

MEMORANDUM

TO: Sambrito Board Members and Membership

FROM: Germaine Chappelle, Legal Counsel

DATE: November 1, 2021

RE: Background, Evaluation and Recommendations re Bylaws

In 2019 a community association was formed to participate in PRC proceedings. At that point the community was deciding if they wanted to litigate or negotiate with RJV to transfer the water and waste water systems, form a mutual domestic and run the systems as a community. Community members voted in a 5 member board for the community association.

After several community meetings and door-to-door discussions with residents of both subdivisions, the community opted to move forward to form a mutual domestic and negotiate a transfer.

In the fall of 2019, community meetings were held to learn more about the formation of a mutual domestic, pros and cons, and operational and legal requirements. At this meeting the board and community members present discussed the Sanitary Projects Act, the Open Meetings Act, the governance and formation requirements of a mutual domestic and other relevant statutes. Draft Articles of Association and draft Bylaws were also reviewed at this meeting. There was significant discussion about making changes to the Bylaws regarding who would be eligible to be board members. The participants were very emphatic that to be eligible to be a board member: 1. given the history and conflict between the community and RJV, interested persons must live in the community served by the mutual domestic, 2. that there must be balanced representation from both subdivisions, and 3. that they be in good standing and not behind in payments to the mutual domestic.

The community association board voted on these and other changes in concept and requested legal counsel to make them. Additionally, as part of the evaluation of whether to form the mutual domestic, Souder Miller performed a

field evaluation of the water and wastewater systems. Based on feedback from the field evaluation, Board Members believed that accepting transfer of the water and wastewater systems to a mutual domestic was feasible and that the improvements/repairs needed, while significant, were achievable and not insurmountable.

In 2020, at a community meeting the 5 board members of the community association volunteered, and were elected, to become the initial board members for the mutual domestic and formally approved the language of the Articles of Association. At this time, proceedings at the PRC were underway and negotiations were also progressing with RJV to transfer the water and wastewater systems to Sambrito.

Because the formation of mutual domestics are fairly rare, and the function of business formation is still relatively new at the Secretary of State's Office (was previously the province of the PRC) it took a significant amount of time to work with the Secretary of State on both content and process for forming a mutual domestic, not to mention that COVID had hit and it was difficult to get access to state government employees who were working remotely. Ultimately, the Articles were accepted for filing with the Secretary of State on December 14, 2020 and Sambrito was formally notified on December 22, 2020 that the Articles were approved. Based on review of notes, it does not appear that the draft Bylaws were formally voted on by the mutual domestic board.

Recently, the attached draft bylaws have been reviewed by legal counsel in the context of concerns received from regulators that the mutual domestic could ultimately be run or controlled by private ownership of RJV in contravention of the anti-donation clause. The concern being that governmental funds could ultimately be used for private purposes. The board member eligibility language, in addition to the strengthened language on percentages required to call special meetings and quorum needed for annual membership meetings discussed at the last Board Meeting in October help address this concern.

Also discussed at the last Board Meeting was the concept of proxies. As part of conducting a final review of the bylaws, legal counsel also reviewed the Articles of Association to make sure that both documents are consistent, particularly because the Articles take precedence over the bylaws. Section VII

of the Articles do not allow for proxies, but do allow for mail or email voting. Section VI specifies that elections shall be held every 2 years, with members of the Board being elected to staggered terms of 4 years.

In accordance with the Articles, the next membership vote for Board Members should not occur until 2022 and proxies are not valid. Given community interest regarding voting for vacant seats filled in the interim by the Board, however, legal counsel makes the following recommendations:

1. Given the history of the formation of the community association and then the formation of the mutual domestic, as well as uncertainty about formal passage by the mutual domestic board of the bylaws, the Board should formally vote on the bylaws at the Nov. 3 meeting and present the bylaws to membership to vote on at the Nov. 3 membership meeting.
2. Depending on the ultimate outcome of the vote by membership on the language of the bylaws, which would resolve the current dispute over the requirement of board members to reside in the community, determination of the eligibility of the nomination of John Dustin, who does not reside in the community, could be made.
3. Because the nomination/vote by proxies of John Dustin by 3 members in good standing were made in good faith prior to review of the Articles, it is recommended that the proxies be accepted as email nominations/votes.