



FOUR SEASONS AT WALL HOMEOWNERS ASSOCIATION, INC.
2519 Sparrowbush Lane, Manasquan, NJ 08736
Tel. 732-223-2289 Fax. 732-223-7120



August 9, 2019

Dear Resident,

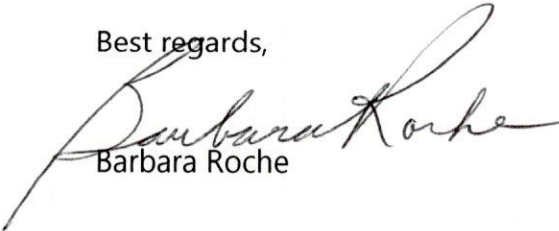
As a follow up to concerns regarding the solar initiative for our clubhouse, your entire Board of Trustees met with our Attorney on August 5, 2019.

Much of the conversation with our attorney involved the inadequacy of our amendments.

Attached is his letter resolving those concerns.

Installation of the solar panels will be completed in early Fall.

Best regards,


Barbara Roche

August 7, 2019

VIA EMAIL(chuck.braun@fsresidential.com)ONLY

Chuck Braun
Community Manager
c/o First Service Residential
2519 Sparrowbush Lane
Manasquan, NJ 08736

Re: Four Seasons at Wall Homeowners Association, Inc.

Dear Chuck:

I write to follow up on my May 23, 2019 e-mail to you and our August 5, 2019 board workshop meeting.

I have been told that the solar panel proposal was exhaustively vetted, thoroughly publicized and publicly discussed at multiple Association meetings. Apparently separating the solar panel installation project from the roof replacement project would significantly complicate the project, increase costs and impact associated warranties etc.

I know essentially nothing about Solar Renewable Energy Certificates, the State, Federal or other programs used as the basis for repaying the loan from reserves or the third parties involved in the solar panel proposal. I have not been involved in the solar panel proposal. I therefore render no opinion on the substance of the solar panel proposal or its financing.

As to authority to proceed with the solar panel proposal though, it appears that the Membership and the Board have substantially complied with the Association's governing documents and proceeding with the solar panel installation project effectuates the will of the Membership.

Reserves, Borrowing & Repaying

Amended By-law Section 6.08 (June 6, 2000) Reserves. Provides "The Board of Trustees shall not be obligated to expend all of the revenues collected in any accounting period, and must maintain reasonable reserves for, among other things, repairs, replacements, emergencies, contingencies of bad weather or uncollected accounts...Investment choices will be made through the Finance Committee or an outside investment advisor subject, in either case, to Board approval and shall be utilized for the general capital improvements contemplated at the time of assessment."

N.J.A.C. 5:26-8.7(a) provides that "The association shall prior to making an annual assessment, prepare and adopt an operating budget which shall provide for any and all common expenses to be incurred during the year as well as adequate reserves for repair and replacement of the common elements and facilities."

I have not audited the Association and I do not know the Association's reserve requirements however, board members have represented that, even after the proposed borrowing from reserves, the Association will have reasonable and adequate reserves.

By-law Article V, Section 5.01(g) provides that "The Board of Trustees shall have all those powers granted to it or necessarily implied by law or by the Certificate of Incorporation, these Bylaws or the Declaration, including but not limited to the following:...Borrow and repay monies, giving notes, mortgages or other security upon such term or terms as it deems necessary." As the Board can borrow from third parties, presumably the Association can borrow from itself (the reserve funds). Especially where, as here, the Board is implementing a repayment plan after ample diligence. The Association's auditor will note an interfund balance on the audit and probably detail it in a footnote.

With respect to Membership authorization of the proposal:

Meeting Quorum

By-law Article III, Section 3.05 provides that "At each meeting of the Members, Members representing twenty-five (25%) percent of the authorized vote, present in person, by proxy or ballot by mail shall constitute a quorum for the transaction of business except where otherwise provided by law."

Meeting of Members-Voting

By-law Article III, Section 3.07 provides that "Except as provided in Section 4.03 with respect to the election of Trustees or as otherwise required by the Certificate of Incorporation, the Declaration or any law, a quorum being present, a majority of votes present in person, by proxy or ballot by mail shall be sufficient on those matters which are to be voted on by the Members."

Membership Vote Tally

Out of 400 total households, 297 Members voted, 241 voted "Yes", 54 voted "No" and 2 cast ballots with no preference marked. **297 Members almost tripled the 100-vote quorum requirement, and 241 favorable votes far exceeded the 149-vote majority needed to pass the proposal under Article III, Section 3.07.**

2014 Declaration Amendment

I did not have the 2014 Declaration amendment when I wrote my May 23, 2019 e-mail. The third paragraph of the 2014 Declaration amendment provides: "WHEREAS, the Board of Trustees determined that in order to conduct the affairs of the Association more effectively the Declaration should be amended to change *wherever applicable, the requirement of the vote of two thirds (2/3) of the total Homeowners (400 Homeowners), to the revised requirement of the affirmative votes of two thirds of the total eligible homeowner votes cast with a quorum of three hundred (300) votes required.*" (emphasis added). However, "an expression of intent in a 'whereas' clause of an agreement between two parties may be useful as an aid in construing the rights and obligations created by the agreement, but it cannot create any right beyond those arising from the operative terms of the document". See, for example, Trecom Business Systems, Inc. v. Nallur Prasad, 980 F. Supp. 770, 773 (1997) (New Jersey District Court applying New York law).

The 2014 Declaration amendment goes on to provide: "Now therefore, the Association does hereby amend, modify and supplement the Association's Declaration as follows, in the specific Articles and Sections here within noted: Section A... Article 6 Assessments... Section 6.5 New Capital Improvement Assessment... *Each Article and Section noted shall now require the authorization of the affirmative votes cast by 201 eligible Homeowners.*" (emphasis added). **There were 241 "Yes" votes cast which again would result in approval.**

Applying the Whereas clause language as suggested by some would give a result that contradicts rather than clarifies the specific operable language of 2014 Declaration amendment Section A. because, for example, if all 400 members showed up and voted, 267 votes would be required to pass the proposal rather than the expressly required 201 votes.

This conclusion is supported by 2014 Declaration Section B wherein the operable language expressly requires "the affirmative votes of two thirds (2/3) of the total eligible homeowner votes cast with a quorum of three hundred (300) votes required."

Some have argued that original Declaration Article 6, Section 6.5 only applied in the case of a "New Capital Improvement Assessment" but, assuming that such vote requirement applied even when there was no New Capital Improvement Assessment, the "assent of two-thirds (2/3) of all the eligible votes at an Association meeting duly called for this purpose." **would have been required and was achieved: two-thirds of 297 would be 198 votes and 241 voted "Yes".**

It appears that the Board acted in good faith and the Membership approved the proposal. Continuing the debate, filing complaints, hiring more lawyers, complaining to the DCA etc. does not appear to be in the Association's or its Members' best interest. If certain Members are unhappy with the Association's governing documents, they may be further amended.

McGovern Legal Services, LLC

By: 

Francis J. McGovern, Jr., Esquire