

## BMPOA Monthly Board Meeting Minutes: September 12, 2022

*Minutes recorded by Patrick Patton*

**Board Members Present:** President Joe Giordano, 2nd Vice President Jonathan Morrison, Treasurer Mike Veasey, Directors - Carl Herz, David Cook, Jim Critcher, Patrick Patton

**Board Members Absent:** 1st Vice President VACANT, Secretary VACANT

**Total Number of Membership Present:** 25 Members, 7 Board Members

**Guests Present:** Walt Mabe (Warren County Board of Supervisors Representative for the Shenandoah District) and his wife, Taffy.

**Items of discussion:** President Introduction, Previous Month Meeting minutes, financials, roads, recreation, the dam, committee updates, any old or new business and any membership questions/open forum discussion.

### **PRESIDENT INTRODUCTION**

President Giordano opened the meeting at 6pm identifying himself and providing his main goals for the 2022-2023 BMPOA Board year. Those goals are:

- Utilize the current Committees (Roads, Recreation, Architectural Review, and Nominating) to support the community thoroughly to the best of their abilities.
- Add additional Committees and Sub-Committees to better assist our community. As additional committees/Sub-Committees are determined they will be posted on BMPOA.ORG and the Blue Mountain POA Facebook page, <https://www.facebook.com/groups/596522078751700>, so volunteers can make themselves known.
- Bring our community together creating a cohesive community.

After his remarks Mr. Harry Davis and his wife Janet, members of BMPOA for 28 years and held numerous BMPOA Board positions and Committee members, requested to speak about how the cohesiveness was done for many years. The President gave them the floor allowing them to explain the history they have been going through during their years as members and Board Members. After the presentation, Mr. Veasey asked the President how this meeting, and any future meetings, would progress, as in the past, the Open Forum session happened after all current and future actions were presented. The President stated that each subject would include the opportunity for open discussion including the Board and members present. He mentioned that the Board Meetings should not be limited to one hour.

The President then informed the Board and members present that the Board Secretary has resigned and stated anyone wishing to fill the position of Secretary should contact him directly. This will be posted on the BMPOA website, BMPOA.ORG, and the Blue Mountain POA Facebook page. He stated that BMPOA.ORG is the official place for any requests relating to BMPOA actions.

Mr. Veasey stated, in accordance with (IAW) Article III section 3.3 of the BMPOA Bylaws he had a nomination for the 1<sup>st</sup> Vice President vacancy. He nominated Jim Critcher, who was interested in the position, but would have to relinquish his position as a Director At Large. The nomination was seconded and discussed, then Mr. Critcher was elected with a six to one vote. The President, Mr. Giordano, voted No. After the vote, Mr. Veasey stated he believed the Bylaws only allow the President to vote when there is a tie. Harry Davis requested to speak on the Board Voting procedure and was given the floor by the President. He informed everyone that

the Bylaws state that when a vacancy exists, that vacancy is voted on by the majority vote of the remaining Board members. That includes the President. This appointment procedure is IAW BMPOA Bylaws Article III – Board of Officers and Directors, section 3.3 Vacancies. The Director At Large position relinquished, will be posted on BMPOA.ORG.

### **PREVIOUS MONTH MEETING MINUTES APPROVAL**

Due to the Secretary resigning, there were no minutes from the August 2022 Annual Meeting provided. The Board did not discuss approval of the July Meeting Minutes. Those minutes will be reviewed prior to the October meeting for approval then.

### **FINANCIAL REPORT**

The BMPOA Treasurer, Mike Veasey, presented the Treasurer’s Report for September 2022. He stated this is the first month of Fiscal Year 2022-2023 so there were really no expenditures to record, however he maintains the report in his BMPOA Financials binder and anyone may request to view all BMPOA financial reports. We begin the year with \$131,211.00 in the bank for the Blue Mountain Sanitary District (BMSD) and we have spent no money. We have a CD of \$63,879.77. When added to the Checkbook balance, we have Total Available Funds of \$195,091. Nothing was received this month; nothing was spent this month. In the Blue Mountain Property Owners Association (BMPOA) account we carried over 63,617.00 from the end of last Fiscal Year (FY). Beth Herz just gave him a check for Lodge usage income. This will be included in October’s financial report. He then asked if there were any questions. There were none. The President then asked for the Roads Report.

