

**This is part 4 of
Comments and Questions for the Strand Master Board
Review of New Proposed Strand Master Governing Documents
Issued on 11-19-2021**

**Various Sections of the Proposed New By-Laws
by RJ Polizzotto 12-17-2021**

Various sections of the New Proposed By-Laws are reviewed with emphasis placed on the most controversial and have the most impact to the members. The By-Laws regulate how the Master Association Board and Neighborhood Representatives operate in regards to: Membership; Neighborhood Representative (NR) Voting and authority; Master Board of Directors elections, conduct and authority; Duties of the Officers of the Master Board; Fiscal Matters; Amendments.

A. Section 3 – Neighborhood Representative Voting (and Authority).

1. Item 3.1 Annual Meeting;

This was changed from the original Documents which stated that the meeting must be held either in **February or March** of the year. It now reads that a meeting can be anytime: **“in the first quarter of the year”**. Thus an Annual Meeting could be held in January of the year.

a. Question: Why was this changed from the Original Documents?

2. Item 3.2. Special Meetings.

Previously the NR’s could call a Special Meeting representing 20% of the total voting interest. This has been changed to 30%.

a. Question: Why was this changed from the Original Documents?

3. Annual Budget Workshop Meeting - DELETED

The **Annual Budget Workshop Meeting** to review the Strand Master Proposed Budget as presented in the Original Documents **Article 7, Section 12- Annual Budget Workshop Meeting** **HAS BEEN DELETED in the New Proposed By-Laws issued 11-19-2021.**

The wording in the Original Documents was there to fiscally protect the members. It allowed members to understand the Proposed Budget and for the Board to provide complete transparency. The only review of the Master's Budget if the New Proposed Documents stays as issued would be at a typical Board meeting. Detail of the Budget or allowing members to question the Budget would not be required.

With this type of review, the Master Board could adopt budgets that might include Special Projects, or parts of these Special Projects so as not to trigger any other requirements.

You had said in your cover letter with the New Proposed Documents that the "requirement for a "Budget Workshop" has been changed to comport with current legislation and update this section to what is more common in other associations...."

a. Question. Please provide the "current legislation" that you mentioned that was the basis for the Deletion of the Annual Budget Workshop?

The Board decided that since only a few members were at the last Budget meeting, the meeting should be eliminated. In the past, there were many members at the budget meetings, including NR's to vote on surplus carryover, etc. Recently few people attended the meeting mainly due to: Covid concerns; the Board restricting attendance; and the failure of the Board to properly communicate to the members (not just the Presidents) about the upcoming budget workshop meeting.

b. Question. Is there any jeopardy or impairment to the Board or any member to maintain the Budget Workshop Meeting so that the members can at least understand its details?

4. Item 3.5 Vote Required.

This section was revised from the original By-Laws and now reads in part (highlight added):

“The acts approved by a majority of the votes cast by Neighborhood Representatives at a meeting of the Neighborhood Representatives at which a quorum has been attained shall be binding upon all Parcel Owners for all purposes”..

Previously in the Original By-Laws, the NR (Article VII, Section 9) would only be able to **“decide any question brought before the meeting”**. This revised item appears to give expanded powers to the NR versus the Original Documents.

a. Question: Does this revision to this item now allow the NR to overrule any act or rule created by the Master Association?

b. Question: Can the NR enact additional rules or acts that would be binding to all members?

5. Item 3.7 Voting Rights and Neighborhood Representatives.

The New Proposed By-Laws has **deleted** that a Neighborhood Representative must be an **Officer of the Board**.

a. Question. Why was this requirement deleted?

6. Items 3.10 Order of Business.

This item in the New Proposed By-Laws issued 11-19-2021 dictates the order of Business for a Neighborhood Representative (NR) meeting. This list includes: meeting minutes; Reports of Committees; Election of Directors; New Business; etc.

a. Question. Why was this detailed Order of Business included for Neighborhood Representative meetings but there **are no** similar requirements for the Order of Business for the Master Association Board of Director Meetings?

b. Question. Shouldn't this item include a statement stating that this applies only to the Master Board of Director's meetings and delete the reference to NR meetings since there are only a few NR meetings per year if that?

7. Item 3.12 Parliamentary Rules.

This section discusses Robert's Rules of Order to guide the conduct of the Master Association meetings.

a. Question. Shouldn't this item be moved to Section 4 "Board of Directors" since it is applicable to the Master Association Board of Director's meetings?

B. Section 4 – Board of Directors.

General Question - Why are the following items, that are presented in Section 3. of the New Proposed By-Laws issued 11-19-2021 for the Neighborhood Representatives in great detail, **NOT presented in similar or any** detail in the New Proposed By-Laws for the Master Board of Directors where they are more applicable?

- 3.2 Special Meetings.
- 3.8 Participation at Meeting by Remote Communication
- 3.10 Order of Business.
- 3.11 Minutes.

1. Item 4.1 Number and Terms of Office.

This revised item in the New Proposed By-Laws issued 11-19-2021 states in part: **“The number of Directors which shall constitute the whole Board shall be seven (7)”**.

