

The DVCA March Newsletter documents a possible strong association of MUD 136 with the DVCA Perimeter Fence Project:

- The DVCA President's Report states that "the DVCA Board voted in favor of moving forward (on the Fence project) contingent on financing being approved by the bank and funding from the MUD." So the MUD decision to provide funds has a go/no go impact on the DVCA plans.
- The MUD 136 Report states that DVCA "asked for MUD 136 financial participation of \$85,000 to reduce loan and interest payment costs to the community. An informal straw poll of MUD 136 directors was taken and the proposal was approved, contingent on a positive community result of the February 17 vote. Once the DVCA provides an update and formal request, we'll take steps towards crafting an agreement between Mud 136 and the DVCA whereby we can assist in this important and long overdue project."

These reports shows that the MUD's action to either approve or not approve the \$85,000 participation in the fence project in fact determines whether the project goes forward and we believe legally ties the MUD 136 to the DVCA project.

Why you should care?

- The legality and fiduciary implications for DVCA of the DVCA Fence project has been questioned by DVCA Members in several different ways in previous months (with both legal and financial concerns). Many of these issues are documented in the DVCA Board Meeting minutes.
- Until the project has been approved and a contract signed any injury to the Members of DVCA cannot be established and a legal challenge in the courts is not appropriate.
- Once there is a final approval and the contract with the vendor is signed, the injury become real and filing a case in court is legitimate.
- Since the MUD 136, if they choose to help fund the project, will be integral part of the project being approved and a contract being signed, MUD 136 will then become part of the parties that approved the project which subsequently caused injury to Members of DVCA.
- The legality and validity of Special Meeting of the Members and the associated vote on February 17 has been challenged as not complying with the DVCA By-laws or the Texas Property Code. Details of this can be found in the DVCA Board minutes and are described in the attached document. The special Assessment failed to receive the positive assent from 706 member votes as required in the Charge Authority they only received 408 positive votes out of 1058.
- Other items that MUD 136 may want to consider
 - The financial and fiduciary competence of the board are also being questioned. The current plan is not supported by the Finance Committee and does not allow for the recommendations the Finance committee has recently made for resolving the deficit budgets DVCA has been running for the last few years
 - The fence project provides for direct financial value to the perimeter Members, which is not allowed by the DVCA governing documents or the State of Texas. I believe the MUD has these same legal requirements and may not want to be a partner with DVCA in something the MUD cannot do.
- I attended the last board meeting for DVCA and I was told I could review the plans and structural calculations. Tthe Fence committee stated to the board they would have everything available to review and they were ready to move forward immediately . When I arrived at the Fence meeting I was told they did not have the plans and calculations for me to review.

Sincerely - Jonathan Hopko, PE

Attachments



February 17, 1021 Special Meeting of the Members and associated vote is not legal or valid based on the DVCA Governing Documents and State Law

1) There is no record of vote by the DVCA Board calling for the February 17,2021 Special Meeting of the Members and Vote in any of the approved and posted DVCA Board Minutes through the January 25, 2021 Board meeting. An official record of all votes taken by the Board is required to be included in the Board minutes by both the DVCA By-laws (see Section 3.2 below) and the Texas Property Code. Not doing so is a violation of both the DVCA By-laws and the Open Meeting sections of the Texas Property Code. Since the letter from the Board about the meeting and vote was dated January 16, 2021 and the approval of doing this had not been part of the last regularly scheduled Board Meeting on November 23,2020, if an approval was done, it must have been done outside of a regular scheduled meeting. Any actions or votes taken outside of a regularly scheduled Board meeting is required to be communicated to the members at the next scheduled board meeting which was on January 25, 2021 Board and also included in the minutes of that meeting. Since neither occurred, in direct violation of the DVCA By-laws and the Open Meetings section of the Texas Property Code, the meeting was not legally called, could not be legally held and anything decided at that meeting does not have any legal standing. So the vote taken was not a legal vote.

If somehow the meeting was to be considered to be legal the following legal issues still remain:

2) A quorum was not established at the Feb 17 Special Meeting as required by the DVCA By-laws Section 3.3 (below)

- A quorum requires the presence or proxies of 1/3rd of the members (353)
 - There were approximately 15 people in attendance at the meeting and no persons with proxies were recognized by the chair of the meeting
- The By-laws require a member to be present or represented
 - By-laws only allow for one type of representation – via a proxy that has been notarized and delivered to the DVCA office (see Section 2.10.B below)
 - Proxy would have to be held by someone else with standing who was present at the meeting
 - Proxy is required to be on file in the office

Section 2.10.B

3) The letter from DVCA dated January 16,2021 titled “Notice of Special Meeting of Members and the Presidents report in the February DVCA Newsletter stated “you need not physically attend the special meeting of members to vote ”

- In direct violation to the DVCA By-laws section 3.2 (above) which requires a quorum of members based on the “presence” of members or “of proxies from members” with the individual holding the proxy present. (this is standard with Roberts Rule of Order - which is what DVCA runs under)

4) The Notice of meeting and election stated correctly “It is required that 1/3rd of Members attend the quorum” (353 Members) and that “a quorum can be counted by being physically in attendance” but then incorrectly adds the statement “or by submitted ballot”.

