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IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 741192

BLUE RIDGE PROPERTY OWNERS
ASSOCIATION, INC., ET AL.

Appellants

V.

A. LEWIS MILLER, ET AL.

Appellees

FROM THE CIRCUIT COURT OF LOUISA COUNTY

APPENDIX

Submitted by:

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APPENDIX 1

BILL OF COMPLAINT
(Allegations are as follows)

Your complainants respectfully show the following case:

1. The complainants are property owners in the Blue Ridge Shores Subdivision, Louisa County, Virginia, and are as such, members of Blue Ridge Property Owners Association, Inc.

2. The defendant, Blue Ridge Property Owners Association, Inc., is a non-stock corporation, organized and existing under the laws of the State of Virginia.

3. The defendants, George C. Long, Tilden Grant, Leo Gross, Joseph A. Tosti, Dorothy Behncke, Harry D. Knauf, Spencer Marlow, and Charles E. Moyer, were elected Directors of Blue Ridge Property Owners Association, Inc., in elections that have heretofore been held by this Honorable Court to have been illegally held.

4. The defendants, S. F. Stoneburner, Charles E. Moyer, George C. Long, Glenn McWhorter, Joseph A. Tosti, Russell D. McDonald, William Budowitz, Spencer Marlow, and Edward G. White, were heretofore elected as Directors of Blue Ridge Property Owners Association, Inc., at membership meetings held prior to March 1, 1971, and except as to those named in this paragraph who, also, served as Directors subsequent to March 1, 1971, the terms of office for which such Directors were elected had ended, all of such Directors being elected in similar illegally held elections.

5. Following a hearing held in this Court, wherein the defendant, Blue Ridge Property Owners Association, Inc., was plaintiff

against several defendants, this Court considered action taken by the illegally elected Board of Directors then in office, and ruled that the then acting Board of Directors had been illegally elected, and that the Board was without authority to take the action in reference to its members undertaken by the then acting Board of Directors. The ruling of this Court was on December 7, 1973. This Court suggesting that a meeting of members be promptly held to elect all new Directors.

6. Notwithstanding such suggestions and in complete disregard of its responsibilities, and in an effort to usurp authority it did not hold, the then acting Board of Directors without authority to so act, turned over the affairs of Blue Ridge Property Owners Association, Inc., to the Board of Directors that had been in office prior to March 1, 1971, and this Board of Directors that had been acting prior to March 1, 1971, resumed office without authority to act as Directors, and have since acted as the Board of Directors to conduct the affairs of Blue Ridge Property Owners Association, Inc.

7. Rather than then attempting to hold an election of the members of the Association under the By-Laws that had been adopted in previous years and under which the Blue Ridge Property Owners Association, Inc., had been governed, and which had been approved by this Court in the trials held on December 7, 1973, the then acting Board of Directors on December 26, 1973, adopted new By-Laws to be effective on January 1, 1974, a copy of which is attached hereto, marked "Exhibit A."

8. Your complainants allege and believe that the acting Board of Directors was without authority to adopt such By-Laws, and that

the By-Laws as adopted are arbitrary, unreasonable, illegal and particularly put unreasonable restrictions on the members of Blue Ridge Property Owners Association, Inc., in the conduct of elections at its annual meetings, such as is provided under Article V, Section 9, which first stated in part, that "On issues which are proper subjects for a membership vote, any member may vote either in person or by proxy". When inquiry was made to the Board of Directors as to whether or not proxy votes would be permitted at the election of Directors, the complainants are advised that the then acting Board of Directors amended the above quoted portion of the By-Laws to state, "On issues other than election of the Board of Directors, which are proper subjects for a membership vote, any member may vote either in person or by proxy". Your complainants are advised that the officers of the Association do not plan to permit proxy votes in the election, although the By-Laws of the Association adopted and revised, effective January 8, 1966, that this Court ruled to be the proper By-Laws of the Association in the hearings held on December 7, 1973, provided for all voting at the annual meeting of members to be permitted to be either in person or by proxy, a copy of the said By-Laws adopted or revised January 8, 1966, being attached hereto, marked "Exhibit B". The said Section 9, also, provides that the proxy held by the member must be surrendered to the Secretary of the Association, thereby depriving the member and the proxy holder of the member's proxy, and requiring that it be turned over to the then existing management of the Blue Ridge Property Owners Association, Inc. There are other numerous unreasonable restrictions and requirements on the members in order to vote, one of which, requires that ballots

at the annual meetings be collected in not more than fifteen minutes, and that the polls would be declared closed after fifteen minutes had elapsed from the time the presiding officer calls for ballots, and prohibits members from receiving ballots at the annual meetings, unless written request has been made to the General Manager at least seven days prior to the annual meeting for a replacement ballot, and otherwise requiring that the member vote by mail under conditions established in the By-Laws.

9. The Secretary of Blue Ridge Property Owners Association, Inc., Edwin M. Berrien, prepared and mailed, what is assumed to be an official "Notice of Annual Meeting Ballot Information", some of your complainants having first received such Notice with Ballot Information on April 18, 1974, and some still not having received such Notice, Ballots and Materials as of the date this suit is being filed on April 19, 1974. A copy of the "Notice of Annual Meeting Ballot Information" is attached hereto, marked "Exhibit C", and among other things, the official notice of the election, which was presumably sent out at the expense of the members of the Association, states, "We urge you to vote for the entire slate as it is endorsed by your board. If, however, you wish you may vote for any nine of the nominees or may write in the names of other candidates". Enclosed in the envelope received by mail with the "Notice of Annual Meeting Ballot Information", was a "1974 Official Ballot", and this Ballot states on the Ballot "Candidates Endorsed by your Board of Directors", which lists nine candidates in, apparently, alphabetical order, and then lists "Other Candidates Nominated" below these names in a

separate alphabetical listing, a copy of said Ballot being attached hereto, marked "Exhibit D". Also, enclosed was a proxy, attached hereto, marked "Exhibit E", requesting that the members give their proxies to the defendants, S. F. Stoneburner, William Budowitz, or Joe Tosti, to vote on all matters which are proper subjects for membership vote, the meeting to be held on May 18, 1974, except that it is stated that the proxy in no way vests any authority to cast votes for the election of the Board of Directors, and the proxy provides for it to be returned to and with postage to be paid by Blue Ridge Property Owners Association, Inc., in care of Robert M. Musselman, Esquire, the Statutory Agent. It is believed and alleged that these items were prepared, printed and mailed at the expense of Blue Ridge Property Owners Association, Inc., and in turn by its members through assessments and dues, and it is apparent that these documents are not for the purpose of conducting an unbiased and properly held election, but for the purpose of attempting to control the election of Directors at the meeting to be held on May 18, 1974, as well as the conduct of any other business affairs that may come before such meeting.

10. The By-Laws attempted to be adopted by the acting Board of Directors and the election procedures adopted, would permit ballots to be cast by other parties than the members entitled to vote, and there would be no control or check that candidates "Not in good standing" with the Board of Directors, or acting management, could make certain that the ballots being cast are cast by the members themselves, or by their duly appointed proxy. The By-Laws provide and the materials received in the mail have a stamped envelope

addressed back to Mr. Edwin Morris, c/o National Bank & Trust Co., Louisa, Virginia, 23093, a copy of which is attached hereto, marked "Exhibit F", and another envelope was enclosed in which the Official Ballot is to be placed and sealed, and, apparently, put in the envelope addressed to Mr. Edwin H. Morris, a copy being attached, marked "Exhibit G".

11. No information is given to identify or describe the candidates, other than to show those who are "Endorsed by your Board of Directors", and nothing enclosed in the instructions informed the members that they will not be permitted to give proxies to others to attend the annual meeting. The By-Laws attempted to be adopted, effective December 26, 1973, have not been published, or made available to the members, your complianants having to borrow a copy of the By-Laws from the office of Blue Ridge Property Owners Association, Inc., from which a copy was made, since the copy obtained by your complainants had to be returned. It is alleged that the By-Laws attempted to be adopted by the acting Board of Directors have purposely not been published, or made available to the members, and that they are so involved, restrictive and lengthy that they would tend to make it impossible for the average member to act under them, or to understand them.

12. Over a period of a number of years, your complainants have attempted to obtain financial reports from the existing management of Blue Ridge Property Owners Association, Inc., an accounting of expenditure of dues, special assessments, and to require that un-used special assessments be refunded, in accordance with the conditions under which special assessments were collected. The acting Directors,

who have usurped the Association's affairs, without authority, and the Directors who turned over the affairs of the Association to these acting Directors, have caused illegal payments and expenditure of the Association's funds to be made, for which, each of the Directors who have so acted would be personally responsible for an accounting to the defendant, Blue Ridge Property Owners Association, Inc., and to its members.

13. The complainants are incurring expenses in attempting to require the defendants to conduct the affairs of Blue Ridge Property Owners Association, Inc., in a lawful and proper manner.

14. The complainants allege that none of the acting Directors or Officers have been properly or validly elected, and the actions of those who have acted as Directors are illegal, and oppressive, and under the provisions of the Code of Virginia, Section 13.1-221, your complainants are authorized to bring this suit, and this Court has jurisdiction to determine if the acting Directors of Blue Ridge Property Owners Association, Inc., were validly and properly elected and are properly holding office, and to order a new election under the supervision and guidance of the Court, and to further restrain the acting Directors and Officers of Blue Ridge Property Owners Association, Inc., from conducting an unlawful and improperly held election, and under the provisions of Virginia Code Section 13.1-257, this Court has authority to appoint one or more receivers to protect the assets and affairs of the Association, and to supervise the management and affairs of the Association until such time as the interest of the members of the Association can be protected by its

own management.

WHEREFORE, your complainants pray that a temporary injunction be immediately granted them restraining and enjoining the defendants, or any of them, from conducting or holding the election as planned on May 18, 1974; that this Honorable Court may appoint receivers to conduct a properly held election for the Association; that after the properly held election elects a new Board of Directors, that the Board of Directors and Officers it may select, or designate, shall make an investigation into the affairs of Blue Ridge Property Owners Association, Inc., and report unto the Court its findings, so that the Court may make such adjudication as may be appropriate to protect the interest of your complainants and the other members of Blue Ridge Property Owners Association, Inc., similarly situated, that if it is found that any of the defendant Directors permitted or authorized an illegal expenditure of the Association's funds, that such of them as may be responsible for such unlawful or improper expenditure be held responsible to Blue Ridge Property Owners Association, Inc., for refund of such expenditures; that the expenses incurred by your complainants in bringing and conducting, including reasonable counsel fees, be charged against such of defendants as may appear proper, and that your complainants may have such other, further and general relief as the nature of their case may require.

APPENDIX 2

(ANSWER OF 1973 BOARD OF DIRECTORS)

Comes now Leo Gross, Joseph A. Tosti, Dorothy Behncke, and Harry D. Knauf, some of the defendants named in the above captioned action, and, for answer to the Bill of Complaint heretofore served on them herein say as follows:

1. Defendants neither admit nor deny that the complainants are owners of lots in the Blue Ridge Shores Subdivision, Louisa County, Virginia, since they have not searched the records of the Clerk's Office of the Circuit Court of Louisa County in order to ascertain whether the complainants are record property owners in the Blue Ridge Shores Subdivision. Defendants deny the implication in paragraph one of complainants' Bill of Complaint that, ownership of property in Blue Ridge Shores Subdivision by itself makes the complainants members of Blue Ridge Property Owners Association, Inc.

2. The defendants admit the allegation in paragraph two of complainants' Bill of Complaint.

3. Defendants admit the allegations of paragraph three of complainants' Bill of Complaint.

4. Defendants neither admit nor deny the allegations in paragraph four of complainants' Bill of Complaint since said allgations do not pertain to them. Joseph A. Tosti denies that he was elected prior to March 1, 1971.

5. Defendants neither admit nor deny any allegations which might be set forth in paragraph 5 of complainants' Bill of Complaint since the Order entered by the Circuit Court of Louisa County in connec-

tion with the case tried before it on December 7, 1973, speaks for itself.

6. Defendants deny that they have disregarded their responsibilities or made an effort to usurp authority they did not hold. Defendants admit that they did turn back the affairs of the Association to the Board of Directors who were elected and serving as of March 1, 1971. However, defendants deny that they were without authority since this Court specifically ruled in the case styled Blue Ridge Property Owners Association, Inc., v. Lloyd K. Morris, et al. that the Board of Directors in office as of March 1, 1971, is the duly constituted Board of Directors until a new Board of Directors has been elected by the membership.

7. Defendants have no knowledge of which By-Laws the complainants are referring to in their allegations in paragraph seven of their Bill of Complaint, and again believe that the Order entered by this Court in connection with those cases speaks for itself.

8. Defendants neither admit nor deny the allegations of paragraph eight of the Bill of Complaint since they do not pertain to them.

9. Defendants neither admit nor deny the allegations of paragraph nine of the Bill of Complaint since they do not pertain to them.

10. Defendants neither admit nor deny the allegations of paragraph ten of the Bill of Complaint since said allegations do not pertain to them.

11. Defendants neither admit nor deny the allegations of paragraph eleven of the Bill of Complaint since said allegations do

not pertain to them.

12. Defendants neither admit nor deny the allegation contained in paragraph twelve of the Bill of Complaint concerning complainants' attempts to obtain financial data and refunds of un-used special assessments but would note that requests for financial data by members have been honored in the past, that Financial Reviews of the books and records of the Association have been conducted by an independent Certified Public Accountant, and that said Written Financial Reviews have been made available to the membership.

Defendants deny that illegal payments and expenditure of the Association's funds have been made.

13. Defendants neither admit nor deny the allegations of paragraph thirteen since they have no knowledge of what expenses complainants incur.

14. Defendants deny the allegations of paragraph fourteen of the Bill of Complaint which state that none of the Directors or Officers have been properly or validly elected and that the actions of the Directors are illegal and oppressive.

Defendants neither admit nor deny the allegation in paragraph fourteen of the Bill of Complaint that the provisions of the Code of Virginia, Section 13.1-221 authorize the complainants to bring this suit or that this Court has jurisdiction to determine if the acting Directors of the Association were validly and properly elected and are properly holding office since these issues and related issues were determined at a hearing before the Hon. David F. Berry on April 30, 1974. However, defendants deny that Section 13.1-221 of

the Code of Virginia authorizes any of the other relief prayed for by the complainants in their Bill of Complaint and since their acts are not illegal, fraudulent, or oppressive, defendants deny that Section 13.1-257 of the Code of Virginia gives this Court jurisdiction to appoint receivers to supervise the management and affairs of the Association. Finally, defendants deny that any statutory provision cited by the Bill of Complaint gives this Court authority to grant any other relief which the complainants pray for in their Bill of Complaint.

WHEREFORE, your defendants pray that the complainants' Bill of Complaint now be dismissed in its entirety and that this Court award each defendant named in complainants' Bill of Complaint all costs which have been incurred in defending this action.

APPENDIX 2

(ANSWER OF 1971 BOARD OF DIRECTORS)

Comes now S. F. Stoneburner, Glenn McWhorter, Joseph A. Tosti, Russell D. McDonald, William Budowitz, and Edward G. White by counsel, some of the defendants named in the above captioned action, and, for answer to the Bill of Complaint heretofore served on them herein say as follows:

1. Defendants neither admit nor deny that each of the complainants are owners of lots in the Blue Ridge Shores Subdivision, Louisa County, Virginia, since defendants have not searched the records of the Clerk's Office of the Circuit Court of Louisa County, Virginia, in order to ascertain whether each of the complainants are record property owners in the Blue Ridge Shores Subdivision. Defendants deny the implication in paragraph one of complainants' Bill of Complaint that ownership of property in Blue Ridge Shores Subdivision by itself, makes the complainants members of Blue Ridge Property Owners Association, Inc.

2. Defendants admit the allegation in paragraph two of complainants' Bill of Complaint.

3. With the exception of Joseph A. Tosti, defendants neither admit nor deny the allegation of paragraph three of complainants' Bill of Complaint since said allegation does not pertain to them. Joseph A. Tosti admits the allegation in paragraph three.

4. Defendants deny that part of the allegations in paragraph four of complainants' Bill of Complaint which names the individual Directors elected at membership meetings held prior to March 1, 1971, insofar as said allegations name Joseph A. Tosti as an individual

elected prior to March 1, 1971. Defendants deny that the terms of office for the individuals named as Directors elected prior to March 1, 1971, in paragraph four had ended since said Directors were elected by the membership to serve until their successors were elected and qualified. Defendants deny the allegation in paragraph four of complainants' Bill of Complaint that the individuals named in paragraph four were elected Directors in illegally held elections.

5. Defendants neither admit nor deny any allegation which might be set forth in paragraph five of complainants' Bill of Complaint since the Order entered by the Circuit Court of Louisa County in connection with the case tried before it on December 7, 1973, speaks for itself.

6. Defendants deny that any of them, either individually or collectively, have disregarded their responsibilities or made an effort to usurp authority they did not hold. Defendants admit that the Board of Directors in office on December 7, 1973, did turn back the affairs of the Association to the Board of Directors who were elected and serving as of March 1, 1971. Defendants further admit that this Board of Directors has been operating as the Board of Directors since the affairs of defendants were turned back to it; however, defendants deny that either Board of Directors was without authority since this Court specifically ruled in the case styled Blue Ridge Property Owners Association, Inc., v. Lloyd K. Morris, et al. that the Board of Directors in office as of March 1, 1971, is the duly constituted Board of Directors of the Association with authority to act until a new Board of Directors has been elected by the member-

ship of the Association and qualified. By way of further answer defendants would note that this Court did, at a hearing on April 30, 1974, in connection with this suit, rule that the Board of Directors named in paragraph four of this Bill of Complaint is the Board of Directors which shall remain in office until it is replaced by a duly constituted and qualified Board of Directors.

7. Defendants have no knowledge of which Bylaws the complainants are referring to in their allegations in paragraph seven of their Bill of Complaint; however, defendants believe that the Order entered by this Court in connection with those cases referred to by complainants in paragraph seven speaks for itself. Defendants admit that they adopted new Bylaws on December 26, 1973, to be effective on January 1, 1974, and allege that these are the proper Bylaws of the Association since said Bylaws were adopted by a properly constituted and acting Board of Directors.

8. Defendants deny that they were without authority to adopt Bylaws and deny that the Bylaws adopted by them are arbitrary, unreasonable, illegal and that they put unreasonable restrictions on members of the Association in the conduct of elections at annual meetings. Defendants admit the allegation of paragraph eight of the Bill of Complaint which alleges that they amended the Bylaws to state "On issues, other than the election of the Board of Directors, which are the proper subjects for a membership vote, any member may vote either in person or by proxy."