For Reference, the **Previously issued New Proposed Articles of Incorporation** issued in March 2021 included the following statement (highlight added).

“The affairs of the Master Association will be administered by a Board consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of seven (7).”

a. Question. Why was this statement changed so that the number of Directors is fixed at 7?

b. Question. With the revised number of the Board now being fixed at 7, doesn't this give the Master Board the power and requirement per the Documents to fill the Board with members of their choosing if for example only 5 members are candidates and elected by the NR?

This item 4.1 continues as noted below with the added portion (shown highlighted) since the last issues of the Proposed By-Laws in Feb and March 2021:

“Beginning at the 2022 Annual meeting, All Directors shall be elected for a term of two (2) years each, and each two-year term shall be staggered. Directors may serve for no more than three (3) consecutive terms and must take a hiatus of at least one (1) year before being eligible for election or appointment to the Board” ..”

c. **Question.** Based on your revision, can a member now be on the Board for 3 consecutive terms, then take a 1 year hiatus and then be elected for 3 more consecutive terms?

d. **Question.** Was it your intent of this section to limit a member to 3 consecutive terms versus 3 terms total?

2. Item 4.11 Vote Required.

This Revised item includes the following sentences (highlight added):

“A Director who is present at a meeting of the Board is deemed to have voted in favor of every action taken, unless he or she voted against such action or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes of each meeting”.

a. **Question.** Does this mean that when a motion is presented and seconded on a particular item, there is no need for a recorded vote by the Directors on the item unless there is a vote against the motion?

b. **Question.** For the early part of this year, the Board meeting minutes (posted on the web site) have only recorded the Motion and Second. There was no recording of the votes, e.g. "Passed unanimously". Is this an example of how future meeting minutes and votes would appear if this sentence is adopted in the New Proposed By-Laws or was this an error?

c. **Question.** How does Robert's Rule of Order address that after a motion is seconded, there is no need to ask, for example "All those in favor", and just allow a "muted" approval if not objections?

3. Item 4.6 Organizational Meeting.

This item has been expanded in the New Proposed By-Laws issued 11-19-2021 from the Original Documents to include the following sentence (highlighted for emphasis):

“At the organizational meeting all outgoing members of The Strand Board of Directors shall turnover all official records, written and electronic correspondence, and relevant documents in their possession to the newly elected Board of Directors”.

This statement has the potential of another lawsuit against the Master Association (and members) since it isn't clear who defines “**written and electronic correspondence, and relevant documents**”. The sentence grammatically separates these items from the words “**official records**”, which are required by Statutes.

As explained in various legal opinions, emails (electronic correspondence) kept on a director's personal computer are not “official” records and thus are private and aren't required to be shared with the Board. Florida law also is clear that only emails sent to the Property Manager's computer are considered “official records” and open to inspection by the members.

Furthermore any documents generated or developed by a Director for his / her personal use, are not “official records” and again private property which aren't required to be shared with the Board.

a. Question. Since Florida Statutes and legal cases override any HOA documents approved, will this sentence be corrected to clarify that it's only “**Official Records**” that must be turned over to the other Directors per the Florida Statutes and delete the statement “**written and electronic correspondence, and relevant documents**”?

C. Section 5 – Officers

1. Item 5.2 President

The duties of the President of the Strand Master Association Board of Directors has been **changed and expanded** in the New Proposed By-Laws issued 11-19-2021 as follows (deletions are shown **blue** strikethrough, additions in **red** – shown for clarity-Highlight added):

*“The President shall be the chief executive officer of the Master Association ~~and~~ shall ~~Act as presiding officer at~~ **preside over** all meetings of the ~~Members~~ **Neighborhood Representatives** and ~~the Board of Directors:”~~.*

This change allows the President of the Master Board as that officer, to oversee the Neighborhood Representatives (and Presidents of the Communities who may also be an NR). It is my understanding that a meeting of only the Presidents is not covered by any Declaration rules. However, since Presidents may be an NR, then their Meeting would be a meeting of the NR if there is a quorum.

Neighborhood Representatives should be an independent body of members representing each Neighborhood and should not be presided over by the President of the Master Board (in that capacity) as that may be a conflict of interest. It is understood that the President of the Master Board may be a NR and/or President of his or her community, but the Master Board President should not rule in this capacity as a Master Board officer at a NR meeting. There is an inconsistency in the application of Neighborhood Presidents, Neighborhood Representatives (which may be Neighborhood Presidents) and their respective meetings.

One exception is that the Annual Meeting of the NR is presided over by the President of the Master Board. This should be clarified in that section, 3.1.

a. Question. What was the reason for having the President of the Master Board preside over the NR meetings?

b. Question. To keep the Neighborhood Representatives and their meetings as a separate entity, will the Board DELETE this statement and remove the President of the Master Board from presiding over the NR meetings in that official capacity?