### **ROADS REPORT**

Mr. Carl Herz, Roads Committee (RC) Chairman, provided information on BMPOA roads status and work. This included pending crew actions on gravel and culvert replacements for Rocky Boulder and Rocky Springs. They are stock piling materials and preparing for winter including filling sand barrels and removing vegetation that could cause driving issues. Mr. Roland Carter requested information on what can be done with the road near their house, Mount Oriole, as dirt and gravel are ruining their yard with an estimate of \$50,000 in damage to their alternative septic system. A long discussion ensued. President Giordano referenced the BMPOA Bylaws (Article V PROVISIONS) with the possibility that a culvert could be put in the easement area if the problem is caused by the road. The result of the discussion is that three Roads Committee members: Carl Herz, Jerry Chilcote, and Brian Schebish; as well as Mr. Walt Mabe (Warren County Board of Supervisors Representative for the Shenandoah District) will coordinate within the next month to visit the home and provide information on what can be done and who is responsible for doing each action. Mr. Carter and Ms. Byrne agreed to allow them to visit.

### **RECREATION REPORT**

- **Lodge:** 2nd Vice President Jonathan Morrison is the current Recreation Committee Chairman. He stated he handles maintenance on the Lodge. Jonathan stated he has no report on Recreation (the Lodge) this month. He did want us to know that the Lodge will be shutting down and winterized in the next couple of months when the season is over.
- **Deer Lake Recreation Area:** Mr. Dan Zeman provided a status on the repairs being done to the tennis courts saying we’re just moving along. This is one of the Sub-Committees the President is instituting. It is the Deer Lake Recreation Area Sub-Committee of the

Recreation Committee. Dan stated all trees that fell, and those Dan believed could fall and cause damage in the future, have been removed. Work on the fences surrounding the courts has begun. He is working with several BMPOA members to restore those courts to usability. He said the area could also use reseeded. He believes we should add a gate to the part of the courts that are closest to the road so people do not have to drive all the way down the other end. Brian Schebish thought the current gates are fine, however we need 10 fence pole caps, 160 feet of fence pipe to replace pipe broken by fallen trees, and 1 crank for the net. Dan said he may have fence pipe he can provide to save BMPOA money in replacing bent and broken poles. The discussion included a recommendation to make the entrance roads drivable. Brian Schebish believes putting #3 rock down and Crush and Run rocks could work. The RC Chairman states the #3 stones may be good for short term, however we must look at long term access. President Giordano requested that Mr. Zeman provide a plan and Materials list and anticipated cost of what is needed, including the gravel and all expenses, and present it at the October meeting for approval. Mr. Zeman will provide monthly reports on actions taken in the Deer Lake Recreation Area.

### **VIRGINIA PROPERTY OWNERS ASSOCIATION ACT (VPOAA) -vs- BMPOA RESTRICTIVE COVENANTS USAGE DECISION**

President Giordano In the August Annual Meeting a question was asked about what covenants our community must follow: the Virginia Property Owners Association Act (VPOAA) or the Blue Mountain Property Owners Covenants.

- SUMMARY: President Giordano stated we must follow the current BMPOA Covenants and Bylaws.
- DISCUSSION:
  - o The President contacted the State Corporation Commission (SCC). They only have documents from 1978. Mike Veasey reported that Patrick Patton had done research at the courthouse and had found the 1957 Blue Mountain Sub-Division Incorporation document, that included Restrictive Covenants and the Blue Mountain, Inc. incorporation date of 21 August, 1957. Mike sent these documents to the State organization that oversees the VPOAA and asked for a legal opinion as to whether the BMPOA had to comply with the VAPOAA or whether it was grandfathered since it was created in 1957. He received an email today at 5:18pm. The email states this requires a legal definition and legal determination which they are not empowered to make, and, they could not tell us whether or not the VPOAA specifically applies to us. Their guidance is, in effect, "If you really want to know, get yourself a lawyer and have him make the decision." Mr Veasey stated that we have a document that says we were created as a Blue Mountain subdivision, Deed restricted, in nineteen fifty seven, and the VPOAA applies to POAs created after January 1, 1959. In his opinion, we are grandfathered, and , since the State won't weigh in on it, we should continue with the BMPOA Covenants as we have since their inception. This does not require a lawyer's determination.
  - o Harry Davis informed everyone that VPOAA § 55.1-1801, **Applicability**, paragraph **A** states "This chapter applies to developments subject to a declaration initially recorded after January 1, 1959, associations incorporated or otherwise

