

**WILDWOOD WEST ROAD ASSOCIATION
BOARD MEETING MINUTES
JUNE 1, 2024**

Officers present: Bob Spier-Chair, Bob Bell,-Road Director, Rob Martello-Vice Chair and Karen Gifford-Secretary. Absent Steve Boone-Treasurer.

Guests: Cheryl Blain, Bill Croker, Ian Garfinkel, Al & Donna Gebhart, Marc Gifford, Paula Hansen, Marc Igel, Richard & Diana Kaiser, Rebecca Martello, Pattie Parsons, Shane Wallace, Steve Zoch,

Place: Gifford Residence (12072 Sunset Hill Road)

Time: 1:05

Secretary

Verified there was a quorum.

With permission from the Chair, read a prepared statement to the board, resulting in no further discussion or action.

Read minutes from the annual membership meeting on 4/20/24. The chair moved the discussion forward without a motion to approve these minutes.

Administered oath of office to newly elected Vice Chair, Rob Martello.

Chair

Revisited the ballot count for an increase in annual dues conducted at the membership meeting held on 4/20/24. The number of votes needed to pass could not be agreed upon that day and no final outcome was announced. The Chair referred to documents with legal opinions from John Bilheimer (Law Offices of John Bilheimer, PC) and David Mezzera PRP (Professional Registered Parliamentarian), which were received from and paid for by Al and Donna Gebhart. The Chair stated technically the vote on 4/20/24 was considered “incomplete”, does not require a new motion or additional ballot, the legal advice acquired settles the outcome and the 50% increase passes effective with the billing cycle in April 2025. There was further discussion by both officers and guests to have more clarity in the Bylaws for future voting issues. Based on input from the group there would still be time before next year to introduce and vote on another possible plan to increase dues should the membership want to go in another direction.

Planned item on agenda to introduce possible changes to the Bylaws in preparation for the 2025 annual meeting postponed.

Treasurer

(Report read by Chair in the absence of Steve Boone)

Current Bank Balance \$17,383.96

Expenses \$409 to reimburse Bob Spier for Quick Books, WWRA web site and postage to mail April ballots.

Dues outstanding \$6,200

Road Director

Based on the Chair's request looked into getting information on cost per square foot for possible roadwork projects. Received one call back (5/31/24) from John at Hansen Brothers, his current estimate was given with the understanding the prices fluctuate. He indicated 45 cents plus per square foot for road sealing with required crack filling and for an overlay, with fiber mix in it, \$3.80 per square foot at 2 inches (2023 the association paid about \$3.50). Road Director asked how much money is available to spend to plan future projects for the road. In a prior meeting requested consideration on overlays for three different sections of the road and saving the money to do it. All the information stimulated much conversation and numerous questions from the board and guests.

Motion: Karen Gifford

Budget set aside for the Road Director to spend up to \$17,000 for crack filling and chip sealing maintenance to be done, as conditions warrant, before the end of this summer.

Second: Rob Martello

All in Favor: Motion passed no exceptions

No other items for discussion.

Motion: Rob Martello

Adjourn meeting.

Second : Bob Bell

All in favor: Motion passed without exception.

Time 2:55

Prepared by:

Karen Gifford

Secretary

Safety is a major concern on our road to protect people, pets and property. Please control you speed and remind your visitors to do the same.



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PARLIAMENTARY OPINION PREPARED FOR Wildwood West Road Association Corporation

INTRODUCTION: I have been asked to prepare a parliamentary opinion to address and answer the following questions as they deal with the voting process for the upcoming Annual Meeting of the Corporation ==>

1. Who should be receiving the mail-in ballots (and when)?
2. How should the secret ballots be processed?
3. Are the outside envelopes kept with the Directory to verify who voted?
4. May nominations from the floor be accepted? May write-ins be added at the meeting?
5. Can proxies be used for write-ins?
6. If a ballot has been received, may that vote be changed or a write-in added?
7. How should the ballot be read and interpreted by the tellers?
8. Should the numbers of the parcels submitting ballots be called out?
9. Should a report of the results be sent to all members or only be announced aloud?

