



October 6, 2023

Via U.S. Mail

Aldea Glen Homeowner

*Re: Recent Elections, Governance Procedures  
Aldea Glen Homeowners Association*

Dear Owners:

I represent your homeowners association, Aldea Glen Homeowners Association (“Association”), with respect to general counsel matters, which means I provide your Board of Directors (“Board”) with legal counsel and advice relating to the management and operation of your community. However, I represent the entire Association and, like the Board, my duty is to act in the best interests of the Association as a whole. However, I first need to clarify that when I say “Board,” I am *not* referring to the directors elected at the most recent meeting, but to the previously-elected or appointed Directors because, as explained below, these three remaining directors because the most recent election was not legal.

However, based on what has occurred recently, I have recommended to the Board that they call a special meeting to elect directors in accordance with the HOA Act and the Aldea Glen HOA governing documents. The official meeting notice is included with this letter for a meeting on **October 24, 2023**. Again, my interest in representing the Association is not to ensure that the current Board is re-elected, but only to ensure that proper procedures are followed to ensure that Board activity going forward is proper.

Below, I cover a number of issues that I understand are of concern to the Association. Please review these issues carefully, and I think that you will understand that the recent elections were not proper, but that new elections can and will take place soon.

### **Current Board’s & Mistake in not Holding Annual Meetings and Elections**

As I understand it, a Board meeting was held on August 29, 2023, that 22 Owners attended. After the business of the Board was completed and the Homeowners Forum opened, frustration was expressed that there had not been elections for directors in some time. At that meeting, non-Owner Joshua King, expressed that the HOA documents require elections every two years and directors are only intended to serve for two years. There was discussion about the lack of elections and ultimately it seems that a motion was made to hold elections at a September 19, 2023 special meeting and for some reason, a vote of the Owners was called at that time. Unfortunately, these procedures were not proper under the HOA laws and the

governing documents. I would be happy to advise the Association regarding proper procedures going forward.

However, a couple of things do need to be corrected. First, let me say that the Owners are correct that directors are intended to serve for two years, but, in fact, elections are to be held *annually*. Article V, Section 1 of your Bylaws provides that the Board shall be composed of five directors that shall be elected “from the membership by a simple majority vote of the members attending a General Annual Meeting of the Association.” As I understand it, an annual meeting has not been held since 2019. The current directors confirm that there has not been an annual meeting since the COVID epidemic when it was prohibited to have in-person meetings. However, as I explained to the Board, the governor created proclamations that allowed Owners to attend meetings via phone or video, even if the governing documents of the community required in-person meetings. The Board was not aware of the proclamations, which was not a surprise because that information was not officially disseminated in any way and most of my clients learned of the existence of such proclamations either through legal counsel or professional management, neither of which your HOA had at the time.

While the above explains why annual meetings were not held, I have advised the Board that not having held annual meetings and elections is significantly problematic. It does NOT, however, invalidate the work of the current Board, nor does it entitle the Association members to replace the Board without going through the proper procedures.

In short, everyone in the community will benefit from ensuring that the Association is operating legally and properly going forward, which is why I was hired to assist the current Board in determining what those procedures would be, rather than having the Owners rely upon the advice of someone who is not only not an attorney, but who may have some other agenda given that he is not an Owner or member of the Association.

### **Board Vacancies**

While the Bylaws require that elections take place at the annual meeting, I think everyone will agree that they are long overdue, so we will not be able to follow the Bylaws with perfect precision. Similarly, since the current Directors' terms have expired, all five Director positions will be up for election at the October 24 meeting. Please know, however, that to the extent that there was additional concerns about some Directors being appointed to fill vacancies, please know that this procedure is wholly appropriate under the HOA Act at RCW 64.38.025(2), which provides, in relevant part, that “the board of directors may fill vacancies in its membership of the unexpired portion of any term.” Thus, to the extent that there are ever vacancies on the Board going forward, the remaining Directors may appoint someone to serve the remaining term of the Director whose absence caused the vacancy.