organized after such date, and all subdivisions created under the Subdivided Land Sales Act (§ 55.1-2300 et seq.)”. He then referenced a lawsuit that specifically stated that the dedication of Plat Blue Mountain Subdivision was recorded on August 21, 1957. As such, he stated Blue Mountain Inc., which was incorporated by Henry V. de Longfief, and the Restrictive Covenants pertaining to Blue Mountain Subdivision, certified on August 24, 1957, are prior to the VPOAA applicability. Patrick Patton then provided copies of the 1957 Restrictive Covenants and the 1992 BMPOA Covenants. FYI the copy of the 1957 Restrictive Covenants were provided by the Clerks Office of the Circuit Court of Warren County, Virginia, Deed Book 102 pages 333 and 334. The latest revision of those covenants, Blue Mountain Subdivision Declaration of Protective Covenants, Conditions and Restrictions dated September 15, 1992 are in the Clerks Office of the Circuit Court of Warren County, Virginia, Deed Book 482 pages 146 through 153. The President thanked Henry for the research and stated we don’t need an attorney to say this was established prior to 1959.

- A question asking if the VPOAA applicability still apply even though the association was originally Blue Mountain Subdivision and was changed to Blue Mountain Property Owners? The requestor mentioned Employer Identification Number (EIN) (also called the Federal Tax Identification Number (FTIN)) changes since incorporation. Mr. Veasey informed us that the BMP Inc. applies to all successor organizations. Therefore, because we changed the name, it does not mean we changed the subdivision. Additionally, Harry Davis informed us that when the founder of Blue Mountain Subdivision, Henry de Longfief, died, in the Trust, order to maintain our ownership of the Common Grounds, BMPOA was established. Ownership never changed hands, only the name was changed. This change required a new EIN.
- Another question asked is “If there is something not specifically covered in our bylaws, what Laws to we follow, the Non-Stock Incorporation laws? President Giordano stated that the Articles of Incorporation (AoI) supersede the BMPOA Bylaws. However, the AoI are a very small amount of the BMPOA Bylaws, hence the request to have a committee update the BMPOA Bylaws and reflect any appropriate information on the AoI. Any issues not provided in the BMPOA Bylaws could require arbitration.

### **ESTABLISHMENT OF COMMITTEES AND SUBCOMITTEES**

The President provided the following suggested committees that will require volunteer members and Chairman:

- Roads Committee (RC) (already established with Chair Carl Herz w/ David Cook
- Public Safety Committee (PSC) – Currently No Chair
- Recreation Committee (RecC) (already established with Chair Jonathan Morrison but no other members)
  - Deer Lake Recreation Area Sub-Committee (DLRASC)
  - Lodge Access Committee – Chair David Cook w/ Mike Veasey
  - Deer Lake – Chair Mike Veasey
- Membership Committee (MC) – Currently No Chair
- Legislative and Public Relations Committee (LPRC) – Chair Kris Nelson

- Arbitration Committee (AC) - Currently No Chair
- Architectural Review Committee (ARC) - Chair Jim Critcher w/Patrick Patton & Jonathan Morrison
- Covenants Enforcement Committee (CEC) - Currently No Chair
  - o Covenant Review/Modernization Sub-Committee (CRMSC) - Chair Erica Santana
  - o Bylaw Review/Modernization Sub-Committee (BRMSC) - Chair Kris Nelson
- Nominating Committee (NC) – Chair Mike Veasey

The President stated these will be posted on our official site, BMPOA.ORG, and the BMPOA Facebook page, asking for volunteers and nominations through the end of this month (September). In October’s meeting we will vote on committee directors (chairman). Anyone in the Association is welcome to apply. A complete description of the committee and it’s purpose will be included.

Jim Critcher informed everyone that Covenant changes are very difficult as the current covenants require a majority vote of the property owners (Article V, Provisions, subsection 3.(5)). This is different than Bylaw changes in Article VI Association Meetings, section 6.3 which states “A quorum shall consist of the total of all property owners present and those represented by a properly executed written proxy”, and “Each action of the meeting shall require the affirmative vote of a majority of the members present and those represented by proxy when the vote is taken”. We are bound by law to adhere to these procedures. Along with several members, the President stated all we can do is try. He also stated that our BMPOA.ORG website should include the definition of each committee and all personnel on each committee.

A question on does a committee member have to be a person that owns a lot in BMPOA, or can they be a member of an owner’s family? President Giordano referenced section 5.2, Staffing of Standing Committees, in Article V – Committees, of the BMPOA Bylaws. It only states the Chairman of the committee is appointed by the Board. It does not delegate further. He stated that Article II – Membership, section 2.1 stated “Each legal owner of record of a lot located in the Subdivision shall be a member of the Association.” The answer then, is committee members must be a legal owner of record.