SOURCES CONSULTED:

- ✓ Bylaws of the Wildwood West Road Association, a California Corporation [Bylaws]
- ✓ Robert's Rules of Order Newly Revised, 12th Edition (2020) [RONR]
- ✓ Sample ballot and accompanying instructions [Ballot]

OPINION:

1. Who should be receiving the mail-in ballots (and when)? Based on Article IV [Bylaws], each parcel is entitled to one vote including any business requiring a mailed ballot such as in [14-1 and 13-4 Bylaws]. Mail balloting must allow for secrecy of the vote [Bylaws 4-2]. The ballots to elect officers of the Corporation should be in the hands of members from 30 to 45 days before the Annual Meeting according to [13-4(a) and 14-3 Bylaws]. Sealed envelopes may be hand delivered on April 20th at the Annual Meeting or must be received in the post box by April 19th (as indicated on the ballot instructions [Ballot]).
2. How should the secret ballots be processed? Based on [13-4(d) Bylaws], the Secretary and one other Board member shall keep possession of the unopened ballot envelopes received in order to be counted during the Annual Meeting. Based on [8-2 Bylaws], 25% of parcels must have submitted ballots either in person or via USPS to validate the election results. When all ballots have been received, the Secretary and one other board member (acting as tellers) validate the outer envelopes received by checking off the parcel code number with the Directory. When all such envelopes have been checked against the Directory, the inner envelopes are removed and set aside randomly to insure secrecy of



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votes. Those envelopes are then tallied and a tellers' reports is prepared to give to the President to announce the results at the appropriate time. This process is based on [RONR 45:60].

3. Are the outside envelopes kept with the Directory to verify who voted? Yes, the outer envelopes are retained to verify those who voted (but with no connection to how they voted) until the voting process is completed and there are no challenges to the results. This is based on [RONR 45:61].

4. May nominations from the floor be accepted? May write-ins be added at the meeting? According to [14-2 Bylaws], "if those voting at the Meeting allow it, nominations for the Board may also be made and seconded by Members from the floor at the Annual Meeting. Persons so nominated shall be treated as write-in candidates on the ballot for that meeting." Based on [RONR], this provision is meaningless and confusing. For starters, floor-nominated persons are actual ballot candidates - not write-ins (which are done secretly by voters if they do not wish to vote for one of the listed candidates but wish to put another person's name forward which becomes their vote. Another problem would arise with nominations from the floor: those names need to be placed on a **new** ballot to allow all voters access to the expanded list of candidates. So if there are, in fact, nominations from the floor, the entire process must begin again and send new ballots with the mandated lead time to all members. In keeping with the process, [RONR 45:56] makes it clear that "an organization should never adopt a bylaw permitting a question to be decided by a voting procedure in which the votes of persons who attend a meeting are counted together with ballots mailed by absentees," since the mailed-in votes do not have prior access to any new nominees. And as indicated earlier, nominees should be listed on the ballot sent to all members at least 30 days before the deadline for returning the ballots [Bylaws 14-3], especially for those who don't attend the Annual Meeting but are still sending in their vote ahead of time.

5. Can proxies be used for write-ins? Write-ins can be made by the voters on the ballots themselves [Ballot]. Proxies have absolutely nothing to do with a mail-in voting. Proxies are used for in-person meetings where a member is unable to attend and gives another member written permission to vote on their behalf. Putting the terms 'proxies' and 'write-in' and 'mailed ballot' together somehow is really an oxymoron.

6. If a ballot has been received, may that vote be changed or a write-in added? As previously noted, write-ins cannot be added after the ballots have been received. Also as previously noted, if a new name is added from the floor to be a candidate (which is not recommended), a whole new set of ballots must be prepared and sent to all members with double envelopes, etc. If a member has already sent in a ballot envelope



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and wishes to change a vote, they may ask the Secretary for a new ballot [13-4(e) Bylaws]. If two envelopes are thus received from a single member, [RONR 45:61] indicates that the envelope with the later postmark is the one to be counted and the other disregarded. This is a further reason for keeping all envelopes unopened until their member number has been checked against the Directory.