Defendants deny the allegation of paragraph eight of complainants' Bill of Complaint which alleges that Section 9 of the Bylaws

provides that the proxy of a member must be surrendered to the Secretary of the Association. By way of further answer, defendants would note that the portion of Section 9 of the Bylaws which complainants refer to requires that proxies "shall be filed with the Secretary of the Association and by him entered of record in the minutes of the meeting at which such proxy is voted." By way of explanation, defendants would note that such a procedure is standard in all corporations and is designed to notify management only of the number of proxies held by a particular individual so it will know the number when he votes his proxies on issues and will not have to verify the number of proxies held when the vote is called.

Defendants deny that its Bylaw provisions require that ballots cast at the annual meeting for election of Directors be collected in not more than fifteen minutes. Instead, the Bylaws provide that members shall have a period of fifteen minutes after the call for ballots "to come forward with ballots to be cast." By way of further answer, defendants would call to the Court's attention a letter from Mr. Robert M. Musselman, counsel for the Association, to Mr. W. W. Whitlock, counsel for the complainants, dated April 3, 1974, in which letter (Exhibit 1 attached hereto) Mr. Musselman stated "Sufficient time will be allowed on the day of election to receive ballots from all those present who wish to deliver them in person ..."

Defendants deny the allegation of paragraph eight that the Bylaws prohibit members from receiving ballots at the annual meeting of members and again refer to Mr. Musselman's letter of April 3, 1974, which states "... and a supply of blank ballots will be available for the

the mail." Finally, defendants would respectfully suggest that the complainants misread the Bylaw provision requiring seven days notice to the General Manager since this provision deals with the situation in which a member does not receive a ballot packet in the mail, which ballot packets are mailed out not less than thirty (30) days prior to the annual meeting.

9. Defendants admit the allegation of paragraph nine of the Bill of Complaint which alleges that the Secretary of the Association sent out a Notice of Annual Meeting Ballot Information but neither admit nor deny any allegation concerning the time of receipt of the Notice of Annual Meeting Ballot Information by any of the complainants.

Defendants admit the statements made by the complainants in paragraph nine of their Bill of Complaint dealing with the material sent out with the Notice of Annual Meeting Ballot Information except insofar as those statements allege that the proxy, marked "Exhibit E" in complainants' Bill of Complaint, requests members to give their proxy to S. F. Stoneburner, William Budowitz, or Joe Tosti, which statements defendants deny since said proxies only give members the opportunity to designate the indiviuals named and make no request.

Defendants admit the allegation of paragraph nine of the Bill of Complaint that the items sent out with the Notice of Annual Meeting Ballot Information were prepared, printed, and mailed at the expense of the Association; but, defendants deny the last statement in paragraph nine of the Bill of Complaint which states,

> that these documents are not for the purpose of conducting an unbiased and properly held election,

> but for the purpose of attempting to control the election of Directors at the meeting to be held on May 18, 1974, as well as the conduct of any other business affairs that may come before such meeting.

10. Defendants deny the allegation contained in the first sentence of paragraph ten of the Bill of Complaint and by way of further answer would again refer to Mr. Musselman's letter of April 3, 1974, to Mr. Whitlock which states, in part,

> The representatives of all candidates for office will have an opportunity to designate observers to oversee the receiving of ballots and the tallying of the votes.

Defendants admit the statements made in the second sentence of paragraph ten of the Bill of Complaint.

11. Defendants admit the allegation of paragraph eleven of the Bill of Complaint which states that no information is given to identify or describe the candidates on the ballots; however, defendants would by way of further answer, inform the Court that a synopsis of each candidate's background and qualifications, prepared by the candidate, was published in the Shoreline, which is the official publication of Blue Ridge Property Owners Association, Inc.

Defendants admit the allegation in paragraph eleven which states that nothing is enclosed in the instructions to inform members that they will not be permitted to give proxies to others to attend the annual meeting; on the contrary, the proxy enclosed in the ballot packet indicates that members may give their proxies to others to vote at the annual meeting of members.

Defendants deny that the Bylaws have not been published and made available to members and note that complainants' pleading

itself admits that complainants were given access to a copy of the Bylaws upon request. Defendants further deny the allegation that the Bylaws have purposely not been published and the allegation that the Bylaws are so involved, restrictive, and lengthy that it would be impossible for the average member to act under them or to understand them.

12. Defendants neither admit nor deny the allegation contained in paragraph twelve of the Bill of Complaint concerning complainants' attempts to obtain financial data and refunds of un-used special assessments since they have no specific knowledge of such attempts but would note that request for financial data by members have been honored in the past, that Financial Reviews of the books and records of the Association have been conducted by an independent Certified Public Accountant, and that said written Financial Reviews have been made available to the membership of the Association.

Defendants deny that illegal payments and expenditures of the Association's funds have been made.

13. Defendants neither admit nor deny the allegations of paragraph thirteen since they have no knowledge of what expenses complainants incur.

14. Defendants deny the allegations of paragraph fourteen of the Bill of Complaint which state that none of the Directors or Officers have been properly or validly elected and that the actions of the Directors are illegal and oppressive.

Defendants neither admit nor deny the allegation in paragraph fourteen of the Bill of Complaint that the provisions of the Code of

Virginia, Section 13.1-221 authorize the complainants to bring this suit or that this Court has jurisdiction to determine if the acting Directors of the Association were validly and properly elected and are properly holding office since these issues and related issues were determined at a hearing before the Hon. David F. Berry on April 30, 1974. However, defendants deny that Section 13.1-221 of the Code of Virginia authorizes any of the other relief prayed for by the complainants in their Bill of Complaint and since their acts are not illegal, fraudulent, or oppressive, defendants deny that Section 13.1-257 of the Code of Virginia gives this Court jurisdiction to appoint receivers to supervise the management and affairs of the Association. Finally, defendants deny that any statutory provision cited by the Bill of Complaint gives this Court authority to grant any other relief which the complainants pray for in their Bill of Complaint.

WHEREFORE, your defendants pray that the complainants' Bill of Complaint now be dismissed in its entirety and that this Court award each of the defendants named in complainants' Bill of Complaint all costs which have been incurred by them in defending this action.

APPENDIX 3

FINAL DECREE

This cause came on the 9th day of July, 1974, to be heard again upon the Complainant's Bill of Complaint, the answers of twelve of the thirteen Defendants who have been served, and Complainant's Motion to Enjoin temporarily the holding of the annual membership meeting of Blue Ridge Property Owners Association, Inc., (hereinafter referred to as BRPOA), the hearing previously held on the said Motion on April 30, 1974, at which the Motion was denied, the Reports of the two Special Commissioners appointed by this Court to supervise the conduct of the said election of members of the Board of Directors of BRPOA, the evidence heard ore tenus, the memorandum of law filed by counsel for the Complainants and counsel for the respective Defendants, and the matter of certifying the results of the said election was argued by counsel.

Upon consideration whereof the following rulings are made:

1. The Motion of the Complainants to enjoin temporarily the annual meeting of BRPOA should be denied and said annual meeting should go forward as scheduled on May 18, 1974.

2. The Board of Directors of BRPOA in office as of April 30, 1974, is the duly constituted Board of Directors of BRPOA with authority to act until its successors are elected and qualified.

3. Robert M. Musselman and W. W. Whitlock are appointed Special Commissioners of this Court with the duty of supervising the election of Directors at the annual meeting on May 18, 1974, and reporting to this Court with respect to said election: (1) Any ballot challenged; (2) Any right to vote denied or restricted; (3) All objections made by any member at the election; (4) Any proxies denied or rejected; and (5) Any person denied the right to vote.

4. Blue Ridge Property Owners Association, Inc., shall permit any candidate for the office of Director or any

member to make use of its facilities for the purpose of obtaining a current and accurate mailing list of the members of the Association.

5. Said Special Commissioners shall report hereunder on June 4, 1974.

And it appearing that said Special Commissioners did report to this Court on June 4, 1974, concerning the election held on May 18, 1974. And it further appearing from said report that one slate of nine Directors would be elected if this Court rules that only those votes cast by members in person or by mail ballot (as provided in BRPOA's By-Laws) may be counted and that another slate of candidates (including only three of the same persons) would be elected if this Court rules that certain ballots sought to be cast by proxy, which use of proxies the By-Laws of BRPOA specifically prohibits, are to be counted, in addition to ballots cast in person and by mail. And it appearing from the reports of the Special Commissioners that the issue of which slate of candidates should be certified by this Court as the properly elected Board of Directors of BRPOA would be determined by a ruling from this Court as to whether the ballots sought to be cast by proxy should be counted, this Court directed counsel for both the Complainants and the respective Defendants to prepare and file written memorandums of law on the issue of the use of proxies to cast ballots and set July 9, 1974, for a hearing on the said issue.

And on the 9th day of July, 1974, this Court duly considered the written memorandums of counsel and heard arguments of counsel for both the Complainants and the respective Defendants on the issues raised in said memorandums. Upon consideration thereof the Court does hereby make the following findings of fact and rulings with respect thereto:

1. An owner of property in the Subdivision known as Blue Ridge Shores must apply for and become a member of Blue Ridge Property Owners Association, Inc., which membership is mandatory and becomes a covenant running with the ownership of land, since, by contract, a member cannot resign his membership while he still owns property at Blue Ridge Shores.

2. As a result of such contract and such covenants, assessments may be made personally and against the real estate owned by the members in the Blue Ridge Shores Subdivision, such assessments being obligations upon which judgment liens may be obtained against the real estate of the members, which would subject a member's real estate to judicial sale unless satisfied.

3. Because of the mandatory membership requirement and the power of BRPOA to levy assessments, there are certain constitutional rights involved which are not generally involved in a non-stock corporation, and that these constitutional rights are related to the ability of a member to vote in the election of members to the Board of Directors of BRPOA, the members' ownership of property, and the burdens placed on a member's property.

4. The By-Laws of BRPOA which governed the election of Directors at the annual meeting on May 18, 1974, permitted every member of BRPOA to vote either in person or by mail ballot, regardless of whether or not members had paid all of their dues and assessments, the Board of Directors of BRPOA having previously corrected (by an amendment adopted in December, 1973) a provision in its By-Laws, which this Court had held to be illegal, which had conditioned voting on payment of dues and assessments.

5. As the reports of both Special Commissioners indicate, certain proxies were offered at the annual meeting on May 18, 1974, contingent on the holder being allowed to cast the vote of the members giving the proxies, of which proxies approximately sixty-four (64) were given by members who did not cast official ballots in the election of Directors, and that these proxies were rejected by the Chairman of the meeting since the By-Laws of BRPOA specifically prohibit the use of proxies in the election of Directors.

6. Although Section 13.1-217 of the Code of Virginia specifically provides that the By-Laws of a non-stock corporation may prohibit voting by proxy and specifically provides that a non-stock corporation may provide for the election of Directors by mail ballot, since this case has been brought by Complainants under Section 13.1-221 of the Code of Virginia,

under which equitable relief is authorized, this Court finds that the constitutional considerations involved justify its use of equity powers in contravening the provisions of Section 13.1-217 of the Code of Virginia and the By-Laws of BRPOA to allow the sixty-four (64) proxy votes offered at the annual meeting of BRPOA to be counted toward the election of Directors of BRPOA.

Accordingly, it is hereby ADJUDGED, ORDERED, and DECREED that the following list of individuals is hereby declared by this Court to be the duly elected Board of Directors of Blue Ridge Property Owners Association, Inc., as a result of its annual election held on May 18, 1974:

Directors elected for a term of three years:

1. Tilden Grant
2. James W. Breeden
3. Charles W. Ale

Directors elected for a term of two years:

4. Paul E. Snyder
5. A. Lewis Miller
6. Conrad Bailer

Directors elected for a term of one year:

7. Joyce A. LeVay
8. Robert B. Stocks, Jr.
9. Melva M. Rowe

And it appearing that the Defendants herein have indicated an intention to appeal this Court's decision in confirming the election as Directors of the persons named above, to the Supreme Court of Virginia, it is hereby ADJUDGED, ORDERED, and DECREED that the ruling of this Court is hereby stayed pending final determination of the said appeal, provided formal notice of appeal is timely filed and the petition for appeal is diligently and timely pursued, that for so long as the judgment herein remains suspended the Board of Directors serving

prior to the annual meeting of BRPOA on May 18, 1974, shall remain in office with full authority to operate BRPOA during the pendency of the appeal, and provided that an appeal bond with approved surety in the principal amount of Five Thousand Dollars ($5,000.00), conditioned as required for a supersedeas bond, according to the requisites of Section 8-477 of the Code of Virginia, be given within fifteen (15) days from entry of this decree.

And the respective Defendants herein who have filed their answers objected and duly excepted to this Court's rulings.

And the Complainants, by counsel, objected and excepted to the Court's ruling in holding that the Directors of the corporation as existed as of March 1, 1971, were the duly elected and acting Directors of the corporation prior to the election held May 18, 1974, and that they continue in office until the final determination of the appeal of this decree. And the Complainants, by counsel further objected and excepted to the Court's recognizing By-Laws passed by the acting Board of Directors as having been validly adopted and as being the proper By-Laws under which the election of Directors could be conducted.

This is a final decree, and endorsement of counsel is dispensed with.

ENTER: /s/ David F. Berry
JUDGE

DATE: August 9, 1974

APPENDIX 4

NOTICE OF APPEAL

Comes now Blue Ridge Property Owners Association, Inc., a Virginia non-stock corporation, one defendant in the above captioned case, and George C. Long, Leo Gross, Dorothy Behncke, Spencer Marlow, S. F. Stoneburner, Edward G. White, Joseph A. Tosti, Harry D. Knauf, Glenn McWhorter, and William Budowitz, some of the individuals named as defendants in the above captioned case, and give notice that they intend to apply for an appeal with supersedeas to the Supreme Court of Virginia from a final decree entered by the Circuit Court of Louisa County, Virginia, on the 9th day of August, 1974, in the above captioned case.

It should be noted for purposes of the record that Russell D. McDonald, one of the defendants in the above captioned case, did not elect to appeal the final decree and will, therefore, be shown as an appellee, should the Supreme Court of Virginia grant an appeal.

It is further noted for purposes of the record that Charles E. Moyer, one of the individuals listed as a defendant in the initial Bill of Complaint, was never served with process; accordingly, he was not subject to the jurisdiction of the Circuit Court of Louisa County in the above captioned case, is not bound, as an individual defendant, by the final decree of the Circuit Court of Louisa County, and is, therefore, not a person who can properly be a party to an appeal of said Court's decision to the Supreme Court of Virginia.

Finally, it is noted for purposes of the record that Tilden Grant, who was one of the defendants named in the above captioned case, even though he testified as a witness that he had actively solicited signatures of the complainants on the initial Bill of Complaint in the above captioned

case, elected not to be represented by counsel in the Circuit Court of Louisa County and did not answer the Bill of Complaint which he solicited. Accordingly, said Tilden Grant is in default and his position before the Supreme Court of Virginia, should an appeal be granted, would, presumably, be that of an appellee.

ASSIGNMENTS OF ERROR

The Circuit Court of Louisa County, Virginia, with the Hon. David F. Berry presiding, erred in handing down the decision represented by the Final decree of August 9, 1974, in the above captioned case in the following particulars:

1. The Court erred in its finding and ruling that sixty-four (64) proxies for the election of members to the Board of Directors of Blue Ridge Property Owners Association, Inc., given by members at the annual meeting of Blue Ridge Property Owners Association, Inc., on May 18, 1974, should be allowed to be counted toward the election of members to the Board of Directors since the By-Laws of Blue Ridge Property Onwers Association, Inc., prohibit the use of proxies in this manner and the statutes of Virginia (Code Section 13.1-217) permit such a prohibition.

2. The Court erred in ruling that the equitable considerations involved in the cause were significant enough to permit the Court to exercise its equitable powers and expressly contravene Section 13.1-217 of the Code of Virginia and the By-Laws of Blue Ridge Property Owners Association, Inc., by allowing the said proxies to be counted in determining the results of this election.

3. The Court erred in decreeing the following list of individuals to be the duly elected Board of Directors of Blue Ridge Property Owners

Association, Inc., said individuals having been elected in a manner contrary to the By-Laws of Blue Ridge Property Owners Association, Inc.:

Directors elected for a term of three years:

1. Tilden Grant
2. James W. Breeden
3. Charles W. Ale

Directors elected for a term of two years:

4. Paul E. Snyder
5. A. Lewis Miller
6. Conrad Bailer

Directors elected for a term of one year:

7. Joyce A. LeVay
8. Robert B. Stocks, Jr.
9. Melva M. Rowe

STATEMENT AS TO TRANSCRIPTS

A transcript of all hearings in the above captioned case is to be hereafter filed.

APPENDIX 5

NOTICE AND ASSIGNMENT OF CROSS-ERROR

Comes, the complainants, and give notice of assignment of cross-error, such cross-error being as follows, to-wit:

1. The Court erred in ruling and holding that the Directors of Blue Ridge Property Owners Association, Inc., as existed as of March 1, 1971, were the duly elected and acting Directors of the Corporation, after properly ruling that the then currently serving and acting Directors were improperly elected and not properly holding office, the Directors that were reinstated to office, being those holding office as of March 1, 1971, having been improperly elected in an election which similarly denied members the right to vote in violation of the Corporation's charter.

2. The Court erred in recognizing By-Laws passed by the Acting Board of Directors, being the Directors that existed as of March 1, 1971, that had been reinstated as Directors after having left office, these Directors having been designated by the Court to hold office until the members could elect new Directors in a validly held election.

APPENDIX 6

(Report of Special Commissioner Robert M. Musselman)

The undersigned, being one of the Special Commissioners appointed by this Court on April 30, 1974, to supervise and report on the conduct and results of the annual election of members of the Board of Directors of Blue Ridge Property Owners Association, Inc., one of the defendants herein, respectfully submits the following report:

1. The meeting was conducted as scheduled on Saturday, May 18, 1974, at Louisa County High School, near Mineral, Virginia. The meeting was announced to begin at 10:00 A.M. but was delayed in starting becuase of delays in registering those in attendance and was not called to order until about 10:45 A.M.

2. After opening formalities, the President announced the appointment of five qualified members as Inspectors of Elections, with Mr. Joseph Heischman as Chairman.

3. A representative of National Bank and Trust Company, the designated escrow agent, appeared and delivered to the Inspectors in open meeting three hundred fifty (350) ballots, exclusive of nine ballots which were not accepted by the Inspectors because of having no name (six) or otherwise being void (three), as by voting for more than nine candidates.

