

MEMORANDUM

TO: Renée Hoyos   
FROM: Stephanie Matheny  
DATE: June 22, 2010  
RE: Proposed Bylaws Amendments

As you have requested, I have reviewed TCWN's bylaws and propose the following amendments for consideration at our annual meeting in August. This meeting, and the bylaws amendments, must be properly noticed to TCWN members.

1. **Article III, Section 5: Quorum.** Amend to read as follows: "The quorum for a membership meeting will be five (5) members ~~a majority of the members present.~~"

**Reason.** "Quorum" means the minimum number of members that must be present to take any action. The current definition is circular, and would allow a quorum of one member. We need a number. All board members must be TCWN members according to the bylaws (have you checked to confirm that our Board members are up-to-date on this?), and we need to have a minimum of 9 board members at any time, and we need a majority of board members to have a quorum, so ... I would recommend a quorum of members be set at 5.

2. **Article IV, Section 8: Employment.** Amend to read as follows: "With the exception of the Executive Director, Directors may not be employees of the TCWN. In such cases where a Director becomes an employee of the TCWN, other than the Executive Director, that Director will resign from the Board upon assuming the role of employee of the TCWN."

**Reason.** Article IV, Section 1 of TCWN's bylaws provide that the Executive Director is an ex-officio member of the Board with voting rights. "Ex-officio" means simply that the E.D. is a Director by virtue of holding that staff position. Therefore, the existing language in Section 8 is inconsistent with the existing language of Section 1. The proposed language will resolve this inconsistency.

3. **Article V, Section 6: Informal Action.** Delete the current section, which states:

~~*Informal Action.* If two-thirds of the Directors severally or collectively consent to any action taken by the TCWN, the action shall be as valid as though it had been authorized at a meeting of the Board. Any such action shall be recorded in the minutes of the next scheduled Board meeting.~~

Replace this section with: Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting. If all directors consent in writing to taking the action without a meeting, then the affirmative vote of the simple majority of the Board is the act of the Board. The action will be evidenced by one (1) or more written consents describing the action taken, signed by each director, and included in the minutes filed with the TCWN's corporate records. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date. A consent signed under this section has the effect of a meeting vote.

**Reason.** The current section conflicts with Tennessee's nonprofit corporation law, Tenn. Code Ann. § 48-58-202. That provision allows for board decisions without a meeting, but only under the limited circumstances prescribed by the statute. *Wellesley Builders, LLC v. Village of Cherry Glen Ass'n, Inc.*, No. M2002-03102-COA-R3-CV, 2004 Tenn. App. LEXIS 133, at \*\*11-12 (Tenn. Ct. App. Feb. 26, 2004). Board decisions that are not adopted through the proper process may be challenged by third parties through litigation. *See generally id.* TCWN has used, and may need to use, this process to authorize litigation in between quarterly board meetings.

The proposed replacement process is derived nearly verbatim from Tenn. Code Ann. § 48-58-202.

An alternative approach would be to simply delete this section and renumber the following section. The state provision would apply even if not written into the bylaws. However, I am recommending that the bylaws explicitly adopt this process so that future staff and board members will be alerted to the proper process without the need to research the statute.

4. **Article VII, Section 1: Ad Hoc Committees.** Modify the first sentence as follows: "The Board of Directors may designate one or more ad hoc committees, ~~including but not limited to a Nominating Committee~~, each of which will consist of at least one committee chair and two or more committee members."

**Reason.** Section 2 lists the Nominating Committee as a mandatory standing committee. It cannot be both an ad hoc and a standing committee. Alternatively, Section 2 could be modified to eliminate the Nominating Committee as a standing committee.

5. **Article XI, Section 1.** Amend this to read: "The membership may amend these bylaws at the annual meeting. An amendment to the bylaws shall be approved by members by two-thirds (2/3) of the votes cast, or a majority of the voting power, whichever is less."

**Reason.** This amendment is required by Tenn. Code Ann. § 48-60-202(b).