- “Submitted ballot” is not found anywhere in By-laws Section 3.3. Quorum, so this is an addition made by the DVCA board that has no basis in the DVCA By-laws and is not legal.
- A submitted ballot or absentee ballot is not being present at the meeting. Section 3.3 is very clear on what can be considered to meet the required quorum and it is “presence” or “proxy”.

5) The vote, supposedly made in a legal Special meeting of the members, was taken before a quorum was established, a motion made and seconded or any discussion allowed.

- Roberts Rules of Order does not allow any official business to be handled until after a quorum is established.
- The meeting did not start until 7:00 PM on February 17, 2021, but the vote approved by the Board at that meeting had 455 of the 458 total votes cast and tabulated before the meeting was called to order.
- The three votes cast in person were two against and one for, so the Special Assessment failed if you use valid votes cast by a person who was present.

6) Absentee Ballots and Electronic Ballots (email and fax ballots) are not allowed by the existing DVCA by-laws. They are not mentioned in the By-laws at all, so are not valid for DVCA elections. They are allowed by the state in the Texas Property Code Section 209 but that only means they are legal forms that could be used, not that they are required to be used. In the event that something is allowed by the State, but not allowed by the DVCA By-laws, the order of precedence is that the DVCA By-laws takes precedence.

- Allowing Absentee and Electronic ballots to count is a violation of the DVCA By-laws.
- The “Notice” sent states “The Association’s Trustees urge you to exercise your right to vote by Absentee Ballot, Proxy Ballot, or Electronic Ballot
- Totally ignoring in-person voting – which is the primary voting option DVCA established in its By-laws

7) The Voting Instructions call for three ways to submit a ballot: 1) Absentee Ballot, 2) Proxy Ballot or 3) Electronic Ballot

- A Proxy Ballot is the only one that is allowed by the DVCA By-laws
- It does not call for “in person” ballots to be cast
 - Although DVCA allowed “in person” ballots to be cast and counted at the February 17 meeting

8) Voting absentee limited the member, even if they then attended the Special Meeting, to “forgo the opportunity to consider and vote on any action from the floor. Motions from the floor will not be taken”

9) The Election process followed does not and cannot ensure the integrity of an election

- This process is reminiscent to the process used a few years ago by DVCA that after being challenged as to its validity, the Board in response put in place a committee to create a very secure voting process that has been used by DVCA for the last 3 years and will again be used in

the DVCA election on March 23 -27. The following details the process used for this special election:

- There was no active or proactive approach to validate that only eligible voters voted
- The members who voted were not verified and validated that they are the owner of their lot in order to vote – as required the DVCA By-laws Section 2.10.A.2
- Cast Ballots were not placed in a locked or secured location until the election was over and then opened and tabulated
- There was no protection of the ballots after they had been cast and delivered
- There was no safeguards as to the custody of the ballots
- The observer for the election ballots and counting is the sister (and office manager) of the Board President who is a member of the Fence committee and strongly pushing this project
- The ballots were viewed and tabulated prior to the meeting being called to order
 - By two employees of DVCA, whose boss is the President
 - One is also the sister of the President
- There were no official “observers” of the count for either side of the issue
- This process
 - Did not validate the voter is who they say they are or that they are personally eligible to vote
 - Allowed for electronic (email and fax) votes – but not allowed by the DVCA By-laws
 - Allowed for absentee voting – but not allowed by the DVCA By-laws
- DVCA has a better voting process that was not used for this election
 - The Board said this current better voting process that can ensure the integrity of the voters, ballots and the election results was not necessary
 - Even though this is the most significant vote in the history of DVCA - one that had to do with a project that will cost more than \$1,000,000, the largest in DVCA history by a factor of four.

10) The language of the ballot and instructions are very confusing and worded in a way that an average person would find hard to understand. It does not meet the general criteria that’s been used in the past by District Judges when they rule on overturning on the basis of ballot confusion. The Board was made aware of this issue very soon after the letter went out and at the January 25, 2021 Board meeting where the issue is documented in the approved and posted minutes of the meeting.

- The ballot continually tied together the Special Assessment and Fence Project as the same thing
 - The cover letter on the mailing to all residents stated “ “A vote for the special assessment of \$85.00 is a vote for the perimeter fence”
 - The ballot (shown below) initially states it is “MY VOTE FOR THE YEAR 2021 PEOPOSED \$85.00 Special Assessment
 - The options offered on the ballot start with the support (for or against) the fence project not the Special Assessment which is what the vote is really for
 - Each option really has two parts that should be voted on separately – the Special Assessment and the Fence Project
 - Option one allows for supporting the Fence Project and to vote yes or no to the Special Assessment
 - Option two does not give two options – just the ability to not support the fence project and say no to the Special Assessment

- There are people who may have been against the fence project and for the special assessment as a way to resolve the financial deficit DVCA currently has

I hereby vote in the following manner (Note: place a check in the “FOR” space or in the AGAINST” space. MY VOTE FOR THE YEAR 2021 PROPOSED \$85.00 SPECIAL ASSESSMENT, and to offset some of the costs of the Association’s Perimeter Fence Project (Special Assessment shall be invoiced in April and payment thereof will be due by June 1, 2021), is as follows:

Option 1 - I support the Fence project, and I hereby vote FOR____ or AGAINST____ the special assessment. I also understand that the remaining cost of the fence and its care will be paid from future annual assessment. A vote “FOR” will allow fence construction to begin immediately.

