Ward	Position	President
Laurie K Stoner	Position	Vice President/Treasurer
Beth C Swalm	Position	Secretary/Director

### **Quorum:**

There are 257 lots in sections 1, 2 and 3. The falls JV-L owns 102 lots and 109 owners were present by proxy. A quorum was represented.

### **Minutes of previous meeting:**

There were no minutes for 2013 annual meeting and it was presumed that no meeting was held.

A question was raised by Linda Skiles, owner, about the need to have minutes recorded for the meeting.

Bill Rothrock and Larry Wiley, owner, expressed concerns the current directors appointed themselves as officers/directors for the renewing/remaining terms. Larry Wiley recited past historical meetings where few owners were in attendance and that directors were elected prior to 2010. Beth Swalm stated that there is nothing wrong with re-electing the same directors. There were no directors left and therefore The Falls Corporation could and did appoint the directors.

Point of order: Linda Skiles, owner, stated that The Falls Corporation had no ability to appoint directors to the Board of FOA. Beth Swalm stated that she was not an appointed director (not a board member/director) however appointed replacement directors when in April 2013 the then directors resigned their positions. They appointed Billy Ward, Laurie Stoner and Beth Swalm as directors and officers of FOA without notification to the homeowners.

Discussion of board members terms: Owners Linda Skiles and Ken Wied asked for each director to identify their term and position. David Arnold, filled the remaining term of Beth Swalm (2010), Steve Patton (Secretary Treasurer/Director), was re-appointed for another 3 year term. Billie Ward and Beth Swalm reviewed the minutes of 2010 and 2011 to review the terms of the directors and the respective officer positions:

David Arnold Position Vice President

Claude Manning Position President

Steve Patton Position Secretary Treasurer/Director 2011 re-appointed

In 2013 with the resignation of Steve Patton, Beth Swalm was appointed to serve out his remaining term with/by the remaining officers David Arnold and Claude Manning.

President Billie Ward called for the nomination of Beth Swalm to replace her expired term.

Point of Order: Ken Wied, owner, regarding the call for nominations from the floor for the election for the annual director position that comes up for election; Ken clarified the reference in the by-laws for proper nominating procedure.

Billie Ward called for nominations from the floor. Jim Green, owner, nominated Ken Wied, owner, to fill the position of the expiring position of Beth Swalm, Director. The nominations were closed, a vote was called, the owners by proxy voted along with owners in attendance the vote passed by majority; motion was carried.

President Billie Ward called for the vote for the sole nominee Ken Wied. The nominations were closed, a vote was called, the owners by proxy voted along with owners in attendance the vote passed by majority; motion carried.

Billie Ward reviewed the agenda of the meeting.

### **Treasurer's Report:**

Treasurers financial report FYE 2013 and budget FY 2014. Laurie Stoner, treasurer presented her report and budget. There was a handout presented at the meeting. Treasurer/ Laurie Stoner stated her only purpose is to add value by coming close to or at least to making a profit. Treasurer reviewed her intention of equalizing the differential in fees certain home (lot) owners paid \$240, as maintenance assessment (did not include social membership) others pay \$1400 (as a fee for certain lot owners that encompassed recreation amenities usage fees.) The treasurer referred to "Lot files" for owners on file with The Falls that reflected some fees that ran with the land, no documentation was presented at the meeting. The treasurer referred to lot owner interviews that purportedly required two fees: A lot owner assessment of \$120 and recreational assessment of \$600 a year. The treasurer referred to the document as a contract and related to 21 current home owners.

The treasurer reviewed the covenants specifically the section regarding the maintenance assessment wherein the amount charged may be increased by the CPI of July of the prior year. The treasurer explained the reason for the increase in the annual assessment was the need to have everyone on the same fee structure and to insure this was a nice place to live. Steve Rogers, owner, pointed out that the charge must be justified and that the Falls Corp has nothing to do with the FOA. Steve Rogers clarified the recreational amenities usage fee has nothing to do with the FOA. He further emphasized that the interview documentation was between the developer and the buyer, and did not involve the FOA. Beth Swalm clarified that the Falls Corp. was the

successor from the original developer and subsequent owner and is the current declarant. Beth further stated that the Falls Corp manages the FOA. Steve Rogers clarified that the document governing the (FOA), has no authority to charge for anything that it does not own. The treasurer referred to the Declarations Article 6, Maintenance Assessments, Section 2 Purpose of Assessments. Linda Skiles, owner, asked that the treasurer read out loud the definition of common areas, Article 1, Definition Section 2, Common Areas.

