

**Lenox Place at Sunnyside Homeowners Association, Inc.**

**Board of Directors Meeting Minutes**

**Tuesday, July 27, 2021; 7:00 p.m.**

**Courtland Circle Courtyard**

## Attendance

### **Directors**

Frank Purcell, President (2021)  
Saide Ashaboglu, Vice President (2021)  
Jim Rorke Member at-large (*remote*; 2023)  
Robin Roberts, Secretary (2022)  
Haben Petros, Member at-large (2023)

### **Residents**

Rodrigo Vazquez, Katie Bacharach, Javier Arniella

### **Special Guests**

None

### **Management**

Not present

## Call to Order

Purcell called the meeting to order at 7:08 p.m.

## Item 1: Public Health Emergency Extension

Purcell explained that the regular Monday, July 26<sup>th</sup>, HOA meeting was postponed for reasons relating to the new legislation enacted by the Virginia legislature. Consequently, he called a Special Meeting of the Board for today, outdoors in the Courtland Circle courtyard.

Purcell pointed out that according to legal counsel, the end of the Virginia Public Health Emergency (due to the COVID-19 pandemic) triggered new requirements for HOA Boards across the Commonwealth to continue virtual meetings. Using email, the Board failed by a Saturday, July 24<sup>th</sup>, deadline to unanimously adopt a resolution provided by counsel that would have ensured that virtual Board meetings met the new requirements.

According to HOA Bylaws, any action by the Board outside a meeting must be agreed to by all Board members to pass. Thus, the regular July 26<sup>th</sup> meeting had to be postponed until after the Board adopted the resolution on virtual meetings. That resolution was the subject of the in-person Special Meeting.

## Item 2: Community Forum

Residents of Lenox Place at Sunnyside made the following comments.

- Vazquez thanked the Board for the virtual meetings conducted to date, pointing out that they made it possible to attend meetings despite travel and family commitments. He added that virtual meetings conserve HOA funds. He concluded his remarks by asking Rorke and Petros to explain why they did not vote to continue the virtual meetings.
- Petros responded that the request to approve the continuation of virtual meetings was unnecessarily rushed. Board members received emails about continuing virtual meetings on Friday, July 23<sup>rd</sup>, and were expected to vote by noon on Saturday, July

**Lenox Place at Sunnyside Homeowners Association, Inc.**

**Board of Directors Meeting Minutes**

**Tuesday, July 27, 2021; 7:00 p.m.**

**Courtland Circle Courtyard**

24<sup>th</sup>. He stated that Board members could have been voted on continued virtual meetings at the regular July 26<sup>th</sup> meeting. He also requested that questions about his rationale for voting be addressed to him in writing.

- Ariella stated that virtual meetings are an effective way to meet given the acute infectiousness of the COVID-19 Delta variant. He also suggested that more people are likely to attend virtual meetings than in-person meetings.
- Bacharach noted that recent guidance by the Centers for Disease Control indicates that continued virtual meetings are advised as Delta variant infections are on the rise.
- Rorke clarified that he abstained from the vote to continue with virtual Board meetings, as did Ashaboglu.

### Item 3: Discussion of *Guidelines for Electronic Board and Committee Meetings*

The Board turned to discuss *Guidelines for Electronic Board and Committee Meetings* that was emailed to Board members on Friday, July 24<sup>th</sup>. The guidelines were prepared by Lenox Place at Sunnyside Homeowners Association's legal counsel: Chadwick, Washington, Moriarty, Elmore & Bunn (See attachment A). He also referenced counsel's comments on the guidelines. (See Attachment B). After Purcell provided a brief overview of the Guidelines, the following section was discussed:

**Section II.D.1. Technical Sufficiency and Malfunctions.** Unsecured public internet connections (such as unsecured public Wi-Fi hot spots) must not be used to join the E-Meeting, unless connecting through a virtual private network (VPN). In addition, each person attending remotely through the E-Meeting Platform is responsible for his or her own audio and internet connections; no vote or other action at the meeting will be invalidated on the grounds that the loss of, or poor quality of, a person's connection prevented participation in the meeting.