4. Twenty-one (21) ballots were turned in directly to the Inspectors by members and twenty-seven (27) other ballots were turned in at the registration desk and turned over to the Inspectors by the persons registering those in attendance. Four (4) other ballots were received with other special characteristics.

5. The Inspectors of Elections determined that a total of four hundred two (402) valid ballots were cast, when all ballots had been received, checked against the membership list, and counted.

6. In addition to proxies for the meeting solicited by the present Board of Directors, which expressly disclaimed the right of the holder of the proxy to vote for the election of directors, other proxies had been solicited designating a proxy committee headed by C. W. Rigsby, which proxies authorized the Committee to vote the proxy for the election of directors, a procedure not authorized by the present By-Laws of the Association.

7. At the meeting Mr. Rigsby, a deputy sheriff, though not in uniform, appeared wearing side arms and tendered one hundred forty-three (143) of these proxies, saying that they were tendered only for the purpose of withdrawing the ballots cast by any of these individuals so that their ballots might be cast in a block by the proxy committee. The presiding officer refused to accept the proxies for this purpose on the basis of the By-Law provision. He further asked for a show of hands as to how many of those represented by these proxies were present and found a good number, probably at least fifty.

8. The president then stated that any of those who had already voted and wished to change their vote at this time could come forward individually and they would be given a new ballot and their earlier ballot withdrawn and destroyed. While two or three members had requested and been granted this privilege earlier in the meeting, no one else came forward for this purpose after the rejection of the proxies.

9. The meeting then continued with the regular order of business.

The question of the presence of a quorum was raised when a vote was to be taken on the approval of the minutes of the previous meeting. A recess was taken to tabulate those registered including (without duplication) those who had sent proxies to the present Board of Directors. This tally revealed the presence of a quorum, but so many members had left during the recess that, when another question of the presence of a quorum was raised, the meeting was adjourned for lack of a quorum.

10. The Inspectors of Elections then retired to court and tabulate the ballots in the presence of both Special Commissioners and of the Secretary of the Association.

11. In accordance with the fulings of the Court, the ballots were segregated into classes and each class separately tabulated, especially from the standpoint of whether or not the voter had also given a proxy for the election of directors to the committee headed by Mr. Rigsby. Two hundred seventy-six (276) valid ballots were received by the escrow agent from those who did not give proxies to Mr. Rigsby's committee, seventy-four (74) valid ballots were received by the escrow agent from those who gave such proxies, none of the twenty-one (21) who turned in ballots directly to the Inspectors also gave such proxies, and of the twenty-seven (27) who turned in ballots at the registration desk, three had given such proxies. All four (4) of those whose ballots had other special characteristics had given such proxies. Accordingly, it appears that sixty-two (62) members who gave proxies to Mr. Rigsby's committee did not turn in ballots, but eighty-one (81) of them did so.

12. A tabulation of the votes for each candidate in each category is attached. From this it will be seen that the vote was very close, with only one vote separating the ninth and tenth candidates and two votes separating the tenth and eleventh. Based on this tabulation the successful candidates were:

Grant	223 votes
Talbott	221 votes
Long	218 votes
Coulthart	216 votes
Breeden	215 votes
Behncke	207 votes
Moyer	207 votes
Ale	205 votes
Dohlquist	204 votes

Under the By-Laws, the three with the largest votes are to serve for a term of three years, the next three for a term of two years, and the remaining three for a term of one year. The unsuccessful candidates were as follows:

Gross	203 votes
Snyder	201 votes
Spink	193 votes
Knauf	191 votes
Miller	190 votes
Bailer	182 votes
LeVay	181 votes

Stocks	173 votes
Rowe	166 votes

13. Your Commissioner knows of no member who requested a ballot and was denied one nor any member who requested to withdraw his ballot and vote again who was denied this right.

14. There was no disagreement between the Inspectors of Elections as to any of their tabulations nor as to the acceptance or rejection of any ballot.

15. Your Commissioner knows of no reason why the results of the election as set forth above should not be certified by the Court and so recommends.

Respectfully submitted,

Robert M. Musselman
Special Commissioner

Recap

	Bank w/o Proxy	Bank w/Proxy	Teller	Outside w/Proxy	Outside w/Proxy	Special w/Proxy			Void	No Name
Behncke	187	5	8	7		0	207	6-7		5
Coulthart	193	4	8	9		2	216	4		6
Dahlquist	186	2	6	10		0	204	9		4
Gross	188	4	4	7		0	203			4
Knauf	175	2	7	7		0	191			4
Long	196	5	7	10		0	218	3		6
Moyer	185	5	7	10		0	207	6-7		4
Spink	175	2	7	9		0	193			5
Talbott	199	3	7	11	1	0	221	2		4
Ale	97	64 7	15	15	3	4	205	8		3
Bailer	80	61 7	14	14	2	4	182			2
Breeden	107	63 7	16	16	3	3	215	5		4
Grant	109	65 7	17	18	3	4	223	1		3
LeVay	78	65 7	12	14	3	2	181			2
Miller	83	63 7	16	14	3	4	190			2
Rowe	65	62 7	12	14	3	3	166			1
Snyder	94	62 7	15	16	3	4	201			3
Stocks	74	63 7	11	12	3	3	173			1
Total Ballots	276	74	21	24	3	4	402		3	6

APPENDIX 7

REPORT OF SPECIAL COMMISSIONER W. W. WHITLOCK

The undersigned, W. W. Whitlock, being one of the Special Commissioners appointed by this Court on April 20, 1974, to supervise and report to the Court on the conduct and results of the annual election of members of the Board of Directors of Blue Ridge Property Owners Association, Inc., one of the defendants herein, respectfully submits the following written report, the undersigned Commissioner having previously given verbal report and filed a written tally sheet of the results of the election.

Since the Court has previously received a detailed written report from Robert M. Musselman, who was, also, appointed Special Commissioner for the aforesaid purpose, this report will be confined to additions or amendments undersigned believes appropriate to that report.

1. The undersigned does not take issue with the first eight items stated in the report of the Commissioner, Robert M. Musselman, except to state that the reference in Item 6 as to proxies not being authorized by the "present By-Laws of the Association", the undersigned respectfully submits is a legal conclusion as to which By-Laws are the "present By-Laws of the Association". The By-Laws that had been approved by the Court as the valid By-Laws of the Association did authorize proxies, however, the undersigned acknowledges that the By-Laws attempted to be adopted by the acting Board of Directors that came back into office for the purpose of continuing the business on a normal basis until an election could be held, attempted to rule out proxies for the purpose of voting for Directors only, but authorized proxies for other business to be conducted at the meeting.

As to the estimate of members who were present at the meeting, contained in Paragraph 7, as being "probably at least fifty (50)", is in error, as a count of those showing hands totaled eighteen (18).

2. The report as to Item 9 is incomplete. Prior to the beginning of the meeting, and when the undersigned Commissioner came to the meeting, it was found that the management of the Association had set up tables outside of the building, where the meeting was scheduled to be held, and these parties were checking off members from the membership list, and issuing identification cards to the members. These people outside the meeting, were, also, receiving ballots from the members without authorization under the published By-Laws, or Rules, under which the election was to be held, these ballots being a total of twenty-seven (27) ballots, and were counted separately by the tally inspectors, as is shown on the tally sheet previously filed by the undersigned, a copy of which is, also, attached herewith, and made a part hereof, and, also, were shown on the written report previously filed by Commissioner, Robert M. Musselman. The first order of business attempted to be conducted at the meeting was to receive the ballots, and to appoint inspectors. The Proxy Committee, headed by C. W. Rigsby, at this time, attempted to vote the valid proxies he held, and the Chairman denied this privilege, but stated that the proxies could be turned over to the tally inspectors to confirm the number of valid proxies to be held, which were found to be 143 valid proxies by the inspectors. C. W. Rigsby stated for his Proxy Committee that he desired to withdraw ballots for all members for whom he held proxies, and upon checking the list of members who had given this Proxy Committee their

proxies, it was found that a total of 79 members had voted, who, also, gave proxies (this figure being erroneously reported in the tally report previously filed as 76 votes, however, this 76 not including the additional ballots that had been turned in outside of the building prior to the meeting, these, also, being shown on the tally sheet in a separate column). The Chairman then began to read the minutes, and when the question was raised about approval of the minutes, the undersigned Commissioner, as counsel for the complainants herein, question whether or not a quorum, as required under the By-Laws under which management was attempting to conduct the meeting, was present, and over the objections of the undersigned, the Chairman adjourned the meeting for one hour for the purpose of determining the number of proxies management had available, and after making this determination and comparing the proxies with the list of parties who had registered outside of the building, the management determined that a quorum was present and called the meeting back to order. The undersigned then stated that people registering outside of the building would not be considered in attendance for the meeting, and asked for a count of the members present to determine the quorum, and management, after counting the members present, and the proxies held by management, concluded that there was not a quorum of members present, counting both members present and management's proxies. The undersigned stated that on behalf of his clients and the Proxy Committee that if management would recognize the proxies held by the Proxy Committee for all purposes, including the election, that the Contesting Proxy Committee would vote its proxies for the purpose of establishing a quorum, however, if management

was not going to permit the Proxy Committee to use their proxies to vote in the election, then the Proxy Committee would withhold their proxies on the question of a quorum. Thereupon, the Chairman declared the meeting adjourned for lack of a quorum, but requested that the Tally Committee take charge of the ballots and count the ballots, and report to the Court the results thereof.

3. The undersigned Special Commissioner takes no issue with the number of votes counted and the tabulations, however, as to Item 13 in the report of Commissioner, Robert M. Musselman, undersigned assumes that this reference excludes members requesting ballots by their proxy holders, as it is otherwise acknowledged that C. W. Rigsby requested the right to withdraw on behalf of his Proxy Committee, the ballots of parties who had granted the proxy to his Proxy Committee.

4. The undersigned Special Commissioner takes issue with Item 15, in that the results as stated in the Commissioner's report and shown on the tally sheet are not the final results of the election, as a minimum of 62 votes, as outlined in the report of Commissioner, Mussleman, as being members who had given proxies and who did not vote, should be added to the candidates not recommended by the Board of Directors, which would, even under this computation, make all of these candidates not recommended by the Board of Directors be elected, the computation being as follows:

Grant	285 votes	Breeden	277 votes
Ale	267 votes	Snyder	263 votes
Miller	252 votes	Bailer	244 votes
LeVay	243 votes	Stocks	235 votes
Rowe	229 votes		

The following candidates under tabulation reported by Commissioner, Robert M. Musselman, would have been the unsuccessful candidates, with the following votes:

Talbott	221 votes	Long	218 votes
Coulthar	216 votes	Behncke	207 votes
Moyer	207 votes	Dalquist	204 votes
Gross	203 votes	Spink	193 votes
Knauff	191 votes		

Although undersigned Commissioner figured that the candidates not recommended by the Board of Directors would have received a few more votes each had the proxies been permitted, the results of the election would not have been different, using the ballots as reported by Commissioner, Robert M. Musselman, so the undersigned will not take issue with his reported proxies that were denied vote, as being 62 members, rather than the undersigned's analysis that there would be 64 members who gave proxies, but were not permitted to vote.

Accordingly, the undersigned Commissioner, reports to the Court that the above named candidates receiving the most votes, considering the votes of the proxies, should be declared the duly elected Directors of Blue Ridge Property Owners Association, Inc., with the three members receiving the highest vote being elected for a period of three years; the next three highest being elected for a period of two years, and the next three highest being elected for a period of one year.

APPENDIX B

ARTICLES OF INCORPORATION
OF
BLUE RIDGE PROPERTY OWNERS ASSOCIATION, INC.

We hereby associate to form a non-stock corporation under the provisions of Chapter 2 of Title 13.1 of the Code of Virginia and to that end set forth the following:

A. The name of the corporation is Blue Ridge Property Owners Association, Inc.

B. The purpose or purposes for which the corporation is organized are:

1. To have an association composed of members who are property owners in the development in Louisa County, Virginia, known as Blue Ridge Shores, and to provide rules and requirements for such membership and to provide rules and regulations for the maintenance, upkeep and enhancement of each owners property to the end that the same may enure to the benefit of the property of the members of this association;

2. To provide by-laws for the operation of the association, and to improve, promote and protect all property transferred or deeded to the association for the benefit of the members of the association and to adopt rules for the improvement, promotion and protection of the members of the association and property owners in the development known as Blue Ridge Shores in Louisa County, Virginia;

3. To exercise all the power conferred by the laws of Virginia upon non-stock corporations; it being hereby expressly provided that the

foregoing enumeration of purposes shall not be held to limit and restrict in any way such general powers.

C. The corporation is to have members who are property owners of the Blue Ridge Shores development in Louisa County, Virginia, whose application for membership are accepted by the corporation; the members will have the right to vote and other privileges of membership.

D. The directors of the corporation are to be selected by the vote of the members of the corporation as provided for in the by-laws of the corporation.

E. The post office address of the initial registered office is 1128 Mutual Building, Richmond, Virginia. The city in which the initial registered office is located is Richmond, Virginia. The name of its initial registered agent is Herndon P. Jeffreys, Jr., who is a resident of Virginia and a member of the Virginia State Bar and whose business office is the same as the registered office of the corporation.

F. The number of directors constituting the initial board of directors is three and the names and addresses of the persons who are to serve as the initial directors are:

Harold H. Purcell	Louisa, Virginia
George Carroll	807 Madison Boulevard Orlando, Florida
Edward M. Wrenn, Jr.	Chestnut Rd., Vestavia Hills Birmingham, Alabama

APPENDIX 9

BLUE RIDGE PROPERTY OWNERS ASSOCIATION, INC.

1974 ELECTION OF DIRECTORS

Under the Rules pursuant to which this election was conducted, nine directors were to be elected from eighteen candidates nominated (or any others for whom write-in votes were cast). The three receiving the largest number of votes were to be elected for a term of three years, the next three in number of votes were to be elected for a term of two years, and the remaining three for a term of one year.

Three approaches to counting the ballots have been proposed, namely, to count all official ballots tabulated by the tellers, to count these ballots and in addition a group of approximately sixty-four proxies, the holders of which sought to cast ballots in spite of the provision of the By-Laws forbidding the use of proxies in the election of directors, or to count only those ballots submitted by mail.

It is stipulated that those elected and the order of their election (the one receiving the largest number of votes being listed first) under each of these approaches are as follows:

I. The total of all official ballots accepted and tabulated by the tellers showed:

1. Grant
2. Talbott
3. Long
4. Coulthart
5. Breeden
6. Behncke
7. Moyer
8. Ale
9. Dahlquist

II. If these ballots and the approximately sixty-four who sought to vote by proxy are counted, those elected are:

1. Grant
2. Breeden
3. Ale
4. Snyder
5. Miller
6. Bailer
7. LeVay
8. Stocks
9. Rowe

III. If only the ballots cast by mail are counted, those elected are:

1. Talbott
2. Long
3. Coulthart
4. Behncke
5. Gross
6. Moyer
7. Dahlquist
8. Grant
9. Breeden

APPENDIX 10

BY-LAWS AND RULES AND REGULATIONS
AS ADOPTED DECEMBER 26, 1973

ARTICLE V

Section 5. Meetings. Meetings of members shall be open to all members of the Association and all members of the Association who are present at a meeting, either to person or by proxy, shall be entitled to vote.

Section 6. Quorum at Meetings. A quorum at any meeting of members of the Association shall consist of Twenty-Five per cent (25%) of the members of the Association who are present either in person or by proxy.

Section 7. Voting Rights. Voting rights of members in the election of Directors and on issues requiring a vote of the membership shall be determined on the basis of one vote for each membership in the Association. Where there is joint ownership of a lot or group of lots, any owner may vote the membership's vote in person or by proxy, and, if there is any dispute between the joint owners as to how the lot's vote shall be cast, the majority of them may cast the lot's one vote. Owners of more than one lot are only eligible to case one vote.

Section 9. Voting of Members. Members shall be entitled to vote for the election of Directors and on any issues which are proper subjects for a membership vote under the non-stock corporation law of Virginia. On issues other than election of the Board of Directors which are proper subjects for a membership vote, any member may vote either in person or by proxy. All proxies shall be in writing, shall be filed with the

Secretary of the Association and by him entered of record in the minutes of the meeting at which such proxy is voted. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution and every proxy shall be revocable at the pleasure of the person executing it.

The Board of Directors of the Association shall be elected in accordance with the following requirements and procedures:

(a) Nominations. For every election of the Board of Directors, the incumbent Board of Directors shall designate the last date on which nominations for election may be submitted and shall notify the membership of said date thirty (30) days prior to that date. All nominations must be received by the General Manager of the Association on or before the last date for submission of nominations for election to the Board of Directors. Any member of the Association receiving the nomination of five (5) or more memberships shall have his name placed on the ballot; provided, however, that the member receiving nomination shall certify in writing to the General Manager of the Association no later than the last date on which nominations may be submitted that, if elected, he is willing to serve as a member of the Board of Directors. Each ballot for the election of members to the Board of Directors shall contain space for write-in-votes.

(b) Casting of Ballots. A packet containing materials for election of members to the Board of Directors shall be mailed to each member of the Association thirty (30) days before the annual meeting of members. Each packet shall contain at least the following items:

(i) An official ballot for election of members to the Board of Directors. This official ballot shall have an identifying mark which designates it as the official ballot and only official ballots, so identified, shall be counted in the election of members to the Board of Directors;

(ii) One plain envelope which shall have no identifying marks on it (hereinafter referred to as the "plain envelope");

(iii) One envelope (hereinafter referred to as the "outer envelope") which shall be pre-addressed to an independent escrow agent. In addition to the address of the independent escrow agent, the "outer envelope" shall be marked with the name of the member to whom the ballot packet has been mailed and his lot number.

The independent escrow agent whose name appears on the "outer envelope" shall be designated by the Board of Directors of the Association. Members may cast their ballots by mail in the following manner:

(i) The official ballot shall be used by members to cast their vote for election of members to the Board of Directors;

(ii) Once a member has marked his official ballot, he or she shall place it in the "plain envelope" and the "plain envelope" shall be sealed; and

(iii) The sealed "plain envelope" shall then be placed in the "outer envelope" and the "outer envelope" shall be sealed, stamped, and mailed to the independent escrow agent whose name appears on the "outer envelope".

Ballots which are cast in the manner prescribed above must be received by the independent escrow agent prior to the annual meeting of members in order to be counted.