2. Item 5.4 Secretary.

The duties of the Secretary of the Strand Master Association Board of Directors has been changed **and expanded** in the New Proposed By-Laws issued 11-19-2021 as follows (deletions are shown **blue** strikethrough, additions in **red** – shown for clarity)

*“The Secretary shall ~~have the following duties and responsibilities:~~
~~a. Attend all regular and special~~ **attend** meetings of the **Board and all meetings of the Members and the Board of Directors Neighborhood Representatives** and ~~keep~~ **shall cause all records votes and the minutes of all proceedings..”***

This is another change made to oversee the Neighborhood Representatives (and Presidents of the Communities who may also be a NR). It is understood that the Secretary of the Master Board may be a NR and/or President of his or her community, but the Secretary should not rule in this capacity as a Master Board officer at a NR meeting. The Neighborhood Representatives should be an independent body of members representing each Neighborhood and the Secretary shouldn't attend a NR meeting, in that capacity as an officer of the Master Board of Directors.

a. Question. What was the reason for having the Secretary of the Master Board attend and record the NR meetings?

b. Question. To keep the NR members and their meetings a separate entity, will the Board DELETE this statement and remove the Secretary of the Master Board from attending the NR meetings in that official capacity?

c. Question. I don't believe there is any per se Member meetings mentioned in the Documents. It was deleted from the President's role. Why wasn't it deleted from the Secretary's role?

D. Section 6 – Fiscal Matters

1. Item 6.3 - Budget.

This section defines how the budget is prepared, when it can be revised by the NR, and when it must be sent to the Members. There is a large portion of this section that is made to appear that the members can somehow provide a substitute budget if the proposed budget from the Master exceeds 115% of the Assessments for the preceding fiscal year. Reading further, this portion has several New parts.

1. a special meeting of the Owners to consider a substitute budget if The Master Board receives, within twenty-one (21) days after adoption of the annual budget

2. a written request for a special meeting from at least ten percent (10) of all voting interests as represented by the Neighborhood Representatives.

3. The special meeting shall be conducted within sixty (60) days after adoption of the annual budget.

4. A substitute budget shall be adopted if approved by fifty-one percent (51) of all voting interests represented by the Neighborhood Representatives.

5. Special Budget meeting is only called after the proposed budget is adopted

In addition, any determination of whether assessments exceed 115 percent of Assessments from the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the Common Area and Master Association property, anticipated expenses of the Master Association which the Board does not expect to be incurred on a regular or annual basis, or Assessments for betterments to the Common Area or Master Association Property.

a. Question, Is it correct in the understanding of this section that the determination of the 115% of Assessments for the prior year excludes: All Reserve Funding; All Special Project Funding; All Improvement Funding?

b. Question. If question “a” above is affirmative and with most other expenses shown in the Budget being relatively fixed at about 4%, some fixed by contract (e.g. Comcast contract), it would appear that the other expenses, making up less than 15% of the Budget, would have to increase dramatically to achieve the total increase of 115% to trigger a call for a substitute budget. Is that Correct?

The concern of this section, which appears to be directly from Florida Statute 718 for Condominiums, was added in lieu of the Annual Budget Workshop meeting whereby members could voice their options about any Proposed Increases and further understand the budget details.

2. Item 6.4 Reserves

The New Proposed By-Laws includes a statement that reads:

"Board adopted reserve funds are not controlled by Chapter 720 Florida Statutes and therefore may be spent, waived or used as approved by the Board."

a. Question. What was the intent of this Statement to allow the Board to create a separate Reserve Fund that is unrestricted?

The New Proposed By-Laws also includes a statement that reads:

"In the event the Master Association adopts restricted reserve accounts pursuant to Section 720.303 (6) (d), the same shall be governed by Section 720.303(6) and may only be used, waived or reduced in accordance with said statute as amended from time to time to time".

b. Question. Are the current Reserve Funds, according the New Proposed Documents issued on 11-19-2021, considered Un-Restricted or Restricted Reserve Accounts?.

c. Question. Are the Unrestricted Reserve Funds designed to be used for such items as Special Projects, e.g. Front Gate Re-design, etc.

d. Question. Per the Current Adopted 2022 Budget, are those Reserve Funds considered Un-Restricted or Restricted Reserve funding?

E. Section 7 – Amendment of By-Laws

1. Item 7.2 Vote Required.

The current sentence in the Proposed By-Laws reads (highlighted for emphasis); “Except as otherwise required by Florida law or as provided elsewhere in these Bylaws, these Bylaws may be amended if the proposed amendment is approved by the affirmative vote of the Neighborhood Representatives representing at least two-thirds (2/3rds) of the voting interests present and voting, in person or by proxy, at a duly called meeting of the Neighborhood Representatives of the Master Association.

In reading the highlighted portion of the paragraph, it appears that there might be some inconsistencies. It is understood that at this type of meeting, there would be some NR voting by proxy who would constitute some voting interest, but there is a question of voting interests **Present and Voting**.

a. Question. Per the highlighted portion, does this mean that if only a few NRs are present or via proxy (for a quorum) attend a meeting called for Amending the Documents, can just 2/3 of those present and voting approve passage of any Amendments?.

b. Question. Shouldn't the statement be changed to “2/3 of the voting interests of the Strand” and delete the words “~~present and voting~~”.