Purcell and Arniella pointed out that the first sentence of Section II.D.1 should be struck since VPNs afford no more security than password-protected Zoom and GoToMeeting technologies. Further, VPNs are considerably more expensive to operate.

Purcell also pointed out that the guidelines will apply to neither annual meetings nor committee meetings. Annual meetings are required by HOA Bylaws to be held in person. Where, when and how to hold the next in-person annual meeting will be discussed at an upcoming board meeting.

Rorke suggested that the Board could meet in person and allow homeowners to dial into those meetings. He also noted that he had heard that some HOAs had disregarded the Virginia Public Health Emergency mandate, and held in-person meetings.

Ashaboglu replied that guidelines allow for considerable flexibility in how virtual meetings are held. While she expressed her willingness to learn about locations for in-person Board

**Lenox Place at Sunnyside Homeowners Association, Inc.**

**Board of Directors Meeting Minutes**

**Tuesday, July 27, 2021; 7:00 p.m.**

**Courtland Circle Courtyard**

meetings, she cautioned that some Board members would likely not wish to host in-person Board meetings at their homes.

**Purcell motioned** to accept the Guidelines as amended above. **Roberts seconded the motion.**

- Aye: Purcell, Ashaboglu, Roberts
- Nay: Rorke, Petros
- **Motion adopted**

Purcell stated he would schedule the next meeting

**Roberts motioned** to adjourn. **Ashaboglu seconded the motion.**

The meeting adjourned at 7:42

**Lenox Place at Sunnyside Homeowners Association, Inc.**

**Board of Directors Meeting Minutes**

**Tuesday, July 27, 2021; 7:00 p.m.**

**Courtland Circle Courtyard**

ATTACHMENT A

**LENOX PLACE AT SUNNYSIDE HOMEOWNERS' ASSOCIATION, INC.**

**ADMINISTRATIVE RESOLUTION NO. \_\_\_\_\_**

**GUIDELINES FOR ELECTRONIC BOARD AND COMMITTEE MEETINGS**

**WHEREAS**, Lenox Place at Sunnyside Homeowners Association, Inc. ("Association") is a property owners' association organized and operating pursuant to the Virginia Property Owners' Association Act ("POA Act") and the Declaration of Covenants, Conditions, and Restrictions for Lenox Place at Sunnyside ("Declaration"); and

**WHEREAS**, pursuant to Article VII, Section 1 of the Bylaws, the Association's Board of Directors ("Board") has the power to exercise for the Association all powers, duties and authority vested in or delegated to the Association, except those that are reserved to the membership by the Association's Articles of Incorporation, the Declaration or the Bylaws; and

**WHEREAS**, effective July 1, 2021, Sections 55.1-1816 and 55.1-1832 of the POA Act allow any meeting of the Board or committees to be held entirely or partially by electronic means, provided that the Board has first authorized such electronic meetings and adopted guidelines for holding them in accordance with the POA Act; and

**WHEREAS**, the Board has determined that it is in the best interests of the Association to adopt guidelines, policies and procedures for holding Board and committee meetings entirely or partially by electronic means.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors hereby adopts the following guidelines, policies and procedures for using electronic means to hold Board and committee meetings ("these Guidelines").

**I. Definitions.** Unless otherwise defined in these Guidelines, the capitalized words used in these Guidelines have the same meanings as defined in the Declaration or, if not defined in the Declaration, then as defined in the POA Act.