Members may, in lieu of casting their ballots by mail, cast their ballots at the annual meeting in the manner described in subparagraph (c) of this Section 9.

(c) Casting of Ballots at the Annual Meeting and Conduct of Election. The casting of ballots at the annual meeting and the conduct of the election in general shall be as follows:

(i) The official ballot shall be used by members to cast their vote for election of members to the Board of Directors;

(ii) Once a member has marked his official ballot, he or she shall place it in the "plain envelope" and the "plain envelope" shall be sealed; and

(iii) The sealed "plain envelope" shall then be placed in the "outer envelope" and the "outer envelope" shall be sealed and cast in the manner provided below.

(iv) The presiding office of the annual meeting of members shall call the meeting to order and shall, as the first item of business, designate at least two (2) inspectors of election, taking care to insure that no Director of the Association, officer of the Association, or candidate for election to the Board of Directors shall be designated as an inspector of election.

(v) Having been designated, the inspectors of election shall take charge of the polls and shall call upon the independent escrow agent for delivery of all mail ballots in his possession. Once the independent escrow agent has delivered all mail ballots in his possession to the inspectors of election, he shall be relieved of all responsibility for said mail ballots.

(vi) When all mail ballots have been delivered to the independent escrow agent, the presiding officer shall call upon all members in attendance who hold ballots that they desire to case in person to deliver their ballots to the inspectors of election. The inspectors of election shall accept these ballots taking care to see to it that ballots have been cast in the manner prescribed by these By-Laws and that no ballot is cast in person which has been cast by mail. In the event that the inspectors of election determine that a ballot has been cast by one member both in person and mail, then the person casting the ballot in person shall designate which one of the two ballots is to be counted. The presiding officer shall allow a reasonable time, not to exceed fifteen (15) minutes from his call for ballots, for members to come forward with ballots to be cast. Once the time for casting ballots has elapsed, the presiding officer shall declare the polls closed and ballots shall no longer be accepted.

(vii) Once the polls are closed, the inspectors of election shall take all ballots cast, count them, determine the results of the election, certify the results of the election in writing, and deliver the results to the presiding officer who shall announce the results of the election to the meeting.

(viii) In the election of members to the Board of Directors, each membership shall be entitled to cast one vote for each of the Director positions to be filled and such votes shall not be cumulative. A plurality of votes cast shall elect.

(d) Replacement Ballots. If members do not receive their ballot

packets in the mail, the General Manager of the Association shall be authorized to give members replacement ballot packets; provided, however, that members must give the General Manager written affirmation that their ballot packet has not been received by mail. Written affirmation by a member shall be made to the General Manager at least seven (7) days prior to the annual meeting and a replacement ballot packet, properly marked and identified, shall be promptly issued by the General Manager. In the event that a replacement ballot packet is issued, the General Manager shall notify the inspectors of election of such issuance.

ARTICLE X

AMENDMENT OF BY-LAWS

Section 1. These By-Laws may be amended, altered, or repealed by any meeting of the Board of Directors by the affirmative vote of a majority of all of the Directors. The members shall have the power by a majority vote of all members to rescind, alter, amend, or repeal any By-Laws and to enact By-Laws which, if expressly so provided, may not be amended, altered, or repealed by the Board of Directors, provided that notice of any such action proposed by any member has been given in the notice of the meeting of members.

APPENDIX 11

BY-LAWS AND RULES AND REGULATIONS
AS ADOPTED MARCH 1, 1971

ARTICLE V

Section 9. Voting of Members. Members shall be entitled to vote for the election of directors and on any issues which are proper subjects for a membership vote under the non-stock corporation law of Virginia. On issues which are proper subjects for a membership vote, every member entitled to vote at any meeting may so vote either in person or by proxy. All proxies shall be in writing, and shall be filed with the secretary and by him entered of record in the minutes of the meeting. No proxy shall be valid after the expiration of eleven months from the date of its execution, and every proxy shall be revocable at the pleasure of the person executing it.

The Board of Directors shall be elected exclusively by mail ballot and in accordance with the following requirements and procedures:

(a) Nominations for the first election of members of the Board of Directors to be elected pursuant to these By-Laws shall be accepted at the office of the General Manager of the Association on or before April 3, 1971. After that date nominations shall be closed. For every election of the Board of Directors thereafter, the incumbent Board of Directors shall designate the last date on which nominations for election of the Board of Directors may be submitted and shall notify the membership of said date by mail thirty days prior to that date. Nominations must be received by the General Manager on or before the date set by the Board of Directors.

(b) Any member of the Association receiving the nomination of five or more paid-up active memberships shall have his name placed on the ballot; provided, however, that the member receiving nomination shall certify in writing to the General Manager of the Association not later than the last date on which nominations may be submitted that, if elected, he is willing to serve as a member of the Board of Directors.

(c) Each ballot for the election of members of the Board of Directors shall contain space for write-in votes.

(d) All ballots for the election of members of the Board of Directors shall be mailed to each active member in good standing thirty days before the annual meeting.

(e) All ballots for the election of members of the Board of Directors shall be either:

(1) Mailed to the General Manager of the Association so as to be received before the convening of the annual meeting of the Association, or

(2) Delivered to the General Manager or to his office before the convening of the annual meeting.

(f) When the presiding officer shall have called the annual meeting to order, the polls should be closed and ballots shall no longer be accepted. The presiding officer shall then appoint two inspectors of election who shall, with strict impartiality and according to the best of their ability, take charge of the polls, count all votes, and determine the results of the election. No director, officer, or candidate for office shall be appointed as an inspector of election.

(g) In the election of members of the Board of Directors, each paid-up active membership shall be entitled to cast one vote for each of the Director positions to be filled, and such votes shall not be cumulative. A plurality of votes cast shall elect.

APPENDIX 12

BY-LAWS AND RULES AND REGULATIONS
ADOPTED OR REVISED JANUARY 8, 1966

ARTICLE I

Section 4. Voting Rights. Voting rights of members in the election of Directors and on issues requiring a referendum, of the total vote of all eligible members shall be determined on the basis of one vote for each paid-up membership in the Association. Where there is joint ownership of a lot and only one paid-up membership for said lot, any owner can vote the membership's vote in person or by proxy, and if there is any dispute between the joint owners the majority of them may cast the lot's vote.

Section 5. Limitation of Voting Rights. Only those members whose dues are paid before May 1, for the year during which a vote is requested, are eligible to vote on any business of the Association.

Section 10. Quorum at Meetings. A quorum of eligible voters at any meeting of members of the Association shall be constituted by 5% of the members of the Association in good standing, present in person or by proxy, except for any meeting as may, by statute, require a larger percentage.

Section 12. Voting of Members. Every member entitled to vote at any meeting may so vote either personally or by proxy. At all elections of Directors, the voting may but need not be by ballot and a majority of the votes cast shall elect.

Every proxy must be executed in writing by the member entitled to vote or by his duly authorized attorney. No proxy shall be valid

after the expiration of eleven months from the date of its execution unless therein otherwise specified. Every proxy shall be revocable at the pleasure of the person executing it or of his personal representative or assigns.

At all elections of Directors, two holders of election shall be appointed by the presiding officer of the meeting. The holders of election shall faithfully execute the duties of holders of election at such meeting with strict impartiality and according to the best of their ability, shall take charge of the polls and after the vote shall have been taken shall make a certificate of the result thereof, but no Director, officer or candidate for such office shall be appointed as such. If there be a failure to appoint holders, or if any holder appointed be absent or refuse to act, or if his office becomes vacant, the members present at the meeting, by a majority vote, may choose temporary holders of elections.

ARTICLE VI

AMENDMENT OF BY-LAWS

These By-Laws may be amended, altered or repealed by any meeting of the Board of Directors by affirmative vote of a majority of all of the Directors. The members shall have the power to rescind, alter, amend or repeal any By-Laws and to enact By-Laws which, if expressly so provided, may not be amended, altered or repealed by the Board of Directors.

APPENDIX 13

a. Transcript of April 30, 1974, Hearing before the Honorable David F. Berry:

(1) From page 2, line 10, through page 3, line 25.

WHITLOCK: We take the position both, that they are without authority and they - if they have the authority of a normal Board of Directors they have exceeded their authority.

COURT: Now what's the basis of the allegation that they are without authority?

WHITLOCK: Well that this Board of Directors that is now acting Your Honor is one that has - was elected under similar By-laws to which Your Honor has held were improper in that they did not grant all of the members the right to vote. In fact many members were denied the right to vote because they hadn't paid their dues currently. And to some surmise and perhaps with some indication from the Court after a conference between - with Your Honor and Mr. Musselman after the last hearing, the previous Board of Directors that was in office when we had our last cases turned over the business of the Association to the Board of Directors that had gone out of office in 1971, I believe. I don't know about any authority - the existing Board turned over the affairs of the corporation to the previous Board. I submit to Your Honor that the previous Board has no more authority to act than the Board that was in office when previous hearings were had, in that both Boards were elected where the denial of the vote was applied as to members who had not

currently paid their dues. I would like to review Your Honor's discussion with Mr. Musselman and at the conclusion of the previous hearing we had some guidelines under which we expected to act and much to my surprise as few days after that I learned by seeing in the papers where the court reporter had filed a transcript of the discussion between Mr. Musselman and Your Honor of things at great length that Mr. Musselman had discussed with Your Honor without my being present. And Your Honor called Mr. Musselman's attention at the beginning of that discussion or asked Mr. Musselman if I was to be there or any reason why I wasn't there. Well Mr. Musselman stated that he didn't think it was a matter that concerned me or my clients and he went into matters that I think gave Mr. Musselman guidance and direction how to proceed then but if they didn't proceed in that manner - I'd like if I may - I'd like to review what Your Honor commented upon in the previous hearing. I brought the transcript of the previous discussion or ruling of the Court at the conclusion of our previous trial in the four cases and also the transcript of Mr. Musselman's conference with you subsequent to that. If we could just briefly. . .

(2) From page 4, line 16, through page 5, line 9.

COURT: As I recall I specifically ruled in that case that you can't have a corporation without directors. You've got to have one board or the other and it would revert back to the previous board if that present board was removed. Now if the effect of that was to declare null and void the actions of the then Board of Directors because of their illegally being elected then it would revert back to the previous Board as a holdover matter. I recall that.

WHITLOCK: It was some discussion to that effect and I don't know what previous Board would be, the one that was validly elected. It seems to me that you'd probably have to go back to the initial Board of Directors. . .

COURT: I don't know about that.

WHITLOCK: . . . for the corporation.

COURT: The fact is though that there'd never been a court attack on any of the corporate affairs, never been a stockholder's suit or any contest filed, as such. It was always raised as a secondary matter in the defense of some person's claim where a money judgment was being sought.

(3) From page 7, line 17, through page 9, line 9.

COURT: All right. Now is this problem having to do with the upcoming election only or are there other matters which are involved in your petition?

WHITLOCK: As I see it Your Honor, it has to do with the Directors in office now, whether or not they have authority to act in any manner really. To pass By-laws, the Directors who are in office now have attempted to pass By-laws since the subsequent hearing and to conduct an election under those By-laws. Now our position is that these Directors have no such authority to conduct an election, to pass any By-laws or to control and supervise the coming election. We submit that. . .

COURT: What's the problem with the - just the fact that those Directors are conducting it or is it the way in which they're conducting it?

WHITLOCK: No sir, there are many problems Your Honor, I'll be glad to go into it. It's. . .

COURT: Well what do you want to do? The Court to appoint Directors?

WHITLOCK: I want the Court to appoint - I don't - I think the Court would have to appoint receivers or a committee to conduct the election.

COURT: Well who's going to conduct the business while an election? Now the corporation has activities that have to be . . .

WHITLOCK: The receivers, Your Honor would have to appoint receivers to conduct the business of the corporation, unless the initial Directors, and we submit that the only officers . . .

COURT: Well, would you rather have the Directors that were in there when the suit was heard in Louisa?

WHITLOCK: No sir, I don't submit that - I don't - I'd just as soon have those to tell you the truth about it, but. . .

COURT: Well you were asking - you were saying that they had no authority over there.

WHITLOCK: I don't think that they have any authority or those who were elected under the same circumstances that those did, have any authority. And I don't think that the existing Directors, the ones that were in the office when that hearing was held in Louisa, had any authority to turn the corporation back over to the previous Directors.

COURT: They did not turn it back over to them necessarily - they, I suppose they took at face value what the Court said and that was it upheld your position that those Directors were improperly in office, and then under the holdover statute. . .

(4) From page 10, line 5, through page 12, line 15.

COURT: Well, I have before me the transcript of the hearing on December the 7th and 10th. . .

WHITLOCK: All right, let's take - start at page 4 and you were discussing then the ruling in the case before the Court. That these By-laws, and beginning down about the 6th line, these By-laws have problems in regard to their adoption and in the second place, or in another respect, in regard to the voting limitations, I believe Mr. Whitlock's position is well founded and that is if we are going to construe these obligations fairly on both sides, then there cannot be any undue restrictions on the rights of the members to exercise their vote. And now we'll go on over to page 7, beginning in the middle of the page, Your Honor says, I don't consider at this time Mr. Whitlock - and that was a routine matter of annual dues, I don't hold that as critical to the issue as to what we are dealing with in the complete adoption of new By-laws and the restrictions on membership.

COURT: Where are you reading from?

WHITLOCK: In the middle of page 7.

COURT: All right.

WHITLOCK: These are your comments at the conclusion of the hearing which we submit were the matters you ruled upon. Then if we go over to page 9, Mr. Musselman asks you, Will Your Honor clarify the effect of its ruling. Does it say that the Board is not presently properly constituted? And Your Honor said, I think it has that effect Mr. Musselman, that any elections taking place of the new rules which went into effect with regard to those By-laws and it has two problems with it. First of all the minutes don't clearly reflect that this set of By-laws

were adopted as such and secondly, that the restrictions on voting in those By-laws exceed the authority of incorporation. And, of course, that's true as to - because the By-laws under which the 1971 Board was elected. Then you go on down to the bottom of that page and say, Yes sir, I would - it is apparent in both sets that the old directors remain in office until their successors have been elected. Mr. Musselman asks a further question, maybe I should read it. Is Your Honor's ruling then that those persons elected prior to the adoption of these By-laws continue as the directors of the corporation? And you say, Yes sir I would - that it is apparent in both sets that the old directors remain in office until their successors have been elected and qualified and if there are vacancies they should be filled in the same manner provided under the old By-laws. It seems to me Your Honor that the old - you've given - if it wasn't a direction it was an instruction that the new election should be held under the old By-laws.

COURT: No, Mr. Musselman asked on page 10, says, So that Your Honor is holding that the person, as a part or as a formal part of your order, that the directors of the corporation are those who were in office at the time of the adoption of these By-laws in 1971. Then my comment was, Well let's put it this way Mr. Musselman, I don't think it's necessarily a part of the order.

WHITLOCK: Yes sir.

COURT: Now, . . .

WHITLOCK: And then the next thing I see of importance is on page 11.

COURT: I think it was clearly indicated that the directors in office at the time the new By-laws were adopted should be back in office and continue to conduct the affairs of the corporation until a new election was held.

(5) From page 12, line 24, through page 14, line 9.

WHITLOCK: Well let's see on page 11 here's what Your Honor said and I think we're getting to the meat of what is - you said or at least I asked, or this is a statement I said, beginning about the middle of the page; I assume these people will not attempt to collect any dues or anything of that kind under these new By-laws. Then if that is all they are asking for - I talked with Mr. Musselman ahead of this hearing. I think the proper procedure for this corporation now is to call a meeting of its members. The powers of the corporation go back to the members, and have an election and elect new directors by all of the members voting. And Your Honor said, The thing about it Mr. Whitlock there has to be somebody in office. And I said, Well I agree with that but for emergency purposes the directors who are duly elected, and then you said, They are hold overs, there is no contest. If this were an actual voter's contest it would be very appropriate for the Court to enter this up in the order. I will do it if counsel wants it done, but I don't think it's necessarily appropriate that I start saying what else is wrong with the corporation. I am saying I deny the judgment here for those reasons, but I point out that to counsel because there may be other actions coming up and other assessments to be made. Then. . .

COURT: Well, I don't know that you all ever settled that. Now. . .

WHITLOCK: No sir I don't think we did ever settle it because I never knew any more occurred until I just happen to come across this proceeding that had gone on between Your Honor and Mr. Musselman, and I had written to Mr. Musselman. I want to submit to Your Honor

copies of letters I have written him asking that these matters be resolved and Mr. Musselman never related to me in any manner that he had had this further discussion with Your Honor and I was amazed and surprised that he had conducted himself in that manner.

COURT: Well what is it that has taken place and that as a result of the other discussion now that you claim is to your prejudice or to your clients' prejudice?

(6) From page 24, line 22, through page 25, line 14.

WHITLOCK: I'm asking that the Court supervise an election and have an open election that everybody who's a member vote and vote in whatever manner that's suitable to them, whether it's personal or by proxy and that if anybody wants to do any campaigning, they do it at their own expense and not do it at the Board of Directors expense and in direct conflict with the Board's own rules. And let me just point this out to you Your Honor. In 1973, when Mr. Anderson represented the dissenting - some dissenting stockholders. 1973, here's a resolution that was adopted at the annual meeting. This is amended. Resolution, Mr. Anderson, attorney for a group of interested members stated that he had four resolutions to present. One, that the Shore Line publish any item of news submitted by a member and not be used to advance the desires or political interests of any fraction of the Association, including the Board or management. Mr. Anderson - and that's one and there are three others that are not so awfully important although they did touch on matters here of concern, but this one has been directly violated.

(7) From page 26, line 5, through page 28, line 16.