Option 2 - I do not support the fence project, and I vote AGAINST ____ the special assessment.

- The above ballot is confusing, hard to understand, has multiple items in each option that should be voted on separately and not together.

Other issues around Special Meeting and Election

1) The February 17 Meeting was NOT postponed even though the area was under a freeze, power and water emergency that had been declared by Harris County, the State of Texas and the President of the US. Literally Deerfield had no power or water and was in the middle of the freeze and The President of DVCA stated it is not projected to rain residents can sit outside. These actions were not in the best interest of the members especially for a members meeting where people were supposed to be allowed to e-mail vote. How exactly is that done when there is no power for internet or computers and there was no water and people were home and told not to go out because of the freezing weather?

- President of DVCA when asked as to whether the meeting was to be rescheduled texted:
 - “meeting will be held as scheduled”
 - that he was “limited in choices at this point”
 - “that it is strange that this” (the meeting) “is happening, but out of my control”, and
 - “The conditions are not dangerous for a vote in Deerfield”
- President has emergency authority (in the DVCA By-laws) to make decisions when there is an emergency – which was not in question as up to the President of the US had stated there was an emergency
- When confronted with his authority – did not respond with agreement or disagreement about his authority.
- Without power or communications capability, many people may not have been able to attend the meeting as it was being held as a GoToMeeting call – meaning they were disenfranchised from their rights as a member of DVCA
- Interestingly, a Deeds meeting was cancelled on Saturday February 20th because of the emergency and disaster (3 days later after power and water had been restored and

the weather back to normal). The cancelation was justified by the Board Trustee for deeds because of the emergency and disaster.

2) No email or communication was sent to the members letting them know the meeting was not being cancelled

- When any reasonable person would expect that there would be no way that the meeting would still be held in the conditions they found themselves in

3) There are known instance of people whose rights were disenfranchised as they believed the only legal vote was to vote in person, but because of the Emergency declarations, and no email communications from DVCA, did not attend because they did not believe the meeting would be held in defiance of the Harris County, State and President of the USA declarations and by candlelight in a room with no power or heat or due to COVID restrictions would require people to stand outside to participate (as written in the Notice of Election)

Other issues around the Fence Committee and Project

1) Fence Committee did not have open meetings and the meetings were not publicized as to date, time or location

- DVCA Board established the fence committee as an official committee
- All other DVCA committees are open to members
- All DVCA committees publish when and where there meetings are and are open to all members
- Fence committee in effect acted as a secret committee without other member involvement

2) Project illegally benefits some members directly and at the cost of the other members in violation of DVCA Governing documents and state law.

3) DVCA is making improvements on property that DVCA does not own and providing value to the owners of the property in violation of the DVCA governing documents

4) Easement Agreement obligates DVCA to provide value to perimeter fence properties that they do not provide to all other members – in violation of the DVCA Governing Documents

Financial Issues surrounding the Fence Project

1) DVCA Board has not accurately or fairly communicated the financial plans around the fence, the accurate state of DVCA finances in general, the Finance Committee recommendations, and negative impact that approving the Fence project will have on providing the services and amenities the DVCA members have had since DVCA's inception. The DVCA board has approved:

- Financing more than the Finance Committee has recommended can be safely financed

- Taking at least \$225,000 from designated reserves for known future expenses DVCA will incur to maintain the standard services and amenities, with no plan to refund them
- Providing no plan to build reserves for replacing the \$1M+ Fence at the end of the anticipated lifespan of 25 years, ignoring the standard financial processes DVCA has followed since its inception
- Ignoring the Finance Committee recommendation for resolving the deficit budgets DVCA has been running for the last few years. By approving the Fence Project the ability to resolve the deficits has been eliminated as there will be no additional funds available due to the revenue cap Friendswood put in place, accelerating the demise of DVCA's current services and amenities

2) If the DVCA services and amenities are not maintained at the current high levels that has been the standard for DVCA, the member's house values will be negatively impacted, injuring the members not only by the decreased value of their homes but also the increased assessment to pay for the fence that created the downfall in DVCA services.

3) The Board has not communicated these financial issues and the probable legal issues and its costs to DVCA because of the less than forthright way they have proceeded on the fence project.

Charge Authority Excerpt:

(full text available on the DVCA Website)

"In addition to the annual services charge authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement being maintained by the Deerfield Village Community Association, including fixtures and personal property related thereto provided that any such assessment shall have the assent of two-thirds (2/3's) of the votes as outlined below of the then owners of the property voting in person or by proxy at a meeting duly called for this purpose.

"For voting purposes in connection with changes in annual assessments and/or special assessments, a single family residence owner or owners shall have one vote for each residential unit owned.