**II. Board Authorization of Electronic Board and Committee Meetings.**

**Lenox Place at Sunnyside Homeowners Association, Inc.**

**Board of Directors Meeting Minutes**

**Tuesday, July 27, 2021; 7:00 p.m.**

**Courtland Circle Courtyard**

- A. **Default Method: Virtual-Only Meetings.** As of July 1, 2021, all meetings of the Board and authorized committees may be held by electronic means in accordance with these Guidelines (“E-Meetings”). *However, except as otherwise provided in these Guidelines, all meetings of the Board and committees are by default held as E-Meetings conducted entirely (rather than partially) by electronic means and are referred to in these Guidelines as “Virtual-Only Meetings.”*
1. Reasonable Alternative for Owners (Virtual-Only Meetings). At least three days prior to a Virtual-Only Meeting, any Owner needing to conduct business with the Association at that meeting who cannot (or desires not to) conduct business by electronic means at that meeting must notify the Association’s management agent (“Managing Agent”) in writing of such circumstances so that a reasonable alternative can be discussed and made available. A reasonable alternative may be for that Owner to submit written comments in advance of the meeting.
- B. **Other Meeting Methods.** Instead of holding a Virtual-Only Meeting, the Board (or a committee for that committee’s meetings) has the discretion to determine that a particular meeting(s) will be held by one of the following methods:
1. Hybrid Meetings. An E-Meeting may be held partially (rather than entirely) by electronic means and is referred to in these Guidelines as a “Hybrid Meeting.” Hybrid Meetings provide an option to attend by authorized electronic means, but must have a physical meeting location to allow for at least limited in person attendance. At all Hybrid Meetings:
    - a. At least one Director (or one committee member for committee meetings) or the Managing Agent must be physically present at the meeting location. Typically, the presiding officer (i.e., the chairperson) will be one of those physically present at the meeting location to best facilitate the meeting, but this is not mandatory.
    - b. The Association representative(s) physically present at the meeting location: (i) is responsible for handling meeting registration for those physically attending at the meeting location and (ii) should attempt to resolve any issues that may occur at the meeting location impacting the electronic means

**Lenox Place at Sunnyside Homeowners Association, Inc.**

**Board of Directors Meeting Minutes**

**Tuesday, July 27, 2021; 7:00 p.m.**

**Courtland Circle Courtyard**

being used for the meeting (such as ensuring the presence of an adequate speaker or other electronic device so that those physically present can hear or view the meeting proceedings).

- c. In-person physical attendance at the meeting location must be allowed for those authorized to attend the meeting who do not have the capability or desire to attend by electronic means (subject to reasonable occupancy limits due to fire code restrictions or other health or safety purposes).
  - d. Depending on the circumstances, those persons choosing to physically attend a Hybrid Meeting may be observing and participating in the meeting primarily through electronic means at the meeting location, particularly if the majority of attendees (such as Directors or committee members) are attending virtually.
2. **In-Person Meetings.** A meeting may be held as a traditional in-person meeting at which the participants only attend in person at a physical meeting location (“In-Person Meeting”). For In-Person Meetings, the Board or committee may choose to allow persons to view the meeting electronically but they would not be officially attending the meeting for quorum, voting or other purposes as may be applicable.
- C. **Board Authority to Change Committee’s Meeting Method.** Notwithstanding the above, if the Board determines that these Guidelines are not being followed by a committee, that there are too many technical difficulties with the chosen meeting method, or that holding a committee meeting by a particular method is not in the best interests of the Association, the Board may require the applicable committee(s) to change the method by which the committee meetings are held.
- D. **Electronic Means for Holding E-Meetings.** E-Meetings are held using the electronic means authorized under these Guidelines (“E-Meeting Platform”). Unless otherwise determined by the Board, the E-Meeting Platform will be selected by the Managing Agent and must be an internet-based videoconference system with integrated audio capability (such as Zoom or GoToMeeting). For purposes of these Guidelines, the applicable Board-approved videoconference system is referred to as the “Videoconference Platform.”
1. **Technical Sufficiency and Malfunctions.** Unsecured public internet

**Lenox Place at Sunnyside Homeowners Association, Inc.**

**Board of Directors Meeting Minutes**

**Tuesday, July 27, 2021; 7:00 p.m.**

**Courtland Circle Courtyard**

connections (such as unsecured public Wi-Fi hot spots) must not be used to join the E-Meeting, unless connecting through a virtual private network (VPN). In addition, each person attending remotely through the E-Meeting Platform is responsible for his or her own audio and internet connections; no vote or other action at the meeting will be invalidated on the grounds that the loss of, or poor quality of, a person's connection prevented participation in the meeting.