WHITLOCK: It says Mr. Anderson stated each resolution in the form of a motion to be voted on and all carried. And the Minutes says that the resolution was carried. And then we come along in April of this year and we received this Shore Line. First it starts off with the interpretation of Your Honor's ruling by Mr. Musselman. It says and quoting the Court I guess, or Mr. Musselman one, it says, The Court further ruled that the improper elections held in 1971, 1972, and 1973 had the effect of continuing in office the Board of Directors which was in office on March 1, 1971. The ruling specifically established the authority of that Board to continue to administer the affairs of the Association until an election is held of a complete new Board next May. The ruling establishes the authority of the present Board to act on all matters related to the normal operation of the Association, confirms the validity of the revised By-laws and rules and regulations adopted by the Board effective January 1, 1974, which By-laws and rules and regulations have formed the basis both for the operation of the Association in recent months and also for the specific arrangements for the conduct of the election in May. No one will be relieved from paying the regularly assessed dues and assessments in these years, that the Association will have no obligation to refund any amounts paid by any member, and the dues assessed in 1974 are fully collectible from all members, including the four who were involved in this litigation. Now the last part is in direct conflict with your discussion with Mr. Musselman. You told Mr. Musselman in that discussion that they could go ahead and assess the dues but when the new Board of

Directors got in office they could very well change the dues that were applicable in 1974 and that if they changed them that they'd have to make some adjustment in them. Then we go on to say in this official bulletin, this Shore Line is the official bulletin of the Association and it's not supposed to be used for political purposes. It says, The May Election -- Nominees' Resumes. Eighteen members have been nominated for membership on the Board from which you may choose nine. This will be a completely new Board. There will be no one to furnish continuity in office unless you elect some members who have had Board experience. You surely do not need to be warned of the danger of skyrocketing costs resulting from inexperience. Our Board has always endorsed candidates with varied backgrounds in order to have a wide view of members' desires. Here is a list of those chosen from the list of nominees. All nine have demonstrated an unselfish interest in and love for Blue Ridge Shores. And then they the nine nominated by the Board. And in each case it starts off naming their persons and it says endorsed by the Board. And then - well the first one is Charles Moyer and it starts off, endorsed by the Board, and then, Chuck was prevailed on to run again because of his experience he will be most valuable to the new Board. So many of the nominees have had no experience with dam work and the dam is our most valuable asset. Then we go on with Mrs. Dorothy Behncke and Don Coulthart, all showing to be endorsed by the Board; David Coulthart, endorsed by the Board; Colonel Leo Gross, endorsed by the Board; Harry D. Knauf, endorsed by the Board; George Long, endorsed by the Board; Thomas N. Spink, endorsed by the Board; Lee Talbott,

endorsed by the Board; and then they start out with a resume of those who weren't endorsed by the Board and they are given a brief comments as to them and there's no recommendations given as to them, although one of the people not endorsed by the Board, Mr. Grant, previously served on the Board and was on the Board that was found not to be properly elected.

(8) From page 31, line 24, through page 32, line 13.

COURT: Are you complaining about the nearness of the meeting date in May?

WHITLOCK: I'm complaining - yes, sir, the date is so near now that - and we - that it's impossible to make a - to correct the problems that have been made by this Board misinforming the members. And I submit Your Honor that this Board has made a deliberate effort to mislead the members and to make it impossible for them to vote and vote in a reasonable manner. They've put restrictions on their opportunity to vote so that if they don't vote with the Directors - if they're not with the Directors then they'd be confused as to what they can do otherwise.

COURT: Well now if the Court removed all restrictions on their voting then what would be wrong with the election going ahead as scheduled?

(9) From page 34, line 21, through page 35, line 12.

COURT: But the fact is that what I'm saying to you, Mr. Whitlock, and I'm offering this as a possible solution and I'm not saying that I'll grant it, but if the Court removed all restrictions on voting and said the election will proceed without any restrictions, whether you

come in person, whether you send your proxy, or whether you send your mail ballot, that no member who owns property can be denied the right to vote. Now what prejudice could that bring on a member except that he might claim he's been brainwashed?

WHITLOCK: Well, I think what Your Honor suggests would be a wholesome procedure for the election. In fact I begged Mr. Musselman to agree to that or we wouldn't be here today.

COURT: Well that may well be, but the fact is that an election should be held.

WHITLOCK: I'm all for it Your Honor. I want. . .

COURT: The question is, when.

(10) From page 36, line 12, through page 41, line 18.

COURT: Well I'm going to point out this to counsel and allow you all to comment on it, I'm not about to go back into all these past affairs and all the problems that have occurred over the years. This is a practical problem here of getting in a duly constituted Board of Directors. Now the Court in effect has ruled and I'm confirming it in this hearing now, that this corporation is not going to be without Directors and I'll consider any motion to remove any Director for cause, but the Court is finding that the nine Directors who are listed in paragraph 4 of the Bill of Complaint were informally ruled to be the proper Board of Directors after the latest Board had been declared invalid and should continue in office until replaced as hold overs. Now certainly Mr. Whitlock has the right to ask for the removal of any or all Directors if members are being prejudiced by their activities or the presence in office of those Directors, but for the purposes of

going forward we'll start off with the proposition that those nine people are the Directors of this corporation until removed or replaced in a valid election under the theory that when one group of Directors is removed until replaced under the doctrine of hold over, the ones who preceded them in office are the proper office holders. That's generally true in all offices. It's a constitutional matter, it's a corporate matter and it's contained in the By-laws of this corporation which the Court reviewed at the hearing. Now, from the standpoint of electing new Directors and carrying on the business of the corporation, I'm going to ask Mr. Musselman to respond to the question of why this Court shouldn't impose certain requirements on this present Board as to how the next election shall be held, if rights have been prejudiced and as Mr. Whitlock has indicated they desire to circulate among the membership a new slate or an additional slate of proposed Directors, why the Court shouldn't in effect supervise this election and then once a new Board is properly in office, to hear such additional matters as might be brought to the Court's attention after that new Board has taken office. There are many matters which go back into the old business with the corporation that Mr. Whitlock has brought into this Bill of Complaint that have to do with the expenditure of funds. I don't consider it a proper time now with hold over Directors in office to go into the detailed financial management of the corporation when the most urgent matter is the election. And it may be that those matters can be clarified to the satisfaction of the membership generally, if an unrestrictive election can be held. Now Mr. Musselman, the Court very frankly is considering allowing a thirty day extension

on the holding of the election and to remove for the purposes of this election all restrictions which would prevent a member from exercising his right to vote if he showed up in person, if he sent a proxy or if he used his mail ballot. Now, do you have any basis upon which you feel that that would be improper or that you wish to be heard on?

MUSSELMAN: We wish to be heard on it sir.

COURT: All right sir.

MUSSELMAN: May it please the Court, the action that was taken after the decision last December included the adoption by the hold over Board of By-laws which were, except for non-essential changes of an essentially typographical nature, the same as the By-laws that were adopted by the Board that Your Honor held to be illegal except as to the provisions for voting. These provisions were conformed strictly to Your Honor's direction in providing for the allowance of a vote to every member whether or not he was in good standing by the payment of dues. The By-laws that were adopted are, I believe, in strict conformity with the statutes of the State and I think Mr. Whitlock needs to address his remarks to the legislature rather than the Court because the statutes specifically provides that in a membership association you may have a mail ballot, and that is what the By-laws provide, that we have a mail ballot, and we have given Mr. Whitlock assurance that there will be ballots available for persons who lost theirs. There will be ballots available that can be cast at the meeting, that an opportunity will be given for a member to vote. The only thing that Mr. Whitlock has indicated to the Association that he objects to is that we do not allow proxies. That any member may be - the ballots that were sent

out contained all 18 names of all nominees who - supplied with additional spaces for writing. The literature that was sent out had equal length discussion of each candidate which they were permitted to prepare themselves. The whole thing has been done on a strict conformity with the statute which provides that for this type of an association you may have a mail ballot. The procedures are set forth with great care to provide for impartiality. We have an independent escrow agent. The By-law provide for the appointment of an Inspectors of Elections who are not to be in any way candidates or past candidates for officers or directors or anything of that nature. And Mr. Whitlock has been given every assurance he asked for as to the conduct of elections, except that we have refused to permit the use of proxies in the election of Directors because we believe this is what the statute provides and we believe that it is giving the maximum amount of democracy to the whole procedure. It's permitting every member to vote without substituting someone else's judgment for his. Mr. Whitlock acts as though this were an impairment of contract. Does he feel that the inability to send somebody to the polls in the local elections is an impairment of their right to contract. Just as in all our public elections, no one is ever permitted to act for someone else and we've had endless legislation and litigation trying to be sure there was no interference with the ballot process. So here we feel that the ballot should be the vote of the member, not of someone else for him. And that's what the Association is striving for and we believe that it is in strict conformity with the provisions of the Virginia statute governing nonstock corporations.

COURT: Now what provisions are there then for judging the fairness of the election other than the management being in a position to judge it? What independent. . .

MUSSELMAN: There is the provisions of the statute that permits anyone aggrieved to come to Your Honor for relief after the election, if there is any unfairness. The Association has no objection to Your Honor appointing someone to - as a referee for the election if this is indicated to be appropriate. We don't wish to run up any more expense than it's necessary but if Your Honor feels that this is appropriate we have no quarrel with that. The Association is anxious to have every member vote, not somebody else vote for him, but every member vote. The By-law provisions with respect to voting were separately because of delays by the printer who has had the By-laws to print for general distribution for over two months. The - we put out a special issue of the Shore Line that went out Saturday setting forth in specific terms the provisions of the By-laws with respect to the election.

COURT: You're saying that as a general proposition you feel that it is more expeditious and certainly in keeping with the general integrity of the ballot to encourage mail ballots as opposed to proxy votes:

MUSSELMAN: Yes Your Honor. Because it's awfully easy for people to go around and say well you don't want to bother with this, sign me your proxy and let me go vote for you. We don't allow that in general elections. We don't allow anything even approaching it. We don't even allow a person to see how he votes. And this is what the Asso-

ciation is trying to approach as close to as we may by complying strictly with the statutory provisions that says that in a membership association you may have a mail ballot.

(11) From page 42, line 9, through page 42, line 20.

COURT: And the statute certainly is clear that the Court can and should give summary consideration to the matters of the government of the corporation. Now other matters can be taken up in due time, but I think I'm required and should give summary judgment on this question today as to how this election shall go forward. Otherwise it's encouraging further litigation later on. It might have a tendency to stop litigation if it can be resolved in a proper manner today. Now the question is, of course the cause for changing the rules of the election and secondly the reasonness of extending the time of it. Now how much is the date of the third Saturday in May fixed in all the official papers and what changed it?

(12) From page 43, line 6, through page 44, line 8.

COURT: This matter of whether or not there shall be proxies is a rather intriguing thing. You've certainly brought out an item here which is worth considering as I have commented and have really justified upholding Mr. Whitlock on, in considering the rights of the stockholders, here they are more in the category of a voter than a stockholder because this corporation through its Board of Directors actually exercises governmental powers over its members insofar as their property is concerned. The right to assess, the right to collect taxes, and to perform functions which actually constitute liens on their property if they don't pay up their dues. Now the question is whether

or not this is to be approved generally or whether the Court should in effect remove the voting procedure and open it up to the extent Mr. Whitlock is asking for, and as you commented in governmental elections proxy is never used. It's always either a mail ballot or a vote in person. And you are saying in effect that because of the similarity to actual political elections that you're undertaking to duplicate it as closely as possible. And certainly in the Court's ruling as commented on in the previous trials, the constitutional questions have been compared to the citizen's right to vote when he's delinquent in his property taxes. He can't be denied the right to vote because he hasn't paid last year's taxes. You might be delinquent in paying your real estate taxes but the recourse there is to sell your property if necessary to collect it and not to deny you the ballot. And this is the analogy the Court used. And the question here is then should there be a further analogy in the matter in which the balloting is carried out.

(13) From page 46, line 13, through page 47, line 5.

COURT: That may be an issue though, as to whether they in fact have - here you have the control of the press in a sense. Now in that sense the Court can't acknowledge that management might have the same prerogatives that they would in a business corporation. They certainly are recognized...they have the right to use the corporate facilities and corporate funds to perpetuate their continuing in office, it being a business corporation. But I don't know that when you're dealing with a quasi-governmental question here that the same principal would apply. I think we have to acknowledge that Blue Ridge Shores

Property Owners Association is a government within a government. It has a lot of the aspects of an unincorporated town. And I suppose that's basically what the legislature is going to have to deal with one of these days or the Court of Appeals in resolving this question. Just what rights and responsibilities attach and how far restrictions can go on the questions of what privileges are given up and what responsibilities are attached by reason of the mere ownership of the land.

(14) From page 48, line 11, through page 48, line 19.

(WHITLOCK): Your Honor has ruled in the earlier cases and in your comments today that these people are bound by a contract because they signed an agreement in the beginning that if they were to retain their membership in this Association they would be bound by the rules and regulations lawfully adopted by this Association and they had contractual obligations in which they could not withdraw - from which they could not withdraw themselves because of the commitments they made by a contact when they became members of this Association.

(15) From page 48, line 25, through page 49, line 6.

COURT: That's not the question. Now this again it shouldn't be misunderstood that a member does not have to make application to be among the membership, by purchasing property he is a member. This is what the agreement says. He has no choice. Anymore than a person living in the United States has a choice of whether or not he's a citizen. He is a citizen.

(16) From page 50, line 9, through page 52, line 2.

WHITLOCK: All right sir, well I want to comment on this Your Honor that I - surely Your Honor has had experience and most attorneys have had experience in assessable insurance companies, assessable mutual insurance companies whereby people can be assessed. And I have never seen a vote yet that wasn't conducted by a proxy being sent out in those type things. Now if it's - the great difference in a public election is that there are so many - it's so easy to vote. It's so simple to vote. People are fully informed on both sides. Maybe they're informed too much. Anyhow, it's a great deal of effort made to fully inform all people by the parties who are running for office. And a voter has a right to know what he's doing and have an opportunity to vote. This - mail ballots are controlled under a supervised procedure that nobody can vote by mail except the voter himself. He goes before a Notary Public. He certifies his signature on the ballot. And in this - this mail ballot, an illustration and I'm not availing that anybody is going to do anything fraudulent, but when things don't go right, people who are wronged wonder what has happened and they wonder what could have gone wrong. I was reading through these minutes and I see here where Mr. Anderson had 134 proxies back here one time. He was representing the opposition. The Board of Directors had 104 proxies, and yet every member - every member that the Board of Directors supported was elected and they didn't get - one or two of them got one more vote than Mr. Anderson's proxies were. Of course Mr. Anderson's proxies were reduced to 104 by examination that he had ruled out by the Board of Directors. . .

COURT: But Mr. Anderson never contested that election though did he?

WHITLOCK: I believe he did Your Honor but he didn't follow through on it.

COURT: Right, as far as the Court's concerned, it's over and done with. . .

WHITLOCK: I'm just - I'm not contesting that election. I'm just trying to make a point that balloting if it's not under serious supervised and controlled procedures can go wrong. Now I can foresee how 100 ballots can be cast in the mail election fraudulently and I'm not saying these people are going to do it, but they're sending out some 800 letters and if anybody has had anything to do with sending out letters in this organization, at least 100 of them are going to be returned, moved, unknown. Now somebody - whoever wants to if they wanted to be fraudulent, could vote those 100 ballots. There's nothing to keep them from voting it.

(17) From page 52, line 10, through page 53, line 21.

WHITLOCK: I'm asking if you're going to have a mail ballot that that should be done. I think that there - that not only you should have a mail ballot, the person - if you want to have a mail ballot it's fine with me if the people sign it, but not only should you have a mail ballot but you should give an opportunity to a person to give his proxy, to go to this meeting and hear and see and observe what is going on, who are the officers, make an investigation of who is qualified to serve. It's been reported to me that one new member and I can have some evidence on it if Your Honor wants it, it's been

reported to me that one new member has already voted and he came to see one of my clients and said I have found now that I voted for the first nine people on the ballot and I'm sorry that I did because I don't want to vote for them, and if there's anyway that I can vote differently I will do so. But he read the campaign literature and being a new member and not having received the By-laws and not knowing what was going on he cast his vote as a normal person would do. If I received this campaign literature I'd have cast my vote right away because if I sat it down I'd probably forget about it. But it's not important to me as it is to some of the other people here involved. Other people are spending their lives trying to educate and inform the people, but I don't - I don't for the life of me see why there could be any objection to an open, wholesome, free election. They have every opportunity to ask this man to give them their proxy if they can sell him on their honor, integrity and if they want to get his proxy he will give them his proxy and then they can use it. And they asked for a proxy for everything other than the election and I can't see why - at least they think it's proper for this corporation to conduct business on all matters other than elections by proxy and I see no law - I've read every case I could find except this Federal case that I found last night at 2 o'clock and I haven't read that, but every law that I could find I've read about proxy votes and I've never seen yet where a proxy could be used for one purpose and then not used for another purpose. And that's just what they're asking Your Honor to do.

(18) From page 60, line 6, through page 61, line 17.

COURT: No sir, not of counsel. You may address the question to the Court, but now this is a matter of argument, we're not in evidence yet. It may that we'll get to it, but we are at the point now where the Court is considering this from the standpoint of matters that can be stipulated into evidence.

WHITLOCK: May I suggest to the Court that - to ask the question as to why a signature couldn't have been on the outside envelope as well as the name printed. Anybody could print the name on it, but a signature is effective and how would that interfere with the secrecy of the ballot?

MUSSELMAN: This has been suggested and probably should have been done. We followed what we thought were carefully prescribed provisions for identifying the ballots and seeing that they were only mailed out and we only gave duplicates to people who made written statements that they had not received the original ballot, to try to protect the integrity of the ballot in every step of the process. The election on May 18th having been announced repeatedly since last December. The letters that went out December 15th, Mr. Whitlock referred to, was the first of the regular indications that have gone out at frequent intervals since then that the election would be held in May. The Directors have advised me that they felt that it would be disadvantageous and expensive to the Association to have to - and confusing to many of the voters to have the change after all this many things have gone out to them stating that May 18th was the date. Many who are interested

have probably kept this weekend open, and a new date would undoubtedly cause some conflicts with people who have complied with the notices that have gone out over the past 4 months stating that this is the time the election will be held. The Association would be quite happy to have the Court appoint a referee to decide any controverted matters at the election, but believes that it should be held at the appointed time, that if it is not to be held then, it should be put off until sometime after school opens in September, because during the summer people make plans for their children and are not in general available for this sort of thing.

(19) From page 62, line 16, through page 65, line 14.

EDWARD G. WHITE, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By: Mr. Whitlock:

Q Your name is Mr. Edward G. White, is that correct?

A Yes sir, that's correct.

Q And do you have an official position in the Blue Ridge Property Owners Association at this time?

A Yes I do.

Q What is that?

A As President of the Association.

Q You're President and are you a member of the Board of Directors?

A And a Director also.

Q I hand you a letter dated April 26, '74 and ask - it indicates

being over your signature and ask you if you have - did you send out that letter?

A Yes I did.

Q And to whom did you send it?

A I sent it to the total membership.

Q Would you read the letter to the Court? I might stop you at a paragraph to ask you about some things. . .

MUSSELMAN: Your Honor couldn't things be expedited by being handed to the Court.

COURT: Yes sir, I'll be glad to consider that.

Q I'm going to question him about paragraphs as he goes along Your Honor.