“Section 2 common area, if any, shall mean all real property owned by the association for the common enjoyment of the owners.”

Jim Green read a section in the By-laws, Article 2 its Definitions Section 9 “Common Area shall mean all real property (including the improvements thereto), owned by the Association. for the common use and enjoyment of the owners. The owners emphasized to the treasurer that the FOA does not own any recreational amenities or any common areas.

The treasurer described that during the period of Dave Swalm’s ownership of the resort from 1996 to 2008 there was a requirement to have either a golf membership or social membership. The treasurer reported during the period of time the Swalm’s invested \$21M, and \$15M came from the Swalm foundation. Stating that the Falls Foundation was assisting with cash flow of the Falls Resort and that the cash flow from the assessments was insufficient such that further funds would be needed from the Falls Foundation thus taking funds from children. The treasurer discusses the 2014 budget in terms of necessary assessments including the 2009 recreational amenities usage fee that was associated with specific lots contractually obligating themselves thereto.

The treasurer delineated the items anticipated to be covered by the annual assessment. These included: 1 swimming pool, the street lights, the conference center, security guard, fishing pond, the water that goes into the fishing pond, the gate, the electricity that opens the gate, the repairs to the gate, the repairs we make to the conference center, repair of the swimming pool, and maintenance of the swimming pool. Enjoyment of the green room, and use of the restaurant and bar area for sporting events. Maintenance and cleaning expenses associated with FOA common areas and easements; electricity being used for security and street lights and the mud district charges for the water being used including the swimming pool, etc. The total of all those expenses is \$167,000 divided by 154.5 lot owners (\$1080.00) the treasurer stated “to help us cover these expenses”.

Linda Skiles, owner, rebutted the expenses delineated by the treasurer “as expenses that were associated with the Falls Corp and its various entities none of which are owned by the FOA”. Ken Wied, owner, reiterated that the expenses described by the treasurer should be encompassed in the recreational fees and/or the golf resort.

Jim Green, owner, delineated a list of questions relating to the financials of the FOA:

1. Clarification that the funds of the association are deposited in separate bank accounts for the association True or False? Treasurer affirmed yes.
2. Are association funds co-mingled with the Falls Resort? Treasurer responded, no it’s not.

3. Are internal payables and receivables kept separate? Treasurer's response, yes I do.
4. Have any of the funds been used for maintenance of the Falls Resort?  
Treasurers response: you have only been paying for via the management agreement \$240 x's the number of lot's in the reimbursement acct.
5. Is there or has there ever been and independent audit of the Association's independent funds? Treasurer's response: Not that I know of.

Mr. Green owner, made a request of the chairman to make a motion for an independent audit of the association's records. Ken Wied (Owner/Director elect), seconds the motion. Discussion ensued Beth Swalm indicated that the expense of an audit can be excessive Jim Green noted that now that we have a board member (inferred homeowner Ken Wied), that if the cost is excessive that will be taken into consideration.

Owner Carl Adkins addressed the board, expressing concern about the lack of consistency in means in communication in the past few years, 2010 to present.

Discussion/Questions by homeowners regarding the monthly social membership to the Falls resort were addressed to Laurie Stoner. Laurie indicated since January 2014 no one had been billed for individual social memberships as the intention was to encompass social expenses and homeowners assessment in one billing (\$1084.00) Further discussion ensued regarding both golf and social memberships. (Non Owner's association matters)

Jim Greene, owner, made a motion regarding an audit of the FOA records. Discussion ensued resulting in Mr. Greene withdrawing his motion and asking the board to review possible auditing firms. Mr. Greene amended his motion to have the Board of Directors make a decision upon whether or not to contact an auditor or accountant to review accounting records by someone other than current accountants. The amended motion carried. The motion passed.

### **New Business:**

Linda Skiles, owner, addressed the cover letter to the annual assessment for homeowners which was from the Falls Corporation as CFO of that corporation; reiterating that the business of the association should be separate and distinct from the Falls Corp and any of its entities and its officers. Beth Swalm responded that the Falls Corp as the declarant under a management certificate managed the owners association. The existence of the management certificate/agreement was addressed in that its existence had been communicated prior to this meeting to the owners.