## **OPEN FORUM**

The President clarified that this session is not to make anything worse amongst the Board. If your question is based of precedence, please provide BMPOA information pertaining to that precedence. He stated that not everything we have been doing aligns with covenants and bylaws. Is that necessarily bad? That depends on your point of view. However, some of it makes a lot of sense and some of it doesn’t. Some things are in the best interest of the community but haven’t been addressed in those covenants or bylaws, and some are not in the best interest of the community. That is why we are establishing committees to update them.

Janet Davis stated she sees all kinds of violations on the mountain that aren’t being addressed. President Giordano stated the most the Covenants Enforcement Committee (CEC) can do is to send a strongly worded letter to the property owner. Patrick Patton referenced BMPOA Covenants Article IV Protective Covenants and Restrictions, section 17, which states Warren County ordinances are recognized by these covenants and are enforced by Warren County.

Therefore, if a property owner refuses to fix or comply with the notification request, and the Arbitration Committee cannot resolve, the requesting member, or member, can notify Warren County asking them to take action. The President stated this had been done in the past with little resolution. Mr. Patton stated he was just providing a legal alternative.

There was a discussion on houses with vinyl siding. The ARC chairman, Jim Critcher, informed us that he hasn't authorized vinyl siding as it does not meet the covenants. However, if they don't ask, and have already put it on the house, it becomes a CEC issue. That is a challenge. We are currently working with the builder on Source Lane. When informed that vinyl siding is not allowed IAW the BMPOA Covenants, that builder has been very responsive. A member asked about additions to existing houses. Mr. Critcher stated the ARC should be notified of any additions. The member stated that there is a Virginia law that states if one owner has a particular type of build then the neighboring house can do the same. This could cause issues with ARC requests.

Dan Zeman asked if the Board consists of 5 Directors and 4 Officers? The 2<sup>nd</sup> Vice President, Jonathan, stated it is 5 Officers and 4 Directors. Mr. Patton presented the BMPOA Articles of Incorporation Article V, Directors, which states "The affairs of the Association shall be managed by a board of directors, who shall be members of the Association. The initial number of directors shall be nine (9), which number may be changed pursuant to the Association's Bylaws." It then states "The names and addresses of the members of the initial board of directors, who shall serve until the selection of their successors, are". He explained that the next page shows the positions of each "Director". Those positions showed 5 officers (President, Vice President, 2nd Vice President, Treasurer, Secretary) and 4 Directors which we now call Directors At Large. The President clarified that we have a Board of Directors in which 5 of those are Officers. Mr. Zeman thanked everyone for the clarification.

Erica Santana states we need to talk about enforcement. What can we do? The President said, as stated earlier, we as a POA can only send a strongly worded letter. Erica suggested that we have the Covenants mirror what Warren County Ordinances are that build in some type of enforcement. The president said this requires updates to the Covenants. Erica is the CRMSC chairperson. Her team will work on a revision as such. To clarify what can be done, the President read out loud Article IV Protective Covenants and Restrictions, Section I. General Covenants and Restrictions, section 18 of the BMPOA Covenants. He again stated this should be a priority of the CRMSC. Lastly, he said that it comes down to how much BMPOA money do we want to spend on Enforcement? That would depend on how blatant the action is. He gave an example of having 18 dogs chained up outside the home. The expenditure of money to resolve is very subjective. That is why we have the letters, Board, reviews, and Open Comments period.

Ms. Santana asked what can members actually vote on? The covenants and bylaws don't really say. The President said that should be clarified during the CRMSC Covenant and Bylaw modifications. Especially where the Bylaws state Annual Meeting where members vote, then skip to the word "meetings" which could mean Board meetings or any meetings.

Dan Zeman asked if Committee meetings will be announced, and would anyone be offended by other members of the Association attending? The President said it would be up to the committee.

A member asked if notification to new home owners would be at the Annual Meeting besides the small signs put up letting people know we are an association as opposed to giving packets to each new home owner? Another member gave an example of what they received when purchasing their house and they followed the BMPOA Covenant rules, then 2 doors down a house was built with bright blue. He asked what changed. Director at Large David Cook stated that we can't enforce things that have already taken place. There was more discussion on the many covenant building violations that have already happened. Another member (Donna Gray) gave an example of an association she had belonged to before coming to Blue Mountain. One of the owners violated every restriction in their covenants. The POA tried everything possible including informing the County to resolve. After 15 years nothing happened. She said we only have so much power.

