

ALAN D. CLEMMONS
ATTORNEY AT LAW



CL

LAWLLC LAW FIRM,

CLEMMONS_PHONE 843.448.4246

FAX 843.448.4292

ATTORNEY DAVID C. HAAR*AT

SHERI L. MCALLISTER
ATTORNEY AT LAW

December 11,
2020

Chris Millar, Property Manager for South
Hampton Homeowners Association, Inc. P.o. Box
9000
Myrtle Beach, SC 29578

Re: Opinion Letter Regarding Special Assessment

Dear Chris,

I am writing in response to the email from a South Hampton owner ("Owner") that has been the topic of recent discussions. In the email from this owner, he expressed concern that the HOA hired an attorney to represent the owners individually. It is my understanding that owners were notified and were given the option to obtain their own legal counsel. Each owner was served with the lawsuit and could have consulted independent counsel upon receiving service, or after being offered the option to allow Charles Jordan to collectively represent all owners. I am confident that most owners are pleased to have the HOA obtain counsel to protect them until the matter is resolved with Structural Waterproofing.

It is my understanding that information presented at the 2019 annual meeting supported payment of a short-term bridge loan. This appears to be accurate information at the time of the 2019 meeting, but events occurring since the 2019 meeting support a special assessment. Specifically, the piping and building project revealed areas of the building requiring extensive, immediate remediation and additional unanticipated costs.

The Owner submits that the Board must seek majority membership approval for special assessments exceeding ten percent of the prior years budget payable over such period as the HOA may determine etc. If the special assessment is to occur in 2021

and the 2020 budget is \$1,370, 417.00, it appears that the Board may approve a special assessment for up to \$137 , 417 .00 without membership approval . It further appears the Owner is mistaken with numbers presented if he has determined the special assessment will be \$1, 800,000.00. The Owner' s numbers are incorrect according to numerical information provided (\$1,316, 318.57 total of loan to provide UCB payable)

It is also important to note that the South Carolina Nonprofit Act Section 33-31-303 grants emergency powers to Boards . If the project revealed unanticipated issues that require immediate attention for the safety of the occupants of the building, the South Carolina Nonprofit statute may also support irnmediate action to secure and ultimately repair the building to prevent a catastrophic event. Although there is no apparent problem with the Board passing a special assessment, the Board is further authorized to act by way of the code section below if acting in good faith. The language of the statute appears sufficiently broad to encompass the actions of the Board to secure funds to maintain the safety of the building.

SC Code S 33-31-303 (2012) Emergency Powers

(a) In anticipation of or during an emergency defined In subsection (d) , the board of directors of a corporation may:

(1) modify lines of succession to accornrnodate the incapacity of any director, officer, employee, or agent; and

(2) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officer to do so.

(b) During an emergency defined in subsection (d) unless emergency bylaws provide otherwise:

(1) notice of a meeting of the board of directors need be given ; only to those directors it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) one or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation :

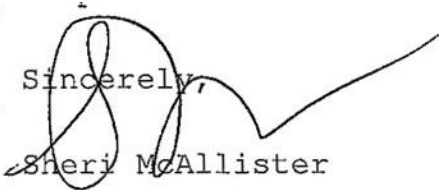
(1) binds the corporation; and

(2) may not be used to impose liability on a corporate director, officer, employee, or agent .

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

(e) Corporate action taken in good faith under this section to further the affairs of the corporation during an emergency binds the corporation. A corporate director, officer, employee, or agent is not liable for deviation from normal procedures if the conduct was authorized by emergency powers provided in this chapter .

Sincerely,



Sheri McAllister