COURT: All right. I'll consider that in evidence though as far as introducing it.

Q I will offer it as an exhibit as soon as he. . .

COURT: All right sir.

A Dated April 26, 1974. Dear Friends: Most of us acquired property at Lake Louisa because we hoped to enjoy the beauty and relax in the peaceful surroundings of Blue Ridge Shores. Isn't it a shame that we now find ourselves involved in legal proceedings brought on by a few disruptive members. We have had to collect some dues and assessments in Court. We have had to defend ourselves against libel and other unfounded accusations.

Q What do you mean by that phrase Mr. White? Are you alleging that any of the complainants in this case is libel. . .

COURT: Now what is this? Is this bearing on the election coming up?

Q Yes, this was sent out as an election campaign notice.

COURT: All right, go ahead sir.

A I'd like to correct you Mr. Whitlock. This was sent out by myself as a concerned citizen.

Q For what purpose?

A For purpose of informing other citizens in the community.

Q About what?

A About what I felt was going on based upon my background and experience.

Q Well what did you want them to do in reference to this? Why was it. . .

A I think the conclusion of the letter says, I feel personally obligated to advise you of these matters and their possibilities. Please attend the annual meeting on May 18th and mail your ballot and proxy in promptly.

Q So this was the purpose of soliciting votes for the Board of Directors candidates wasn't it?

A The purpose is to solicit votes and attending the annual meeting.

Q Read your next to the last paragraph Mr. White?

A Your vote is important. The candidates recommended by the Board are capable and willing to serve all the members. They are being challenged by representatives of this minority. Vote for

only those candidates recommended by the Board. Complete your mail ballot and proxy card and mail them promptly.

Q Now can you tell us, is the purpose of your letter anything other than what it says there?

A Yes, it's to promote the interests of those candidates and also to get people to vote.

(20) From page 66, line 2, through page 66, line 10.

Q Go ahead with the next paragraph.

COURT: . . . go ahead with any further questions.

A This vocal minority, of less than forty, has literally and continually disrupted Association affairs. My letter of December 15th pointed out that just a few, four actually, and their attorney, also a member, were able to convince Judge Berry, solely on technicalities, that the Board had neglected to have a copy of the By-laws, perfectly legal in themselves, attached to the minute books of the Corporation. . .

(20A) From page 66, line 22, through page 67, line 11.

COURT: Now you're offering that in evidence Mr. Whitlock and the Court will consider that.

Q I thought maybe he could give some explanation for it, but if he can't then I'm willing to pass on - go ahead Mr. White.

A You want me to proceed with this letter?

Q Yes sir.

A Judge Berry felt that he had no alternative but to reinstate the 1971 Board until a new Board could be elected at the annual meeting this year. The same vocal minority group has hindered progress time and time again. They were against the roads, against the purchase

of the Water Company, against the purchase of the concession business rights and even compromised the Association with the insurance company when we were negotiating for a settlement for the hurricane damages.

(21) From page 73, line 22, through page 75, line 24.

Q Mr. White, did you - do you know who prepared this publication of the Shore Line dated April, 1974, Volume VIII, Number 3 that gave the interpretation of the Court's ruling from Mr. Musselman and then made comments about the election?

A Yes, that was prepared - do you want me to comment on each portion of it, but if I could take a look at it. . .

Q I just want to know who prepared this? Who approved it and prepared it?

A Could I take a look at the document sir and - as far as the cover letter, this was - we felt that there had been a considerable amount of turmoil brought on by the Court hearing and the fact that the people had faced a transition of Boards, and there was a great deal of lack of understanding possible concerning just what the Court's action was and its influence on the community. As a result we asked our attorney, Mr. Musselman, to prepare this letter, representing what his version of the Court's final decision was, so that the membership would be fully aware of the details of this. So this was approved by the Board after review by each of the members. The. . .

Q Was there any reason that this was included in the election notice and the bulletin that went out to tell about the candidates for office?

A Yes sir, it was our feeling that we'd had considerable communication regarding the fact that we had a very eventful circumstance of one Board being removed and a new Board taking over and we felt an obligation to make the membership aware of just what the Court's influence was prior to the election in terms of what influence it would have on people's reaction to the election and the candidates. So we felt it was a very important piece of information that the Association was obligated to disseminate.

Q Then it was your understanding as a member of the Board - I assume - of the whole Board that you voted - you requested that the membership be informed that the previous hearing confirms the validity of the revised By-laws and rules and regulations adopted by the Board effective January 1, 1974? Is that correct that you approved of informing the Board that the Court had approved those By-laws?

A Is that what this says, that the Court approves the 1974 By-laws?

Q Well, if you read the last lines there. The ruling establishes the authority of the present Board to act in all matters related to the normal operation of the Association . . . (three periods) confirms the validity of the revised By-laws and rules and regulations adopted by the Board effective January 1, 1974, which By-laws and rules and regulations have formed the basis both for the operation of the Association in recent months and also for the specific arrangements for the conduct of the election to be held in May.

A I don't - I'm not aware that that's contrary to what the Court's

judgment was.

Q Then you take - do you interpret that as telling the members that the Court has approved of these By-laws?

(22) From page 76, line 8, through page 79, line 12.

Q I'm asking you about turning to page 2.

A All right.

Q Under the May Election.

A All right.

Q And ask you to read those two paragraphs?

A The May Election - Nominees' Resumes. Eighteen members have been nominated for membership on the Board from which you may choose nine. This will be a completely new Board. There will be no one to furnish continuity in office unless you elect some members who have had Board experience. You surely do not need to be warned of the danger of skyrocketing costs resulting from inexperience. Board Policy. Our Boards always have endorsed candidates with varied backgrounds in order to have a wide view of members' desires. Here is a list of those chosen from the list of nominees. All nine have demonstrated an unselfish interest in and love for Blue Ridge Shores.

COURT: Now Mr. Whitlock, the Court doesn't have time, as I've told you, this is in evidence and it's obviously unnecessary to read this, now what's the purpose of it?

Q I wanted to ask him a question. . .

COURT: Ask him a question but don't tell him to read, now I'm ruling that.

Q All right.

COURT: Because the Court can read.

Q All right sir. Now whose - who authorized this to be sent in - these two paragraphs to be included in the publication to go to the voters? Or the members?

A I authorized it.

Q You personally?

A In conjunction with the Board, yes.

Q You did it as President and as a member of the Board of Directors?

A That's right.

Q And did the Board itself - you said in conjunction with the Board, did the Board, acting Board itself, approve of it?

A Yes, they approved the fact that in conjunction with the By-laws of the Association that a nominating committee appoints a recommended slate of directors and publishes it in the official document, the Shore Line.

Q And do you know how many members of that Board are candidates for re-election?

A I think there are three.

Q So, they in effect, requested the Association to support them for their re-election?

A I don't think there's a request sir, I think it's within the regular conduct of the Association affairs that the By-laws provided for a nominating committee who reviews candidates and recommends a slate of candidates for directors.

Q And the resume that followed and the order in which they were published the candidates being recommended by the Board being put first, was that done because of anybody's request or suggestion?

A No, I think it was a choice of Mrs. Elva Hall as to the format of it, and Mrs. Hall is the Editor of the Shore Line and has had experience over the years of publishing similar documents.

Q Well Mr. White, were you aware and was the Board aware of the resolution that was adopted by the members in the April, 1973, meeting that the Shore Line not be used for political purposes?

A I think if you go back to that resolution Mr. Whitlock, that the resolution, if I recall correctly, stipulated that it was resolved that the Board would review these 3 or 4 matters and I think that that resolution was accepted on that basis.

Q Well wasn't it - the membership, itself, voted on it didn't they?

A Well I think the wordation of it sir was that, the resolution read if I - as my memory stands, that these four items as represented by the attorney for this group were to be reviewed by the Board and I don't think it was resolved by the majority at that point in terms of saying that they were adopted as amendments or resolutions that had a definite follow through on.

Q You're not saying that the minutes are wrong when they say, that at the request of the President, Mr. Anderson stated each resolution in the form of a motion to be voted on and all carried? The minutes are correct in that respect are they not?

A Could I see the document. (Witness makes statement to Mr. Musselman which was inaudible.)

(23) From page 80, line 2, through page 80, line 11.

COURT: Are these minutes or is this one that's been introduced into evidence?

MUSSELMAN: No sir.

Q No sir, I'm going to introduce it into evidence.

COURT: All right, let's get it properly introduced, then Mr. Whitlock. He has a right to see it. And, of course, he may have some question on its introduction, but other than that, it's not appropriate that the witness discuss it with counsel. The question is, are you offering that in evidence.

Q Yes sir, I will offer it in evidence.

(24) From page 80, line 20, through page 81, line 18.

COURT: The Court will receive it in evidence and it will be marked for identification, whatever exhibit number it is, but I'm not sure we've even got all of them itemized as such, but that'll be admitted as Complainant's Exhibit and Mr. Musselman's objections are noted.

Q Any questions about it. . .

A Yes, I think. . .

Q Any question about it being a valid copy of the minutes we'd call for the. . .

COURT: Not a question - a question of whether that's one of the issues of the Blue Ridge Shore Line, not a question of whether it's

a valid copy of the minutes. You'll have to prove those in some other way Mr. Whitlock.

Q All right.

MUSSELMAN: I think this is just a summary of the minutes and not a complete copy of them.

COURT: The only question is whether that's - that is a publication, one of the issues of the Blue Ridge Shore Line and it will speak for itself.

Q Is that a valid publication of the Shore Line. . .

A Yes it is.

Q . . .issued by the Association? We offer it. . .

COURT: All right, it will be received. That will be identified as Plaintiff's Exhibit Number 6.

(25) From page 83, line 18, through page 84, line 8.

Q Do you have in evidence Your Honor, the Shore Line issue of April 25, '74?

COURT: Yes sir, that's in evidence. That has to do with the election itself. It seems to be a special issue.

Q We'd like to call to Your Honor's attention the paragraph on page 3, Replacement Ballots, as to how replacement ballots must be received and requested. And also all of page 3, are made reference to, about six lines down, and that no ballot is cast in person which has been cast by mail. And then about six lines further; The presiding officer shall allow a reasonable time, not to exceed fifteen minutes from his call for ballots, for members to come forward with ballots to be cast. Once the time for casting ballots has elapsed,

the presiding officer shall declare the polls closed and ballots shall no longer be accepted. And then the last paragraph I won't read, it's lengthy, but the 7 day requirement for replacement ballots.

(26) From page 86, line 5, through page 86, line 23.

TILDEN H. GRANT, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By: Mr. Whitlock:

Q State your name, age, and residence please?

A Tilman H. Grant, 62 years old. I live at Blue Ridge Shores.

Q You are a defendant in this suit are you not?

A Yes sir.

Q You were a member of the previous Board that was found disqualified?

A Yes sir.

Q You're not a member of the present Board?

A No sir.

Q You serve on the Advisory Board. . .

A Yes sir.

Q . . . for the present Board. Now, were you elected in 1971?

A 1971, yes sir.

(27) From page 88, line 8, through page 89, line 9.

Q Mr. Grant, have you had any conversations with a member of the Association as to whether or not he's already voted?

A I have, yes sir.

Q What did the conversation that has taken place have reference to a member that's already voted?

A He said that he had. . .

MUSSELMAN: May we have the member identified?

COURT: I don't know that he should be Mr. Musselman.

MUSSELMAN: Well, otherwise it's hearsay Your Honor. And I think it's hearsay anyhow, but. . .

COURT: I don't know - well I. . .

Q A statement made to a defendant in this suit, I don't think it's hearsay.

COURT: Go ahead and answer the question, the objection is overruled.

MUSSELMAN: Exception noted.

COURT: Yes sir.

A Yes sir, he said that he was a new member and he had received this set of literature from the Board of Directors endorsing nine men and since, that he didn't know the affairs of the Association and was a new member, he simply voted for the nine on the top as directed by the Directors and mailed it in, and he was sorry that he did it, after I explained to him what went on, and how these previous things and elections had been conducted. I ran as an independent to get on this Board to find out and I did.

(28) From page 90, line 23, through page 93, line 8.

A. LEWIS MILLER, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By: Mr. Whitlock:

Q State your name, age and residence please sir?

A A. Lewis Miller, age 56, 256 North Lake Shore Drive, Louisa, Virginia.

Q That's at the Blue Ridge Shores Subdivision?

A Blue Ridge Shores Subdivision.

Q How long have you lived at that location?

A As a permanent resident, since February of 1973.

Q Briefly, what is your educational background Mr. Miller?

A I was an engineer for the U. S. Government.

Q That's your employment record. Have you retired from that?

A I have retired.

Q When did you retire?

A In February of 1973.

Q All right now, you are one of the complainants in this suit. . .

A I am.

Q What - if you were given an opportunity to conduct a campaign for the candidates that you choose, how long would you think it would take for you to make a proper campaign under circumstances that may be prescribed, reasonably prescribed?

A I would say six weeks.

Q Did your - do you have a - is there a group of you that are working together on this effort?

A Well there's a group of us working, but as candidates, we're all independent.

Q I see. Do you consider that you can have a fair chance at being elected under the procedures that the Board of Directors have adopted and materials they sent out?

A Not as they now exist.

Q Did you make an effort to get a list of members from the Association?

A I didn't personally, but a member of our group did.

Q What kind of list did you get?

A We got one of their over-aged lists. It was deficient in membership both as to the accuracy of the addresses and the number of members.

Q Now the Association has an automatic addressing system do they not, that automatically addresses their correspondence?

A I can't verify that.

Q Do you receive communications from them?

A The communications I receive would so indicate.

Q Has anybody told you anything about that being available.

A They have not.

Q Now the new By-laws that were effective on January 1, 1974, have you ever gotten a copy of those?

A Not officially.

Q How did you get a copy of them? Or see a copy of them, if you did?

A I was able to get them through a member of the Board that - borrowed them and I was also permitted to copy excerpts from them in

the office.

Q Has there been any publication that you know of to the members of these new By-laws?

A Not to my knowledge.

(29) From page 94, line 2, through page 95, line 15.

(CROSS EXAMINATION OF MILLER - By: Mr. Musselman)

Q How do you mean under standard procedure? What is standard procedure?

A Well, we did not know the procedure that the members of the Board were going to use, because the By-laws that we had copies of stated that voting would be permitted by proxy.

Q But how has that altered your solicitation of votes?

A Well, we're basing our election on the availability or permissibility of proxies.

Q Did this alter your ability to campaign for votes?

A No, but it altered our position to advise members as to the procedure for voting.

Q So that it's simply a procedural matter of how you solicit a person's vote, is this it?

A No, it's very important how you instruct the people in the voting procedure.

Q Oh, since the ballots came out have you had any doubt as to what the voting procedure was?

A Well I've had no doubt no, but it was a pretty difficult thing to counter.

Q No other questions.

REDIRECT EXAMINATION

By: Mr. Whitlock:

Q When did the ballots come out Mr. Miller?

A The. . .

Q Is that - the date on the letter Your Honor I guess.

A The 19th.

Q The 19th of April?

A Of April I think, that our ballot was received.

Q All right sir. That's all.

COURT: All right Mr. Miller.

WHITLOCK: That's our case Your Honor.

COURT: Mr. Musselman, do you desire to call any evidence to counteract the evidence that Mr. Whitlock has introduced?

MUSSELMAN: Your Honor, I don't think that any evidence would be germane to the issue of whether an injunction should be granted, which is the only thing that the notice today covers.

APPENDIX 13

b. Transcript of April 30, 1974, Court Decision:

(1) From page 1, line 8, through page 4, line 24.

COURT: All right now, gentlemen, we had right much in the way of argument. The Court is going to make some rulings here which will be out of practical necessity. I have a matter which is rather urgent to attend to regarding a case coming up tomorrow and then I have another matter this afternoon already scheduled. And under the provisions of the statute which Mr. Whitlock is operating under, I think it's expected that the Court deal with it quickly, and to deal in general terms if necessary or in specific terms. Now the Court makes this finding, that the Board of Directors listed in paragraph 4 of the Bill of Complaint are to remain in office until they are replaced by a duly constituted new Board of Directors. And in connection with the up coming election, the Court finds that matters having gone as far as they have with regard to the publishing of the date of the election and the adoption of election procedures the Court is going to allow the election to go forward as scheduled but will require certain supervisory activities in that election in this regard. The Court is going to appoint two Commissioners of the Court to oversee the election and to report back to the Court in these particulars. They will be acting, of course, as agents of the Court and officers of the Court. Any person whose ballot is challenged will be reported back to the Court. Any voter whose right to vote is denied or restricted is to be reported to the Court and all objections made at the election are to be reported to the Court by those Commissioners. And thereafter, the Court will

decide in what manner those contested ballots will be dealt with. And I'm considering appointing Mr. Whitlock and Mr. Musselman as officers of the Court to report this back because it's not a question of them having to deal with it but to carry certain clerical information from the election back to the Court but I will hear argument on the question of who else may be more appropriate to act as the Commissioners. Now I'm doing it on this basis, that should Mr. Whitlock and Mr. Musselman report that there are people who show up at the election who wish to change their ballot after having already mailed in their mail ballot that will be reported to the Court. Should there be persons who have proxies that they wish to vote who are not allowed to vote, that will be reported to the Court. So that any denial of the right to vote will be further reviewed by the Court just as in connection with a challenged ballot at any other election. And I'm not saying whether the Court will or will not further restrict the ballotting process. It seems to me that over the years that the mail ballot may work itself out and it may be that the proxy ballot ought to be allowed too. But I'm not saying either one in this case, I'm allowing this election to go forward in the manner which has been prescribed and any person aggrieved in the election will be heard from after the election through these Commissioners. Now that means that the vote will be tallied, the contested ballots will be tallied and those who have ballots which were not allowed will be further heard from so that there will be a final tally of everyone who wishes to be heard from before those results are certified. In other words the election will not be certified until approved by the Court following this May date.