7. How should the ballot be read and interpreted by the tellers? The printed ballots are problematic. [RONR 45:25] states, "In elections, 'for' and 'against' (in this case 'YES' and 'NO' [Ballot] spaces or boxes may not be used. They are applicable only with respect to votes on motions. In an election, a voter can vote against one candidate only by voting for another who has been nominated or by writing in the name of another candidate." If the intent of a member's vote is clear, it should be recorded in that manner by the tellers. It would be hoped that members only vote in favor 'YES' of the candidate they wish to win. The 'NO' column should be disregarded when tallying this ballot, with the exception of the DUES increase issue where members may vote in favor of or opposed to the increase. If someone votes 'YES' for both candidates in a race, then the vote for that office is void on that ballot. Similarly, if a member votes "NO" for both candidates in a race, then the vote for that office is void on that ballot. There is no need to vote 'YES' for the candidate of their choice and 'NO' for the one they don't prefer.

8. Should the numbers of the parcels submitting ballots be called out? No. To keep the voting secret, the actual ballot is not identified; and which parcels do - and don't - even cast a ballot is similarly private. The tellers verify the parcel number in private, using the Directory, and then that information is destroyed (as mentioned before) once the voting is tallied and announced. This is also validated by [45:60 RONR].

9. Should a report of the results be sent to all members or only be announced aloud? This is specified in [13-4 Bylaws] where it is indicated that "ballots with the verified Corporate Seal will be counted and results will be presented to the Association Board and Members." Results should be sent to all members, whether they are present at the Annual Meeting or not.

LEGAL DISCLAIMER: This opinion is meant to be a Parliamentary Opinion based on the writer's understanding of the bylaws and parliamentary authority of the Corporation. It should not be construed to be a legal opinion, which would have to be rendered by an attorney. If additional information were provided to the writer not currently know, this opinion might have to be altered.

David Mezzera, PRP
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April 5, 2024



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ADDENDUM TO PARLIAMENTARY OPINION PREPARED FOR Wildwood West Road Association Corporation

INTRODUCTION: I have been asked to prepare a parliamentary opinion to address and answer the following additional question dealing with the voting process for the upcoming Annual Meeting of the Corporation ==>

10. If someone is nominated from the floor before the ballots are counted, how do we proceed with the vote?

SOURCES CONSULTED:

- ✓ Bylaws of the Wildwood West Road Association, a California Corporation [Bylaws]
- ✓ Robert's Rules of Order Newly Revised, 12th Edition (2020) [RONR]
- ✓ Sample ballot and accompanying instructions [Ballot]

OPINION:

10. As answered in #1 above, balloting for officers must be done through mail-in, secret balloting [Bylaws 4-2, 13-4, 14-1 and 14-3]. If a nomination is made from the floor at the Annual Meeting, according to Robert's Rules [RONR 46:23] the electing ballot should have nominees by the nominating committee and any names from the floor listed. As also noted in #4 above, according to Robert's Rules [RONR 45:56], no question should be decided by a voting procedure in which the votes of persons who attend a meeting are counted together with ballots mailed by absentees, since the mailed-in votes do not have prior access to any new nominees. In the upcoming election on April 20th, if both offices remain with two nominees, then the counting should take place as noted in #2 above. If a third nominee is presented from the floor for either office, then the election is declared incomplete and a new seat of ballots (just for that election) should be prepared and sent to all members as before. Proper notice should be given for the follow-up election which must use mail-in ballots [Bylaws 13-4(a)] with a date set for their return by USPS or in person at the next Board meeting [Ballot] when the ballots will be counted and the voting completed.

DISCLAIMER: Adding this tenth opinion response in no way affects the prior nine responses, but simply adds additional information into the equation.

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April 8, 2024

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PARLIAMENTARY OPINION PREPARED FOR Wildwood West Road Association Corporation

INTRODUCTION: Following my parliamentary opinion submitted on April 5, 2024, I have been asked to prepare an additional opinion to address and answer added questions as they deal with events that occurred at the Annual Meeting of the Corporation on April 20, 2024 ==>

1. What is the correct processes of announcing balloting results and how should the balloting be completed?
2. What is the process for correcting draft minutes from a meeting?
- 3 According to Robert's Rules what is the process to table a matter, and how should it be correctly handled?