2. **E-Meeting Platform.** The E-Meeting Platform must be set up in a manner that:

a. Implements reasonable measures to verify that each person accessing the E-Meeting is authorized to do so, such as by:

- 1) Requiring prior registration for the meeting and providing authorized attendees an identifier number, verification code, password or link to enter the E-Meeting as a means to authenticate the attendee's identity;
- 2) Confirming the attendee's identity by visual recognition when possible; and/or
- 3) Requiring attendees to state their names and Lot addresses and comparing that information to the Association's records.

b. Implements reasonable measures so that persons entitled to participate in the meeting have an opportunity to do so, allowing those remotely attending the E-Meeting to participate, hear and be heard at such meeting in accordance with applicable law;

c. Allows the meeting to be held in reasonable compliance with these Guidelines; and

d. Allows for one or more Association-authorized meeting "hosts" to be designated for purposes of having access to the control panel for the E-Meeting (such as for muting and unmuting attendees, controlling the screen view, removing unauthorized persons, etc.).

**III. Log-In Information for E-Meetings.** The meeting notice will indicate the applicable meeting method and instructions on how to access the meeting. However, the specific log-in information (such as the link or access code) may be provided after the official

**Lenox Place at Sunnyside Homeowners Association, Inc.**

**Board of Directors Meeting Minutes**

**Tuesday, July 27, 2021; 7:00 p.m.**

**Courtland Circle Courtyard**

meeting notice is published. Prior to the meeting date, an authorized Director (or applicable committee member) or the Managing Agent will provide the online link, access code and/or call-in number necessary to connect to the E-Meeting Platform. This information may be published in the same manner as the meeting notice is published (so that it is reasonably calculated to be available to a majority of the Owners) and may be emailed to those Owners who have specifically requested emailed notices or authorized email communications from the Association.

**IV. Quorum at E-Meetings.** Directors (or committee members, as applicable) are deemed to be legally present for quorum and voting purposes when they are either (i) remotely attending a Virtual-Only or Hybrid Meeting through the E-Meeting Platform, or (ii) physically present at the meeting location for a Hybrid or In-Person Meeting.

**V. Use of E-Meeting Platform.** Whether for Virtual-Only Meetings or Hybrid Meetings, the following procedures and requirements apply when using the applicable authorized E-Meeting Platform:

**A. Log-In and Confirmation of Authorized Attendee.**

1. The Managing Agent, Director or committee member responsible for setting up the E-Meeting Platform will endeavor to do so in a manner that allows log-in to begin at least five minutes before the convening of the E-Meeting.
2. Persons attending remotely must truthfully identify themselves as required to enter the E-Meeting. Persons may be kept in a different electronic meeting room until just prior to the convening of the meeting and until their authorization to attend the E-Meeting is verified by the Association.
3. At any time after entering into the E-Meeting and if requested by the meeting's presiding officer, the Managing Agent or other designated meeting "host," any person attending through electronic means must identify themselves with their name and other information sufficient for the Association to confirm that they are authorized to attend the meeting. *If any attendee fails or refuses to provide the requested information promptly after being requested, then the meeting's presiding officer will remove, or cause the removal of, that individual from the meeting.*

**B. Forced Muting and Disconnections.** The presiding officer of the E-Meeting

**Lenox Place at Sunnyside Homeowners Association, Inc.**

**Board of Directors Meeting Minutes**

**Tuesday, July 27, 2021; 7:00 p.m.**

**Courtland Circle Courtyard**

may cause or direct the disconnection or muting of a person's connection if it is causing undue interference with the meeting or if the person is disrupting the meeting and refuses to comply with these Guidelines or other applicable meeting protocols.

