

Guiding Light

By Steve Spanier | Common Ground, March April 2021

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Board members should constantly follow their North Star: What is best for the community? The answer requires thoughtful problem-solving, persistence, creativity, and leadership.

WHAT DOES GOOD community association governance look like? How should board members perform their duties? What should their goals be? What input should members have? How does the ideal community operate?

These are some of the questions I have deeply considered and discussed with many residents while serving as a board president of Oakmont Village Association in Santa Rosa, Calif. The answers always come back to serving present and future residents, but perhaps not in the ways some might imagine.

BOARD BUSINESS

In California, the Davis-Stirling Act governs all homeowners associations in the state and takes precedence over a community's governing documents.

Also relevant is California Corporations Code 300, which specifies that corporations act through their boards. Many large communities, including Oakmont, are organized as corporations.

The code states that “... **the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board.** The board may delegate the management of the day-to-day operation of the business of the corporation to a management company or other person provided that **the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.**” (Emphasis is mine.)

By stating (twice in the same paragraph!) that boards conduct the business of corporations, the preceding helps us understand the following guidance from [Davis-Stirling.com](https://www.davis-stirling.com/) (a website created to help explain the law): “Even though homeowners associations are quasi-governmental in nature, they are not pure democracies where members can vote on all issues.

Instead, they are representative democracies where powers are delegated to elected representatives (the board of directors) and limited powers are reserved to the membership.”

The site goes on to say: “Courts will defer to board decisions, even if the decisions are not the ‘best’ decisions, provided the board made a reasonable investigation and its decision was in good faith with the best interests of the association in mind (Business Judgment Rule).”

Further, boards have fiduciary responsibilities. As defined by Black’s Law Dictionary, a fiduciary duty is “the duty to act for someone else’s benefit, while subordinating one’s personal interest to that of the other person. It is the highest standard of duty implied by law (e.g., trustee, guardian).”

FOLLOWING A NORTH STAR

As I interpret the Davis-Stirling Act, a board member’s North Star is found in the answer to a simple question: “What is best for the community?”

If board members focus on that, their jobs become relatively straightforward. They don’t make decisions based on their own personal interests or the interests of their friends or neighbors. They don’t make decisions based on what’s least likely to create conflict or controversy. They don’t make decisions based on what’s expedient or easy.

Instead, they take whatever time is necessary to do whatever research and legwork are required. They listen to others and think critically about what they hear, asking questions to make sure they understand. They painstakingly pursue truth and mercilessly push away all that is not to find what they believe is best for the community. Then, they summon the courage to vote according to their findings and work hard to effectively execute projects that achieve the best for the community.

What is best for the community is different than what is best for the individuals who live in it. This is a curiously unintuitive statement, but I believe it stands up well to scrutiny.

If a community doesn’t stay relevant, it gradually ceases to be an appealing place to live, negatively impacting both property values and resident satisfaction. Yet the challenge of keeping a community relevant may force board members to act in ways that are not always acceptable to individual residents.

For example, making a community safer from fires is a relatively uncontroversial goal; we are all negatively impacted when our communities burn. However, because fire prevention costs some residents money, the specific goal conflicts with the individual interests of some

residents who perceive they can't afford fire-safety work. Because what is good for the community is not necessarily good for all its residents, virtually every major community decision will irritate some and delight others.

Individuals frequently act in their own self-interest. A fiduciary is not supposed to do that. If board members consistently act as fiduciaries after taking the time to learn about the issues, they will more consistently make decisions that further the best interests of the community. That's why I believe what is best for the community is a more appropriate goal than what is best for the individuals who live there.

By law, board members are the only community members who have the authority and fiduciary responsibility to ensure the community's long-term relevance and help protect association property values. The hired staff cannot do this because they serve at the pleasure of the board and can therefore be guided inappropriately. Residents cannot do this because they are not fiduciaries and are therefore free to act according to their own self-interests.

If there will always be individual residents who will not like any important decision, how can board members know if their findings are really in the best interest of the community? And what pitfalls must they avoid as they research issues and attempt to arrive at conclusions?

FAILED STRATEGIES

Board members sometimes find it difficult to resist strong influences that attempt to draw them away from their North Star. I believe two incorrect strategies are most common.

Finger-in-the-air governance. Board members can fall into this trap by first determining which way the wind is blowing and then acting accordingly. Are a few friends complaining about something? Is there social media noise? Has someone written an impassioned letter to the newspaper or the board? It's easy to stick a finger in the air, determine the way the wind seems to be blowing, and act based on the exhortations of a small number of vocal individuals.

This approach, however, requires board members to weave an uneasy path through a minefield of dissent, always on the lookout for the next explosion. Not only is there no North Star, but wilderness wandering is expensive, inefficient, and frustrating for those whom board members serve.

Self-serving governance. Board members can fall into this trap by making decisions based on what they perceive is in their own best interests. They decide to run for office because

they desire influence on the levers of power to serve themselves. They stay in office so long as the issue important to them is still active and quickly lose interest after it is decided.