## **Problems with Recent Election**

As mentioned above, the procedures taken to elect Directors at the September 19 were not legal. Directors can only be elected at a properly noticed meeting so that ALL OWNERS, not just those involved with Mr. King's Owner group, can attend and have their voices heard and their votes counted. While there was a vote at the August meeting to hold a September meeting, neither the motion to hold the meeting nor the vote of the Owners at that meeting was proper. Owners do not have the authority to call meetings or direct the Board to take certain actions unless either the HOA Act or the governing documents provide the Owners with that authority. The HOA Act, at RCW 64.38.025(1) provides that "Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association," which means that unless the governing documents specifically give the Owners a right to vote on an issue, the Board makes decisions and is not bound by any Owner vote. Thus, regardless of the vote at the August meeting, the September 19 meeting was not required to be held.

Moreover, even if the Owner vote to hold a meeting was binding, the Association still has to provide legal notice of any meeting of the Owners. RCW 64.38.035(2) provides: "Not less than fourteen nor more than fifty days in advance of any meeting of the association, the secretary or other officers specified in the bylaws shall cause notice of the meeting to be provided to each owner in accordance with this chapter." RCW 64.38.110 then provides that "notice . . . shall be in writing and shall be provided to the recipient by personal delivery, public or private mail or delivery service, or by electronic transmission as provided in this section. . . ." That statute goes on to say that notice by electronic transmission (email) is "effective only upon those who have consented, in writing, to receive electronically transmitted notices."

Note that these statutes require the Directors/officers to provide the notice in accordance with the statutes even if the Owners have demanded the meeting. My understanding is that no separate notice of the September 19 meeting was given. Thus, it should not have been held and any action taken at that meeting is not valid. Again, I know that the Owners are concerned about having elections, but I also know from the correspondence that you are concerned about making sure the proper, legal procedures are followed. So that is what we plan to do.

## **September 19 Meeting Cancellation**

After the August meeting, the Board sought advice as to whether holding such a meeting was proper. That is when the Board learned that Mr. King was not an Owner and therefore, it questioned the legality of what occurred at the August meeting. Ultimately, the Board realized that it needed to seek the advice of an attorney specializing in community association law to ensure that proper procedures would be followed to get the Association back on track. Thus, the Board did not provide notice for the September meeting and, in fact, announced that it was "cancelled." I do understand that notice of the meeting was subsequently posted by some Owners saying that the September 19 meeting was *not* cancelled, but again, since the meeting was never properly called or noticed, it was not effective regardless. Going forward,

please understand that only the Board has the authority to notice or cancel meetings and posting a notice is not legal notice under the statutes.

### **Special Owners Meeting for New Elections**

As noted, I have advised the current Board that a meeting should be called to hold legitimate elections and the Board agreed. In fact, with this letter you will find a Notice of Special Meeting for the Association for a meeting on **October 24, 2023**. As noted in the notice, the purpose of that meeting is to elect directors and given the current situation, I have recommended that the election be held for all five director positions. I also want to reiterate that in accordance with your Bylaws, the Board is composed of five Directors. I understand that there may have been a vote to increase the size of the Board to six at some point, but there was no action taken to amend the Bylaws that require a Board of five, so legally, your Board remains composed of only five members.

The Board has asked me to attend the election meeting and I intend to do so to ensure order and that the election procedures are properly followed. Again, I have no particular stake in the outcome other than to ensure that proper procedures are followed so that your community can move forward without fear of having an illegitimate Board. Please note also that only Owners whose names appear on title to the lots within Aldea Glen will be allowed to vote based on the language in the Bylaws that specifically provides that membership in the Association is conferred by "deed covenant." (See Bylaws, Article II, Section 1).

### **Activities Prior to Next Election Meeting**

Given the analysis above, it is my hope that any of the persons "elected" at the September 19 meeting understand that they are not, in fact, legal directors of the Association and have no authority until the next election occurs. This letter constitutes legal notice of the illegitimacy of the "new board" and warns the "directors" not to take any action on behalf of the Association until a legitimate Board can be elected at the next meeting. The current Board can continue to act on behalf of the Association until then. However, I have advised the Board to maintain the status quo as much as possible.