SOURCES CONSULTED:

- ✓ Bylaws of the Wildwood West Road Association, a California Corporation [Bylaws]
- ✓ Robert's Rules of Order Newly Revised, 12th Edition (2020) [RONR]
- ✓ Letter sent by the Law Offices of John Bilheimer, PC, dated April 24, 2024

OPINION:

1. According to RONR [4:43] there are three steps for the chair to process and announce the results of a vote: "(1) Report of the voting itself, stating which side 'has it'—that is, which side is more numerous—or, in the case of a motion requiring a two-thirds vote for adoption, whether there are two thirds in the affirmative. If the vote has been counted, the chair first gives the count before announcing the prevailing side. (2) Declaration that the motion is adopted or lost, and (3) Statement indicating the effect of the vote, or ordering its execution, if needed or appropriate."

I was not present at the April 20th meeting, but it has been relayed to me that the chair gave the count as indicated in (1) but failed to complete steps (2) and (3). In lieu of completing this process, it has been relayed to me that a random discussion took place among members as to whether the motion to increase assessments had in fact passed. A definitive statement should have been made by the chair at that time, which was not done.

Thus, the voting by ballot is considered to be "incomplete" (using Robert's Rules terminology) and according to RONR [46:44], "If an assembly wishes to adjourn when an election is incomplete, an adjourned meeting should therefore be provided for. If such an adjourned meeting is not provided for and the organization will hold another regular business session before a quarterly time interval has elapsed, the election is taken up automatically at the next regular meeting." The next Board meeting would be an appropriate time to complete the announcement of the result of the ballot vote, thus completing steps (2) and (3) above. The question of whether the voting numbers in the ballot vote qualify for the motion to pass is a legal/bylaws issue and has already been determined according to the written legal opinion from the attorney as referenced above.

2. The draft minutes that I was provided with indicate that the secretary reported on the election by interjecting her personal, subjective opinion when she stated "Increase Annual Dues In favor-Yes 18 Not in favor-No 14 - The increase did not pass." If this is, in fact, what was recorded in the draft minutes, the minutes do not reflect what was said and enacted by the chair, and thus are open for interpretation in order to align with the facts in the case. What was provided to me are merely **draft** minutes and must be approved by the assembly or by a minutes approval committee such as the Board. This is validated in RONR [41:12]: "The secretary's draft of the minutes, whether or not circulated before their approval, does not become *the* minutes—that is, the official record of the proceedings of the society—unless it is approved, and the minutes may be materially modified in the correction process. Only the secretary's corrected version of the minutes is official in such a case.

Thus, this written parliamentary opinion recommends that at the next Board meeting, the board acts as a minutes approval committee, allows corrections to the draft minutes in order to provide an accurate version of what was done at the prior meeting and approves the corrected version of the minutes.

3. This is again taken from the draft minutes I was provided which includes the clause: "The Chair said he would table the matter." I don't know if this is a direct quote from the draft minutes or a paraphrase. In any case, according to RONR [47:55] "the duty as the presiding officer is to maintain a position of impartiality, and therefore does not make motions, participate in debate, or vote on any question except in the case of a ballot vote." Thus, the chair cannot on his own make a motion to table the matter.

On top of this, the concept of "tabling the matter" is an improper use of the correct motion to "Lay the Matter on the Table." The purpose of this motion is to take an item that is under consideration, remove it from floor discussion, and temporarily set it aside or place it on the table. This motion might be required if - in the middle of debate on a motion - something of greater importance has arisen that must be taken care of immediately. And this formal motion is processed, not by a declaration of the chair, but by a motion, a second, and a majority vote of the members present. Once the more important matter has been disposed of, the

original motion may be Taken from the Table to continue with its disposition. In no way was the action taken at the April 20th meeting in compliance with this motion according to RONR [17:2]: "In ordinary assemblies, the motion to *Lay on the Table* is not in order if the evident intent is to kill or avoid dealing with a measure," which seems to be what took place in this instance.

CONCLUSION:

For whatever reason, the process of counting the ballot votes and announcing the winner of the election was interrupted, but this does not become a final decision of *nolo contendere* in which no decision has actually been reached. A decision was reached. According to a legal opinion, the resulting vote was valid and the motion to change the assessment fees passed and should be validated. To do this, at the next Board meeting, the numerical voting results should be stated with a decision made by the chair (Question 1). Also part of that meeting, the erroneous minutes should be amended and adopted to become the official/legal statement of the association (Question 2), and the action to table the matter at the April 20th meeting should be recognized as invalid (Question 3).

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David Mezzera, PRP

DAVID MEZZERA, PRP
April 29, 2024