Harry Davis asked if on the ARC do we have posted guidance other than what is in our covenants? The answer was No. He stated that back in 2002 the ARC had written an Architectural Guidelines document. He doesn't know what happened to it. Patrick Patton said he will check all of the digital history documents he acquired from Jack Davis and let Harry know what he finds. *\*NOTE: After the meeting Patrick research all documentation he had and informed Harry there was no Architectural Guidelines document. Harry thanked Patrick.*

The next discussion was on Access to the Lodge other than events. The President mentioned Bible studies, Yoga class, or use the Lodge as an area to study away from the family or school online. His recommendation is to put a key box on the door with a sign-in sheet and spend a few hundred dollars on security cameras placed on the outside entrances so we know who has arrived and left. Only members would have the key box code and access to the Wifi. With the proper checks and balances there is no reason not to allow members access to the lodge when it is not being used. Members wanted to be sure the cameras were only at the entrances as they would not want their activities recorded. The President was adamant that the cameras would not be inside the building. He said we would need to appropriate less than \$100 for the cameras and a lock box. Patrick Patton informed him there is already a lock box with keys. Beth Herz currently manages the box and has provided the code to members when requested. As Beth is leaving the Lodge Coordinator position the first week of November, someone will need to manage accessing the Lodge until a new contractor is approved. David Cook and Mike Veasey volunteered to work out lodge accessibility for the BMPOA. Morgan Elder indicated a willingness to work with the board and expressed an interest in being considered for the upcoming lodge coordinator vacancy. Another member mentioned that the Lodge is winterized which means the water is turned off. Making the Lodge available to all members is great, however there are some considerations like this that must be addressed to ensure it doesn't get back to the useless stage it was a few years ago when it was ready to be torn down. The President agreed and said a lot of that misuse can possibly be mitigated by putting locks on the bathroom doors during winterization. A member asked if we could have an instruction set of what it means to clean up the Lodge. The president agreed and said we could create a list of rules and how we want things done as well as what is and is not allowed. He stated we have created a Recreation Sub-Committee called the Lodge Access Committee and David Cook volunteered to chair this committee. We will decide and finalize Lodge Access procedures in the October meeting.

Bev Pond asked if there was an update on the Tower House? The President informed everyone that the county lost the court case it had brought against the tower operator. Consequently, BMPOA must live with the towers on private property at the top of the mountain even though it is a business being conducted in an area designated as residential only.

Patrick Patton asked if there was a replacement to manage the BMPOA website. The President said they have a member who stated he could do it, however the Board must make a decision during the October meeting as to how to conduct business with him. Joe will email a Board member the gentleman's contact information so they can work things out.

Roads Committee Chairman Carl Herz invited BMPOA member Jason (Jay) Ghazarian to provide a status of R. C. Timber & Excavating LLC's status on the logging project requiring their logging trucks to use Rocky Spring and Springhill roads while logging trees on the lot his parents own that is adjacent to his BMPOA home residence. That lot is not part of the BMSD but is platted to Fire Trail Road. There is no easement so the only accessible road is Rocky Spring. As this project was supposed to be completed in April, however inclement weather, and their promise not to use the roads until they dried after the inclement weather, in August Jay asked for an extension to December 31, 2022. Mike Veasey asked, besides the 3 loads in front of Jays house, how many more loads will they need to remove to finish the project? Jay said he wasn't sure, but would provide that amount in the next few days. Ultimately Carl made a motion to allow them to complete the project no later than December 31, 2022 with the contingency that the logging company follows the previously agreed upon rules. Mike Veasey stated he would not agree with that until Joy has provided the amount of work left to do. He made a motion to amend Carl's motion to allow them to remove the three loads that are in front of Jay's house, and after receiving the response on how much more work needs to be done, Mike stated if the Board President will allow a decision via email a decision for extension would be made and provided in the October meeting. The President agreed. Carl amended his motion per Mikes request. It was seconded and approved. Results will be provided in the October meeting.

Bev Pond informed us she was unable to spearhead the Fall Event at the Lodge this year, therefore it may not be happening this year. As there were no fund requests for this so far, the President suggested we have a potluck and put it on the calendar. It was suggested that Dan Zeman may be able to get authorization from Warren County to have a bonfire.

**President Giordano declared the meeting adjourned at 8:15pm.**