This approach may be based on a specific issue, like whether to build a sports complex, or a more general goal, such as keeping assessment increases minimal. The important distinction is whether the board member believes strongly that their position is best for the community. We see self-serving governance when a board member's primary desire is something other than serving the community.

How can a resident spot these two flaws?

It's not always easy, particularly with self-serving governance. Sometimes, we can't determine a person's true motivation, but we can ask those who know the person and those who have worked closely with him or her.

Finger-in-the-air governance is a little easier to spot because it shows up in inconsistent action. Questions should be asked if there's an uproar over something and a board member soon afterward changes tune. Of course, a change of opinion can be reasonable and appropriate sometimes too.

EFFECTIVE DECISION-MAKING

How should a board member make decisions? Learn all necessary facts about every issue and seek out alternative perspectives with an open mind. Then, filter all this through the lens of what is best for the community and vote based on these conclusions.

That's why, just as board members shouldn't vote based on what their friends believe, they also shouldn't vote based solely on resident polls. Particularly in an era where social media permits the rapid spread of propaganda and outright falsehoods, what a board member thinks is right may not even be what the majority of current members think they want, but it might still be the best thing for the community.

That's the wisdom of the Davis-Stirling Act. Board members aren't encouraged to vote based on majority opinion; they're expected to vote based on their own (hopefully well-reasoned and researched) findings. They are elected because the community (presumably after carefully considering its options) concludes their character and opinions are trustworthy and their skills and experience are up to the task. Board members are elected to research, listen, think, and vote accordingly.

SIDE EFFECTS

The preceding strategy has two interesting side effects.

First, those who follow their North Star may seem impervious to community opinion.

Imagine the following situation. Perhaps encouraged to do so by a social media request, 100 people in a community of 4,730 express an identical opinion in a board meeting open forum. Should the fact that just over 2% of the community expressed a particular opinion sway the board members if those opinions aren't in harmony with their North Star?

Yes, it should, if that idea hasn't been considered and it is consequential to the decision at hand. If either one of these conditions is not present, the answer is no; nothing important has been added to the discussion.

A community's silent majority, who may think differently from the 100 people but don't wish to participate in the conflict, should not be disenfranchised by the community's vocal minority. A community's future residents are similarly disenfranchised by finger-in-the-air governance and undue catering to vocal residents.

It's human nature to complain when you don't like something and to stay silent if you think all is well. California's Davis-Stirling Act helps protect silent majorities, both present and future, from the current vocal minority.

Here's a second, related side effect: When a board member appears impervious to community opinion, she or he may be accused of not listening to community input.

Sometimes, that's a fair accusation. After the 98th person has said essentially the same thing in essentially the same way, it's hard for even the most dedicated board member to remain interested. In this case, even a passionately stated perspective may seem to fall on deaf ears.

However, in my experience, the homeowner was actually heard and understood but because no new and useful arguments were presented, the board member was not pulled from the North Star.

HOMEOWNERS' RECOURSE

If the law provides board members with such power and authority, what can homeowners do when at least one board member doesn't vote the way they or most community members

want? If boards have the responsibility for acting in the best interests of the community, but the community doesn't believe they are doing so, what is the community's recourse?

In California, Davis-Stirling provides that individual board members or entire boards can be recalled anytime. Homeowners may vote to recall a board member by submitting a valid petition signed by at least 5% of the membership. One board member, multiple members, or an entire board may be removed.

And, of course, the other recourse available to members is the ability to run for the board.

Homeowners who consistently complain they don't like what board members do but refuse to throw their own hat in the ring will never have their desired impact on community operations.

IDEAL OPERATIONS

What are the characteristics of a smoothly operating community? The answer should illustrate how much we have in common with our neighbors.

We all want to live in a safe community. We all want to live in a community relatively free from strife and incivility. We all want to live in a community that is well-maintained and attractive. We all want to live in a community that runs efficiently, without unnecessary spending. We all want to live in a community that allows us to pursue our interests, whether that's playing a sport, watching a concert, attending a class, visiting with friends, practicing a faith, or just walking around.

Ideal communities are led by board members and staff members who perform as selfless servants. They work hard, listen well, consider completely, and act thoughtfully.

A HARD, BUT REWARDING PURSUIT

When a homeowner is elected to be a board member, she or he agrees to be bound by their state's relevant law and to perform as a fiduciary on behalf of all members. This is a serious responsibility.

Particularly in this age of social media, community association governance can be a difficult job in which board members are continuously attacked. I understand completely when people say they don't want to subject themselves to this. When most of us simply want to enjoy our lives, it's a rare person who commits to spending the time and energy required to take up the very serious mantle of responsibility necessary to succeed as a board member.

However, it's also extremely rewarding to serve others by constantly seeking a North Star that requires thoughtful problem-solving, persistence, creativity, and leadership to conceive and then achieve what is best for a community. If you love your community, serving as a board member truly is a labor of love.

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