Two separate contracts were addressed in the cover letter to the annual assessment, the 1984 Covenants and the 2009 Recreational Maintenance Fee Covenant. The 1984 document applies to every lot in the Falls and the 2009 applies only to delineated lots in Exhibit A to that agreement. At the time (2009) the Falls Joint Venture L1 LLC owned all the lots on Exhibit A.

A review of Section 4 Article 6 of the 1984 Declarations was addressed as it related to the amount of the annual assessment increase including the need for such increase and advisement of

a meeting called for such purpose. It was also highlighted that all common areas of the Falls Resort are owned by the Falls JVR LLC, and therefore the expenses associated with those areas cannot be assigned to the owners.

Laurie Stoner, Officer of JV R, noted that due to the financial situation of the Falls JVR lack of payment to the management company of the assessments, made a motion to sever the management agreement between the Falls JVR as the management company and the owners association. Billy Ward seconded the motion. Ken Wied, owner, reiterated that there was a conflict of interest regarding Laurie Stoner's position as an officer of various Falls entities including the Falls JVR and that she was not acting to the benefit of the owners association.

Point of Order: Linda Skiles, owner, disputed Beth's assertion that the owners have responsibility for the common areas.

A question was raised by an unidentified owner, "What is the term of the management contract?" Response of the board, "20 years JVR made us this management agreement that was so onerous on both parties that we should find a way to get rid of it."

James Cutler, owner, asked to amend the motion to give the Board of Directors 90 days to stay with the current agreement or find a new one. It was seconded. The amendment carries. Laurie's motion as amended by James Cutler passed.

Jim Greene, owner, addressed the matter of Laurie Stoner's concern that no owners were paying assessments and therefore the bills of the guard and street lights will need to be paid. Jim advised if the board would ascertain what portion of those bills belonged to the owners association he would personally make sure the bills were paid the next day.

Jay Abbott, owner, made a motion to arrange a meeting between the financial officers of the Falls JV LLC, a formally appointed dispute resolution committee made up of a representative group of lot owners bound by the Lot Owner Recreational Maintenance fee covenant dated Dec 18, 2009. The purpose of the meeting will be to discuss the legitimacy of this covenant and the proper invoicing of its associated fee. This meeting should take place within 30 days of this date. Motion was seconded, voted on and passed.

Linda Skiles, owner, made a motion that those falling under the 1984 Declarations Covenants, Conditions and Restrictions, that are not under the 2009 Covenants, That we pay \$240 as our annual fee and allow Ken Wied to sort out the financials and if some special assessment is determined to be paid later that another meeting or some notification of that would be provided. For the time being we abide by the by-laws meeting notification, assessment calculation, and that would remain \$240. (Later clarified to mean every lot owner as all lots are under the 1984 declarations.) Jerry Winston seconded. Motion passed.

Billy Ward, President, wanted to remove the agenda item that would increase the number of Board of Directors by two. It was clarified that the agenda could not be changed. His reasoning was that he believed that the developer should have majority votes. Beth Swalm clarified that

Joint Venture was the developer. (TL Spencer and David Arnold) Beth indicated that no one was developing.

Matt Milentz, owner, made a motion to nominate Jim Greene and Jay Abbott. Billy Ward called his motion out of order. Rochelle Wiley, owner, nominated Larry Wiley and Matt Milentz to the nominating committee. Jim Greene, owner, seconded. Motion was voted and passed. Linda Skiles, owner, made a point of order, asked Laurie Stoner to substantiate her representation of 102 votes.

Ken Wied made a motion to amend the by-laws to change the number of board members from 3 to 5. The motion was seconded and passed.

It was clarified that the members of the nominating committee be one of the BOD ie Billy Ward.

Point of order: Linda Skiles, owner, noted that the proxies that were collected at this meeting would stand for the vote of two new Board of Directors which meeting would be considered a continuation of this annual meeting. Billy Ward took a vote and it passed unanimously.

Steve Rogers, owner, addressed the concern that the developers lots are not accounted for in fee assessment and that in the 2009 Lot Owner Recreational Maintenance Fee Covenant it sets out that the developer Falls JV L1 does not have to pay fees.

Billy Ward made a motion to adjourn the meeting. Seconded and passed.