And then during the meantime the Court will require that an up to date mailing list be furnished or in the alternative that any candidate for the office of Director be allowed to use the facilities or have the facilities made available to him, to have his literature mailed out to the same list that has received the previous literature without equivocation. That's a short time I realize but if any candidate or any member desires to have that mailing list he is to have it. The Corporation, of course, is not to bear the expense but those up to date lists are to be made available so that any one wishing to respond to what Mr. White has said may do it. Mr. White used his own facilities and that's a private letter but now Mr. Miller may need an up to date list and if he needs it, he is to have it and any other member who wishes to direct any literature among the membership is to have the same privilege. That may give everyone an opportunity to be heard from but as a practical matter the Court doesn't feel it's appropriate to set a new date for this election. But if Mr. Whitlock, if Mr. Miller or anyone else desires to pursue the matter of soliciting proxies they have every right to do it and to present those proxies for use at the election and the Court will thereafter determine how to tally up the vote. So that you must keep track of everything that is presented whether it be a proxy, whether it be a vote in person or whether it be a mail ballot. And now under the rules already established if a person has mailed in his mail ballot, he may still show up in person and ask that he be counted then instead of his mail ballot as I understand it. So that if a man desires to renounce his mail ballot he can certainly do it by appearing in person. Then on the other hand the Court may consider allowing him to renounce it by offering his proxy through someone else as Mr. Whitlock has suggested and I'm not

ruling either way. Now those Commissioners now, Mr. Musselman and Mr. Whitlock who will be appointed unless there are some reasons to the contrary who would be acting for the Court to report these clerical matters back, would allow the Court to deal with the election before it is finally certified. And I will hear from those Commissioners as soon after the election as is practicable. . .

(2) From page 6, line 7, through page 9, line 19

COURT: The present Board, the Court will require under the order today not only to remain in office but the Court declares that they have been properly in office in keeping with what the Court previously ruled on the basis that I've said that there must be somebody in the office. Now should there be matters which are to be considered with regard to the actions taken by those Board members they are subject to the same rules as any other Board member, they are fiduciaries of the corporation and their actions are open to review on a proper petition and showing for good cause - showing of good cause and in this case the Court defers those matters. We are not ruling on that this morning. We are taking up the election and any matters raised in Mr. Whitlock's petition with regard to the actions of the Board will be taken up at the appropriate time with regard to the financial affairs or any of the other activities which he is attacking as it would be in any case in a stockholder's suit. Now you gentlemen can act on this without the formal entry of the order but I think you can recall what I have said well enough to be governed in your conduct with regard to campaigning between now and the date of the election and the use of the corporate mailing list for sending out any literature. And

again as I have pointed out to counsel whether you count the vote on the day of the election is up to the corporate officers holding the election but there must be a separate tally made of everyone who feels he has not had his vote properly tabulated, so that the Court can deal with all ballots which are casted or which are purported to be casted and we will deal with it at the June 4th hearing.

MR. WHITLOCK: Your Honor, please, I can see that there may be a couple of areas that there might be a hassle over, one is this 15 minute limitation casting ballots at the. . .

COURT: You may make that objection and undertake to assert your right if that time limit is not sufficient Mr. Whitlock. You have every right to say that you want those ballots cast if the time runs out. I don't know how that will be used. The Court makes no finding that anybody can be denied the right to vote no matter what happens. I might make a finding later on that a person hasn't exercised his rights or has failed to exercise them properly. But certainly I can tell counsel now that the Court won't look kindly on anybody being cut off from his right to exercise his ballot by some technical rule.

MR. WHITLOCK: Then this 7 day requirement that a request be made for a replacement ballot is that going to. . .

COURT: Now there again if a person wants to exercise his ballot in some other way it will be tabulated and brought back to the Court. . .

MR. WHITLOCK: If he doesn't have a ballot - what I think might be the desire of people who have already voted is to get a new ballot and to cast a different ballot especially since there is a question about whether or not they can use a proxy.

COURT: Well you have every right in those cases to solicit their vote by proxy and to vote it in person. Of course I'm not saying it will be counted but you can have it tabulated in this. . .

MR. WHITLOCK: The question about it being tabulated would make it more desirable it appears than to be given a new ballot so that they could cast their own.

COURT: Do you have a group of people who you can say right now need a ballot? I will be glad to consider it, but I'm not going to direct this Board to mail out new ballots. They have indicated that they have had replies indicating that only 7 people have failed to get their ballots.

MR. WHITLOCK: Since the Board has sent out ballots on which they made recommendations on the ballot itself, as to them we think that we should be entitled to send out a ballot in the same manner and if our ballot comes back that it be considered.

COURT: You can use that mailing list anyway you wish to campaign or to solicit ballots, any way you wish to but I'm not laying the rules under which you are going to operate. They are not getting the blessing of the Court either way. Now I'm just saying that the business of the corporation is going to go forward until I find better cause than we have today to disrupt it and I may allow any ballots which are not counted that night to be counted, whichever way they go after we have had it up for review. But if a man has voted I can't see where he has any right to complain.

MR. WHITLOCK: But if he wasn't informed as to what he was voting for. . .

COURT: Well that may well be. How do we know whether anybody is properly informed on anything or not? But you would have the right to exercise within this time limit that you do have such campaign as you wish to conduct and that is Mr. Miller and anyone else who wishes to do it. To send out a letter and any interpretation you want to give to the proceedings as Mr. White gave, that's your right of free speech and I don't know that you have to be held to the truth when it comes to campaigning.

APPENDIX 13

c. Transcript of June 4, 1974, Hearing:

(1) From page 1, line 16, through page 2, line 17.

COURT: Now the 67 unhonored proxies are the ones that, as far as your position is concerned, are in issue?

WHITLOCK: That would be the material issue involved.

COURT: All right sir.

WHITLOCK: We requested the right to withdraw the ballots that had been cast, 76 ballots, and vote 143 or in the alternative would be permitted to vote 67 proxies. Another question, and we think a very material question, that arose at the meeting is that without our proxies, without the 143 proxies that we held, the meeting of the corporation could not muster a quorum. So we raised the question when they said they would not honor our proxies. We told them that we would not submit our proxies for one purpose - for them to consider it for one purpose and not consider it for all purposes. So if they would not permit our proxies to be used for the purpose of casting ballots then we would not permit our proxies to be voted for the purpose of establishing a quorum. So when that question was raised the meeting was adjourned for the management or the officials at the meeting to determine if they could establish a quorum without our proxies and they found that they could not and therefore the meeting was adjourned, because of not being a quorum present. And at the time I stated to the president that we - if they would rehonor our proxies for all purposes that we would be willing for our proxies to be counted for the purpose of establishing a quorum, but we would not be willing for our proxies to be considered for purposes for which they wanted and not for purposes for which we thought were appropriate.

(2) From page 3, line 14, through page 4, line 18.

COURT: Is it the 67 proxies that were significant in making the quorum or is it the 143?

WHITLOCK: Well the 67 would have made it or the 143 would have more than made it, yes sir. There was . . .

COURT: Well how did you resolve the question of a quorum, if it was resolved at all. How was it resolved?

WHITLOCK: The president declared that there was no quorum present and adjourned the meeting. Before - and as I've said we . . .

COURT: Well what meeting are we talking about now, did you have another meeting in which there wasn't . . .

WHITLOCK: No, the president said we will adjourn the meeting but we will hold the election and count the mail ballots and the ballots that have been cast, but there were some ballots cast at the meeting before we called on the question of the quorum there. Another question - objection that we raised at the meeting is when I arrived at the meeting we found that tables had been set up outside of the place where the meeting was to be held and they were marking off people who - as they came and given them a card for identification purposes and when I arrived I found that the people there who was given the cards for the identification purposes were also collecting ballots. And when I got - when this came to my attention that these people had a handful of ballots. Mrs. Hall was collecting them and she said that she was acting under directions of Mr. Barringer who was the manager of the existing association, so I - we have a problem here that shows - you see the third column turned in outside the building without proxy and turned in outside the building with proxy. Now, of course, if these - we counted - these votes were counted in the - by the inspectors.

(3) From page 6, line 16, through page 7, line 14.

COURT: What's the question of a quorum in an election? You don't have to be there to vote. The matter doesn't have to depend on a certain number of people at the meeting. What's the reason for a quorum? What is a quorum as far as the By-laws?

WHITLOCK: Well the quorum is 25 percent of the membership under the new By-laws. Under the By-laws we think are valid and permit proxy voting, 5 percent ...

COURT: You're saying if less than 25 percent of the people vote you couldn't have an election?

WHITLOCK: That's what the new By-laws provides, unless 25 percent of the people are present at a meeting, you can't have the meeting. And by putting this election process on the basis of proxies not being honored for the election but proxies being honored for all other purposes, then the - it appears that you give a string of perhaps having a proxy that you could do everything else but have an election if you were counting proxies for all other purposes and that's what their proxies - they had some - a bunch of proxies too that they counted for the purpose of trying to establish the quorum and it was included in the 122 that were counted. That's why they had to adjourn the meeting. And it was adjourned for about an hour there to determine which of their proxies could be used for the purpose of establishing a quorum. And nobody got proxies and the people present, they came up with 122 people present.

(4) From page 8, line 2, through page 8, line 5.

WHITLOCK: My notes - in referring to my notes, my notes say that 185 are required for a quorum; 740 members; 25 percent was required; 185 were required and we had 142 present. Is that in agreement with what you have Mr. Musselman?

(5) From page 13, line 10, through 14, line 19.

COURT: Mr. Musselman, what is the major difference between the tabulations as you see it and what has been reviewed by Mr. Whitlock?

MUSSELMAN: I don't think there is any disagrement as to the tabulation Your Honor.

COURT: Well, now he has . . .

MUSSELMAN: Well I haven't seen what he handed up to the Court, so I don't know . . .

WHITLOCK: Excuse me, I thought you had gotten a copy. I just hadn't handed you one. I'm sorry.

MUSSELMAN: I guess I had that except for the bottom notes on it.

COURT: Well do you recall enough at this point to answer the question as to whether the 67 proxies which were not honored are the area of dispute or is there something else?

MUSSELMAN: I think so far as I'm aware of Your Honor, that would be the only area of dispute, unless Mr. Whitlock wishes to pursue further the fact that 20 . . .

COURT: Now what . . .

MUSSELMAN: . . . 27 ballots were turned in at the registration desk instead of being handed directely to the Inspectors of Elections.

COURT: All right now, the matter of the effect on the contested ballots, the effect of those ballots on the election itself. It apparently was a rather close tabulation. Now the question that we have to deal with is what changes if any would be accomplished by counting disputed or unrecognized ballots.

MUSSELMAN: Your Honor, I think it may be said in summary that there

would be so far as I am aware no effective change in the results as to the acceptance or rejection of the different categories listed on this tabulation, but that if the individuals who have proxies and did not cast ballots at all, had the committee, the proxy committee been allowed to vote, it would drastically change the results and that only 3 of the persons who were among the top 9 would have been elected.

(6) From page 16, line 9, through page 18, line 5.

COURT: All right, that's what I'm looking for now and you've already got that over here now. All right Mr. Whitlock, now what response do you have to the tabulation with regard to the report of Mr. Musselman?

WHITLOCK: Of course, the tabulation I think agrees with what I have except that it doesn't count - it doesn't show anything about the contested - the proxies who were not denied and we think we're entitled to vote a minimum of 67 - the other votes by the proxies which would completely change the elections of the entire . . .

COURT: Now how are those proxies distributed if they were counted?

WHITLOCK: We announced at the meeting that those proxies would go for the lower - the outs I guess, the directors not supported by the present board. Now I misunderstood Mr. Musselman when he said the top nine because I thought he considered the top nine the top that were on top of the ballot. He was referring to the top - of receiving the most candidates and I agree with him that if the proxies were counted the three that - on the not recommended group by the board of directors would be in the top nine receiving the most votes. In fact Mr. Grant received the most votes of anybody.

COURT: Well let's see you - does he have the groups separated, that is, the candidates?

WHITLOCK: Yes, he has them separated just like they were on the ballot.

COURT: You got how many of your group elected then?

WHITLOCK: Well we think we have all of them elected . . .

COURT: I'm asking you how many did you get according to his tabulation?

WHITLOCK: Three.

COURT: Three of them. And you're saying if you count the disputed or the uncounted proxies you'd have all of them?

WHITLOCK: Yes sir.

COURT: Now how were those proxies obtained Mr. Whitlock?

WHITLOCK: I'll have to put the people who solicited on the stand if there's any question about it because it's my understanding they were solicited personally and through mail.

COURT: But did they . . .

WHITLOCK: By members of the . . .

COURT: Was there any issue as to the form of the proxy?

WHITLOCK: No, I don't understand that there was any issue as to the form and that the proxy was of a general nature and gave the proxy committee the authority to act for it in all business comes before the meeting or, in fact I believe the only difference in the proxies was that some - the limit of time that some of them were granted for, some were for two months, some were for one month and some for a maximum of 11 months.

(7) From page 18, line 21, through page 19, line 2.

WHITLOCK: Yes sir. We reveiwed our proxies at the meeting and determined that the proxy people who gave the proxies were members and furnished the defendant, representatives of the defendants a list of names of people from

whom we had proxies at their request and this list was checked by the membership committee and was checked against the proxies that were offered at the meeting.

(8) From page 29, line 17, through page 30, line 3.

There may be some other discrepancies but the major issue is that of counting those proxies and as Mr. Whitlock says, if as many as 55 votes difference would be involved here it would change the entire results of the election. And that seems to me to be the critical issue. It certainly, even under any probability of certain parts of the proxies being rejected, if I rejected 10 percent of them for instance as a precautionary measure as not having been received in the total package, it would still leave enough to swing the election the other way, so it's a question of whether any of them should be counted and if they are, it seems to me they've got enough of them to change the results of the election.

(9) From page 30, line 24, through page 31, line 7.

The question is a point of law and I'm fairly well aware of this dispute as to the effect to be given to the By-laws with regard to the election and Mr. Musselman's position that it arises out of the statute and he's already recited certain reasons, underlying reasons for that rule having been applied. I'm frank to say that the question involves a practical matter and an equitable matter of how the business of the corporation is to be run and I'm not of the opinion that I should be bound necessarily by the By-laws.

APPENDIX 13

d. Transcript of July 9, 1974, Hearing before the Honorable David F. Berry:

(1) From page 1, line 17, through page 2, line 18.

COURT: Now, under the Commissioner's report the successful candidates by excluding the proxy votes are set forth on page 3 of Mr. Musselman's report of the Special Commissioner; Grant, Talbott, Long, Coulthart, Breeden, Behncke, Moyer, Ale and Danlquist, taking into account the votes that were cast without counting the proxy votes and under the second grouping, the unsuccessful candidates; Gross, Snyder, Spink, Knauf, Miller, Bailer, LeVay, Stocks, and Rowe, came up with the lower number of votes and should the proxies be counted that second group would be in office, as I understand it, is that correct?

WHITLOCK: Well part of the - in the first group would be selected because the proxy group was going to vote for part of those.

COURT: I see.

MUSSELMAN: Three will be elected in either event.

COURT: Three, all right. Now which are they Mr. Musselman?

MUSSELMAN: Messrs. Grant. . .

WHITLOCK: Breeden and Ale, Grant, Breeden and Ale.

COURT: They are in both groups then?

WHITLOCK: Yes sir.

COURT: Or would be? In other words you don't challenge the election of those three Mr. Whitlock?

WHITLOCK: No sir, they were elected anyway.

COURT: But you do challenge the election of the others by virtue of the refusal to count the proxy votes?

WHITLOCK: Yes sir.

(2) From page 6, line 8, through page 7, line 22.

WHITLOCK: In the meeting that the Court held in chambers with Mr. Musselman when the Court gave some guidelines and suggestions as to how to proceed and as I pointed out that I didn't find out about this conversation although the Court directed Mr. Musselman to take these matters up with me and to discuss them with me and to see if we couldn't agree on how to proceed. The only way that I even found out that this guidance had come from the Court was by searching the files in the Clerk's Office in Louisa and finding that a transcript had been made and placed in there, when I was looking for an order that had been supposedly entered in the case involving Mr. Morris and others on their suit by the Association. So I found a transcript there that gave the Court's guidance as to how - they should prepare for this election and what should be done. The Court said I think the balloting business has certain problems inherent in it and maybe it would be better to let them act on proxies rather than ballots. It said, why don't you all then do it this way that it will be understood that the present Board will function in a normal capacity which would include whatever is normal to their activities between now and May with the idea that the whole Board would be open up for election to a new slate and that you will work up satisfactory By-laws that would be allowed to take effect between now and then so that no member who personally appeared would be barred from right to participate in the election. But yet what did they - what did this old Board of Directors that got back into office on - but I think we could read from their actions. They were voted in on the same - same defects that the ones that were found to be improperly elected. They were into office by refusing to - on the same election - same type of election, they refused to let people vote who

owned property and who were members of the Association. They were there because of emergency that had been created by their own actions. They didn't take the guidance of the Court and the suggestions of the Court as to how to conduct this election and how to handle the affairs of the Association during the period of, may we say dilemma, when they were there solely for the purpose of filling a vacuum that had been created by their own action. They went in and tried to adopt and put in more restrictive and more By-laws that would be damaging to the open election and would create difficulties and impossible problems to hold a reasonable and open election.

(3) From page 8, line 16, through page 8, line 21.

WHITLOCK: The By-laws did permit proxy votes. The By-laws permitted proxy votes when these people accepted membership in the Association and became obligated to - and maintain their membership and to pay dues and water bills and be subject to the contractual obligations of the Association. The By-laws then provided for a proxy vote.

(4) From page 14, line 2, through page 14, line 13.

WHITLOCK: Well I won't say majority, but a great - a great part of the property in this area you can't give away today. And alot of it has been given away. They even have a policy and I don't guess, assume that they will deny that, that if you don't want to pay your dues, turn your property over to us and we'll relieve you of your dues. Now what kind of management of any business and association is that when people have paid their valuable money and spent time and effort to accumulate the money that they paid for it and trying to develop their property when the money - the property is not valuable enough that they will cover the dues that these property holders and property owners have been subjected to.

(5) From page 14, line 19, through page 15, line 2.

WHITLOCK: We asked for a delay and Your Honor thought because that they proceeded so far that a delay would not be appropriate. But even with the handicap of over half of the votes already have been cast, these people came - went forward and solicited proxies or solicited votes and obtained enough votes to overcome the handicap of the ballots that had been received and voted prior to their becoming involved and informing the members of what was involved in soliciting the votes.

(6) From page 15, line 12, through page 19, line 21.