It is worth noting that while Mr. King's September 12, 2023, letter advised the Board to cease spending Association funds until a new board could be elected, that was entirely improper regardless of whether it was supported by an Owner vote or not. The Board has an obligation to the Association to act in its best interests, which includes paying bills as they become due or making other expenditures as necessary.

In fact, the Board was in the process of providing materials to the City of Lacey Neighborhood Grant Program, which awarded a grant to the Association in the amount of \$2300. However, this money cannot be claimed without financial records that were provided to a Trustee who has, as I understand it, provided those records to the "new Board" and will not give them back to the current Board. I strongly recommend that the records be returned to the rightful Board

prior to the meeting, or you risk losing out on the grant, which is not in the Association's best interests. Again, as per the analysis above, the directors elected at the September 19 meeting are not validly elected, so there is a risk that failure to return those materials to the current Board can result in personal liability to whomever refuses to return the Association's property to the Board. This situation has already gotten pretty ugly, so I recommend that things not be made worse by withholding property, especially now that the Board is committed to correcting the past mistakes and electing a new Board. I have advised the current Board that such records shall be provided to whomever is elected to the new Board at the next meeting.

Lastly, while this is not a legal issue, I strongly suggest ceasing any communications between the "new Board" or any of its members or Mr. King and the current directors. The legal issues can be addressed at the next meeting and any attending Owners can express their concerns at that time. There is no need to continue any animosity between the "new Board" and the current Board or any Owner groups at all. If everyone can behave like adults and wait for the legal process to work, I believe your community will benefit greatly from a reduction of the enmity that I have seen demonstrated so far. The goal was and is laudable and the election will happen. There is no need to continue disparaging communications. I hope you all agree.

### **A Note on "Trustees"**

In preparation for explaining the election process to all of you, I reviewed the Aldea Glen Bylaws to determine certain procedures and note that your Bylaws are unique in that they require election of two "Trustees" in addition to an entire Board of Directors. According to Article VI of the Bylaws, the Trustees do not vote, but only advise the Board. The Bylaws do give the Trustees the authority to audit the financial records. However, all of these provisions contravene the applicable statutes and are therefore, void. As noted above, the Board has the authority to manage the Association; there is no such concept as a "trustee" in the HOA Act, although there is nothing wrong with having such advisors, they are just usually called advisory committees. The Nonprofit Corporations Act also provides that a nonprofit corporation (which the HOA is) is managed by a Board of Directors with exclusive authority to act on the corporation's behalf, specifically providing: All corporate powers shall be exercised by or under the authority of the board of directors." See RCW 24.03A.490(2). With respect to audits, however, your Bylaws directly contravene the HOA Act, which requires that any audit be conducted by "an *independent* certified public accountant," not by elected Trustees. The reason for having the audit conducted by someone independent from the Association should be obvious.

### **Governing Documents in General**

Lastly, I did want to provide all of you with a recommendation that whoever is elected, I ask that your Board seriously consider having counsel review your governing documents (Declaration, Bylaws, and any Rules) to determine compliance with the HOA Act and Nonprofit Corporations Act. Your Bylaws depart from the applicable statutes in multiple ways and your Declaration is so old, it contains very few of the provisions now applicable to HOAs. As noted

above, the provisions in the applicable statutes will “trump” whatever is in the governing documents, so merely following the documents could still result in Association liability if the Board is not aware of the conflicts.

### **Conclusion**

In short, I have advised the Board that elections need to happen at the next meeting and the notice provided with this letter constitutes legal notice. Had the owner group sought the advice of experienced community association counsel, I am sure the advice would be the same. The elections at this meeting should resolve the issues complained of, so I strongly suggest that all Owners attend the next meeting so that the Association can put these issues behind it and move forward with the work of properly governing the Association. Insistence that the current Board is illegitimate and that the “new Board” has authority to run the Association will only create further legal problems for the entire Association down the road.

I look forward to meeting many of you at the October 24 meeting. Thank you for your attention to this important matter!

Sincerely,



Marlyn K Hawkins

Enc: Notice of Special Meeting for October 24, 2023

MKH:snb