KRUMM: May it please the Court, Your Honor I'd like to focus just for a moment on the issues involved today. The issue which was supposed to be the subject of our Memorandum of Law and that is whether or not the members of the Association are entitled to cast their votes to the election of members of the Board of Directors by proxy; in addition, being able to cast their votes by mailed ballots and votes in person. That is the issue which we are involved with today. Now the Association's position with respect to this issue is that the - this Court has on at least two occasions declared the Board of Directors which has been operating since December 7, 1973, to be the duly constituted Board of Directors of the Association with authority to act. The Association in - on December 7, 1973, sued, I believe, 4 members of the Association for delinquent dues and assessments. On that date the Court handed down the decision that certain provisions pertaining to voting in the Association's By-laws were restrictive and they were illegal. After that hearing, the Board of Directors which was in operation for the Association gave a great deal of thought as to how they should proceed. The informal hearing Mr. Whitlock refers to where the Court gave what he terms to be guidelines for the resolution of the problem, took place the Monday, I believe, following the December 7th hearing. At

that time the Association was of the opinion that it would be necessary to put the corporation into a receivership, that the Court would be required to supervise the operation of the Association until there could be an election of a new Board of Directors, at this informal hearing which we did put on the record specifically so that Mr. Whitlock would have a written record of what happened. The Court refused to put the corporation into receivership or at least indicated a desire not to do so, rather it indicated that it would like to see the corporation operated on its own until there could be an election of directors. On this basis and pursuant to certain rulings by the Court on December 7th, the old Board of Directors handed back the reins of power in the Association to the Board of Directors which had been operating the Association as of March 1st, 1971. I would call to the Court's attention, paragraph 5 of the Order which the Court entered in the Morris case which says, that the Board of Directors of the Plaintiff, Blue Ridge Property Owners Association, herein which was serving on March 1st, 1971, is and has been at all times and subsequent to March 1st, 1971, the only properly constituted Board of Directors of said Plaintiffs with authority to act on behalf of said Plaintiffs, and that the By-laws and rules and regulations of said Plaintiffs and amendments thereto which were in effect prior to the convening of the regular monthly meeting of the Board of Directors of said Plaintiff on March 1st, 1971, are the By-laws and rules and regulations which are the proper and effective By-laws and rules and regulations of said Plaintiffs. And then, until such time as the said By-laws and rules and regulations might be properly amended by a properly constituted and acting Board of Directors of said Plaintiffs. So the Court was saying that, yes, the By-laws are in effect or were in effect prior to March 1st, 1971, are now in effect until the Board of

Directors amend them. On December 26th, 1973, the Board of Directors at a meeting where they properly signed waiver of notice of all members of Board of Directors, amended the By-laws and rules and regulations of the Association. Its purpose in doing so was to follow the ruling of the Court that the voting procedures of the old By-laws should be changed to eliminate the illegal and restrictive provisions. The provisions that I refer to are specifically that a member had to pay his dues and assessments prior to the annual meeting in May before he would be allowed to vote. Now the amendment to the By-laws and rules and regulations on December 26th, had as its main purpose removing that restriction. In addition, the Board of Directors saw fit to carefully lay out step by step the procedure by which a person could cast his ballot for the election of directors. In that procedure there are two ways that a person may vote, in person at the annual meeting and by a mail ballot. The By-laws specifically provide that proxies shall not be allowed for the election of Directors. Proxies are allowed to be cast for other issues which are proper subjects for a membership vote. I would call the Court's attention to the By-law provision which says; "Members shall be entitled to vote for the election of directors and on issues which are proper subjects for a membership vote under the non-stock corporation law of Virginia." The next sentence and I'm referring to Article V, Section 9 of the By-laws of the Association. I have attached a copy of the By-laws to our first Memorandum of Law. The next sentence in Article V, Section 9, says; On issues which are proper subjects for a membership vote, any member may vote in person or by proxy. No mention is made in that sentence or in any subsequent sentence about proxy votes for the election of directors. If you look just at the language of the By-laws itself, they divide voting

privileges in two categories, election of directors and voting for other issues which are proper subjects for a membership vote. Then the By-laws specifically provides proxies for other issues which are subjects for a membership vote, but not for the election of directors! The Board of Directors did this specifically because it was of the opinion that proxies should not be allowed in the election of directors. Rather the Board of Directors feel that the more appropriate method of voting, the way you encourage direct participation, active participation in the affairs of the Association is to provide for a mail ballot. Send the ballot to the member. Let him look at it and vote it and cast it himself. All he must do is mark the ballot and put it in the envelope and send it back to an independent escrow agent. We changed the voting procedure in that respect, because we didn't want to be subject to any criticism such as the ballots were coming back to the general manager of the Association and he had the opportunity to tamper with them. That couldn't have happened, because the By-laws were amended. The independent escrow agent was the National Bank and Trust Company of Louisa and they sent one of their representatives to the annual meeting on the morning of the annual meeting with the ballots. They had never been touched or seen by any member of the Association, any Board of Director, or the general manager of the Association. I would just emphasize we amended the By-laws and rules and regulations of the Association specifically to comply with the Court's ruling in the Morris case.

(7) From page 23, line 25, through page 24, line 10.

KRUMM: Another point I would make with respect to contractual rights is the contract that individuals sign when they apply for membership in the Association provided that members would abide by the By-laws and

rules and regulations of the Association as they now exist or as they might hereafter exist. So that people, when they entered into their contractual arrangement with the Association knew that they had to be members of the Association. They also knew that they had to abide by the By-laws and rules and regulations of the Association and they also were on notice that these By-laws and rules and regulations were subject to change.

(8) From page 24, line 16, through page 25, line 22.

KRUMM: In conclusion Your Honor, I would outline again for you our position. The Court has declared that the Board of Directors which is in operation at the present time is the duly constituted and properly authorized Board of Directors. The Court has refused or declined to restrict their operation at all since December 7th, 1973. It didn't put any restrictions at all on their power to amend the By-laws. It put that Board of Directors in power and it was to operate the Association until there was a new election of an entire new Board of Directors. Now, our position would be that the Association's Board of Directors have to have the power to operate fully to do what the By-laws and the statutes of Virginia provide they legally may do. Unless the Court had restricted its power we don't see any impediment to the corporation amending the By-laws. I would also note to the Court's consideration the fact that the By-laws and rules and regulations which were put into effect on March 1st, 1971 which the Court declared to be invalid were the By-laws under which the corporation operated for the annual meeting in 1971, 1972 and 1973. And there was never to my knowledge any question raised about the ability to cast votes by proxy. In short Your Honor, I think the Association has performed in accordance with the Court's wishes and in accordance

with the statutes of Virginia and that it is entitled to deny the use of proxies in the election of directors pursuant to the statute, pursuant to its By-laws and in addition, it has good, sound, policy reasons for providing for mail ballot and personal casting of ballots at the meeting and not the use of proxies. Accordingly, it's our position that the results of the election which we set forth at the end of our Memorandum should be confirmed by the Court and that would be the Directors elected as recorded by the Special Commissioner of Elections, Robert M. Musselman in paragraph 12 of his written report.

(9) From page 27, line 9, through page 27, line 18.

WHITLOCK: So if you want to get to the facts we could talk a whole lot about what has been done wrong in reference to the facts. Now they have read Your Honor's order in the Morris case and others, about putting this Board of Directors back in office and said that gave them authority to act. And they also read that in that same order the same ruling Your Honor said, and the By-laws in effect prior to the adoption of these By-laws - that we now find them to be improper, shall remain in effect until rewritten or reenacted by a properly constituted Board of Directors. Now I don't believe Your Honor meant that.

(10) From page 28, line 12, through page 28, line 24.

WHITLOCK: Now we all receive proxies through the mail I'm sure and if we don't sign that proxy it says - or ballot - if we don't sign that proxy and send it to somebody that we know then we are going to be directed and governed by the acting Board of Directors and their wishes. And this mail ballot, when it comes in the mail, if you don't sit down and vote it right then and send it back right then without investigating the facts it's going to be set aside and it will never be voted. And that's

the psychology behind this mail ballot, because they are getting a person to vote without even giving it any consideration, without investigating at all and without doing anything but what they have asked them to do. And that's the entire psychology and philosophy behind this mail ballot.

(11) From page 29, line 25, through page 31, line 1.

WHITLOCK: And neither have they explained why they didn't have the courtesy to call me the day they came to Your Honor on December the 10th and Your Honor told them that day, here's a quote from it, said let's do it this way then, since we are on record I'm going to and you can inform Bill Whitlock of this and if he has any objections he can be heard. And Mr. Krumm had the - said, we had a transcript made so that Mr. Whitlock could review it, but not to this day have they ever mentioned to me anything about the transcript and I just happened to find it in the records of the Courthouse. And I'm certain - I don't know why they didn't have the courtesy to - they came to Louisa to meet with Your Honor and I don't think that Your Honor knew that they had purposely not told me they were coming there for a conference. And why they didn't have the courtesy to notify me they were coming down to discuss important matters of this kind I - is beyond - beyond me. And then they said they object to these proxies because the Board of Directors don't know what the person receives the proxy might tell or ask the member. Well I'm telling this Board of Directors that they are not the Saviour or God Almighty and they don't have to know everthing that somebody says to another. They have a right to go to the members themselves and state their position but they certainly don't have to know every time one member speaks to another. And if they think that they - nothing can be done unless this Board of Directors knows what's being done then I say we've not only lost the community in which we live but we've lost the democracy under which we are governed.

APPENDIX 13

e. Transcript of July 9, 1974, Court Decision:

(1) From page 1, line 5, through page 4, line 19.

COURT: Gentlemen, I am going to summarize briefly certain points that have already been raised and which seem to have become somewhat fixed during these proceedings. At least the Court is mindful of that in this proceeding or other proceedings which involved the same corporation and its membership. And these have generally to do with the rights and responsibilities of membership as governed by the Bylaws and the Agreement which is a part of the real estate transaction in which a purchase is made in the Subdivision known as Blue Ridge Shores, the owners of which make of the Blue Ridge Property Owners Association, Incorporated. Number one, the Court has previously found that membership is mandatory on the part of a property owner by the contract and it becomes a covenant running with his ownership of the land. Number two, assessments may be made against members personally and against real estate owned by the member in the Subdivision known as Blue Ridge Shores, which are - and this Court has already ruled to that extent, properly the basis for a creditor's bill to enforce the lien of those assessments which can and sometimes do result in judicial sales of the property of a member to enforce the lien of those assessments. This Court thirdly has already commented in the original - not in the original suit, which we have before us, but in a companion suit which involved the preliminaries of this suit, that is the election of Directors, that there are constitutional rights involved in this membership situation which are not generally involved in a nonstock corporation. Now those findings are a very important part, it seems to me, to a proper disposition of this question of the governing of this body of owners. Both from the standpoint of the stockholders or the - not the stockholders but the members who support the Directors in office and the members who support the dissident Directors,

or those who are not in office by virtue of the election as it purported to be on its face in May of 1974. Unfortunately, the specter of receivership has been raised in this case by both sides, at least directly in these proceedings or indirectly in the previous proceedings or during the interim between the last proceeding and this one. The uncertainty of the authority of the Board of Directors to govern or the impropriety of their acts has given rise to a demand that the Court exercise control over the affairs of the corporation. Now that is a serious problem, both from the standpoint of the Court and the membership of the corporation. Now in commenting on this and the decision which the Court has to render in this case, the Court has to take into account that the statute in this case governing private, nonstock corporations clearly backs up the position taken by Mr. Krumm and Mr. Musselman. And in order for the Court to deal otherwise it must find overriding considerations and reasons to contravene that statute or those statutes and the Bylaws which were enacted. And in considering that the Court, in this case, is governed by equitable principals as well as legal principals. Mr. Whitlock has brought this proceeding under section 13.1-221 and also he has raised an issue with regard to 13.1-257 and 258 which have to do with liquidation. And this Court is not willing to concede at this point that this corporation is in need of liquidation. But the corporation is in need of stability in its government or it will be in need of liquidation. That's the very real danger it seems to me, and the Court must exercise broad equitable powers, it seems to me, to forestall that very event. I don't have the slightest doubt that if the Directors and the members fail to resolve these problems, it will eventually resolve itself in Court by the appointment of receivers which is a very poor alternative. Now, the Court having expressed the opinion that under the

statute mail ballots may be prescribed properly, proxies may be properly denied, the next question is should the Court override that. I can't escape the feeling that sooner or later the will of the majority is going to have to be expressed in the resolution of the problem of governing this corporation and this Subdivision. And the sooner that is put into effect to determine whether it can and will govern the affairs properly, then the sooner we'll know whether the other alternative will have to be resorted to and that's receivership. And the Court makes this finding, that it does find sufficient cause to exercise the broad powers of equity which are contemplated under the statute in affording such relief as the Court finds to be equitable under the circumstances, that this Court should contravene the Bylaws and the statute, because of constitutional considerations, as I have already indicated with regard to the mandatory membership of the owner. And it seems to me that that is a circumstance that is not contemplated under the general statute regarding nonstock corporations and the rights of members. While this is not a business corporation, this corporation exercises certain functions which are very, very close to the power to tax, even to the extent of having the power of the Court behind it to declare such taxes to be a lien on the property and to enforce that lien by a judicial sale. And that being the case, it seems to me that the Court has to recognize that there are principals which would have to override the statute and the Bylaws, and that is that if the will of the majority of the voters can be reasonably ascertained in a case such as this, the Court should uphold that.

(2) From page 7, line 9, through page 10, line 3.

Now, I'll leave it up to counsel to have those listed with the count

so that their terms of office can be governed by that. Now the Court is taking this further action with regard to the case because of the nature of these proceedings and the relief which has been sought in the petition. As everyone knows the statute and the Court are available to any person on e cher side of this division within this membership to seek relief. Any member or Director aggrieved by an election of Directors may after reasonable notice to the corporation and each Director whose election is contested apply for relief to the Judge of the Virginia Court of Equity and so on. Then other statutes in connection...the Court is going to retain this case on the docket for several reasons with this admonition to the Directors. No matter whose vote or which side elected a Director, there's no change with regard to the responsibilities and obligations of a Director to represent all the members in the affairs of the corporation as a whole. Like an administrator of an estate, it's not so important who it is once they are in office because they are charged with the same responsibilities. Their policies might vary or differ but their obligation is to protect and foster the benefit of the corporation as a whole, and the Court won't countenance any activities which would work to the detriment of those people who represent a different viewpoint any more than it would have to the contrary if the other slate of Directors had been in office. The Court will, however, refuse to take any action with regard to surcharging anyone. That has been requested but it does not seem appropriate to the Court at this point to open this proceeding up to that sort of an action. Now if the affairs of the corporation and the governing of the corporation bog down to the extent that they can not be properly carried out, then the Court would consider this matter further with regard to affording general equity relief by allowing anyone to intervene and petition the Court

to consider the activities of these Directors and the corporation generally. And in that regard the Court is not unmindful of the fact that this corporation has experienced some rather severe losses which have resulted in certain assessments being made and which have been litigated before this Court and which have been upheld. There may be some residual questions that remain to be resolved with those assessments, such as any surplus, but the validity of those assessments has already been challenged and has been upheld, and it does not seem appropriate that anyone waste any time going back into those assessments. What is needed is the management and operation of this corporation in a proper fashion from this point on. And when the next election period arises, the same remedy is open, the same relief available to anyone else as was undertaken in this case. The Court does not suggest that these Bylaws have been improperly adopted. It does not suggest that the Directors have acted improperly. As I have stated and whether the Court has acted with justification in this case may remain to be seen if either - or if the present Board before the change decides to appeal this matter. The Supreme Court of Virginia might find that there was not sufficient reason for this Court to override the statute and the Bylaws, because I specifically find as was indicated by Mr. Krumm in his argument that the legal considerations in this case would leave this other Board of Directors in office and I'm using equitable principals to put the other group in by overriding the legal principals. It's as simple as that. And it does not mean that by virtue of this ruling this Court has found that there has been an improper act or that the Bylaws were improperly adopted. Taken at face value, they are legally sound. And it may well be

that the use of mail ballots is much preferable to proxies. I'm not going to say, but I do believe that as a general equitable principal when we have such inherent contract and property rights as are involved in this corporation which are tied in with membership, that there are constitutional principals which would require the Court to override the legal points in the statute and that's the basis upon which the decision has been rendered. My. Musselman, I'm sure you wish to note your exception to the Court's ruling.

(3) From page 11, line 1, through page 12, line 9.

WHITLOCK: Of course, Mr. Musselman is relying on the case, he says Your Honor has ruled in the Morris case which is not certainly res judicata to this case, because the parties are different. But in this case if Your Honor ruled that the existing Board of Directors would continue in office until there was a new election; a new election has been held and it would be just as, we submit, certainly submit just as inappropriate to continue the existing Board of Directors in office under the - if they were brought back because of Your Honor ruling out the previous Board as it would be to say that the Board that Your Honor has now declared elected should not take office until the appeals are sought. We would take the position if there's an appeal we would file a cross error as to the existing Board coming into office when they have been out and I respectfully submit that there are only two options. One would be to have a receivership take control of the corporation pending an appeal and to designate the receivers to operate the corporation or to proceed with the elected officers in the election that Your Honor has declared valid. Mr. Musselman wants to take Your Honor's ruling as to putting his candidates in but he doesn't want to accept Your Honor's ruling as to putting in the

candidates you've ruled today. I don't think he can have it both ways. If he's going to abide by Your Honor's ruling then he ought to accept it both ways and I think there's only one - two things that can be done if he doesn't - it's felt that this Board can not take office now then it would have to be in receivership until such time as final adjudication is held. But this is - although we said the bond would be great, I'm not apt to be putting up a bond to get in - requiring a bond is prohibited, but this corporation is handling thousands and thousands of dollars and I think the bond certainly would be reasonable to cover all of the money that comes into their hands while this thing is pending, if any different Directors other than those who are appealing would be put in office.

(4) From page 13, line 10, through page 14, line 11.

COURT: Well gentlemen, I'm going to do this now, undertake as I said to keep this corporation functioning and not have the Court deal with it through receivers until there's no other method left open. Having already considered this matter and having acted in a collateral case with regard to restoring the affairs of the corporation to a previous Board of Directors, and the Court having already announced the principal which it feels should be adhered to and which is generally recognized, the people in office stay in office until their successors have been elected and qualified under the general theory that you shouldn't have a vacuum when you're dealing with the affairs of a business or a government. The Court, therefore, directs that the Directors in office before this election, will remain in office during the appeal, that the appeal bond is hereby set at $5,000.00 and that a supersedeas will be entered which, in effect, will stay the ruling of the

Court pending the appeal and the government of the corporation then will be entrusted to the Board of Directors who have been active prior to this election. And upon the matter being determined by the Supreme Court of Virginia, of course, the Directors then will take office pursuant to the election, whether they be one group or the other. Now that seems to me to be much preferable to the appointment of receivers and as I have said, anybody who feels aggrieved by the actions of the Board still have their remedy in the Court during the pendency of the appeal and the case will be left on the docket to that extent while the matter is appealed on the question of this election. Any other points Mr. Mussalman?