**C. Owner Participation at the E-Meeting.**

1. Advance Sign-Up. Owners wishing to speak during the designated Owner comment part of the agenda are encouraged to sign up in advance of the meeting (per instructions provided in advance of the meeting). *Owners who timely sign up in advance of the meeting will be given first priority by the presiding officer to speak for their allotted time period during the applicable part of the meeting agenda; time permitting, other Owners will then be recognized to speak by the presiding officer.*
2. Recognition by the Presiding Officer. To facilitate allowing attendees to seek recognition by the presiding officer, the E-Meeting may be set up so that an Owner can physically raise their hand (e.g., as visible on the video screen), electronically "raise" their hand, and/or electronically send a message requesting to speak.

**D. Executive Sessions.** The Board or committee may use a different electronic meeting room or conference call line, or separate videoconference session, to facilitate holding an executive (closed) session during the E-Meeting.

**E. Method of Voting.** Motions from the floor will be verbal and acknowledged by the presiding officer. Voting will be by voice vote or by audible roll call unless a different method is approved by majority vote of the Board (or committee, if applicable) and allowed under the Governing Documents or applicable law.

**F. Video display.** If possible, when using the Videoconference Platform, the video feed of the meeting's presiding officer will be displayed throughout the meeting, and the video of the person currently recognized to speak or report will be displayed.

**G. Recording of E-Meetings.**

1. Recording by Owners. Other than for Association recordings per subsection 2 below, only Owners have the right to record the open portion of E-Meetings – recording by any other person is prohibited. In addition, no Owner may begin recording any portion of an E-Meeting

**Lenox Place at Sunnyside Homeowners Association, Inc.**

**Board of Directors Meeting Minutes**

**Tuesday, July 27, 2021; 7:00 p.m.**

**Courtland Circle Courtyard**

until that Owner has first identified him or herself at the E-Meeting by name and Lot address, informing the presiding officer and others in attendance that the Owner is or will be recording some or all of the open portion of the E-Meeting and specifying whether the device will be recording images, audio or both. Otherwise, the same Rules and Regulations, if any, applicable to recording meetings by Owners at a physical meeting location also apply to recording E-Meetings.

2. Recording by Association. When there will be voting in the form of voice votes and/or a show of hands through the E-Meeting Platform, the Association will cause that portion of the meeting (or the votes) to be electronically recorded, with that recording being retained by the Association in accordance with the Board-adopted document retention policy.

H. **Use of Telephone Conference Call for Meetings.** If a traditional telephone conference call is used as the E-Meeting Platform for a meeting (rather than the Videoconference Platform), the following additional procedures and requirements apply:

1. Arrival announcements. Any person participating by telephone must announce themselves at the first opportunity after joining the conference call, but may not interrupt a speaker to do so.
2. Departure announcements. Any person participating by telephone who is leaving the conference call before the meeting's adjournment must announce their departure before disconnecting, but may not interrupt a speaker to do so.

**EFFECTIVE DATE:** the effective date of these Guidelines is: \_\_\_\_\_, 2021.

**LENOX PLACE AT SUNNYSIDE HOMEOWNERS ASSOCIATION, INC.**

**RESOLUTION ACTION RECORD**

Resolution: Administrative No. \_\_\_\_\_

Pertaining to: GUIDELINES FOR ELECTRONIC BOARD AND COMMITTEE MEETINGS

Duly adopted by the Board of Directors on \_\_\_\_\_, 2021, by [check applicable]:

majority vote at a Board meeting, or

by unanimous written consent through an action without a meeting.

**Lenox Place at Sunnyside Homeowners Association, Inc.**  
**Board of Directors Meeting Minutes**  
**Tuesday, July 28, 2021 - 7:00 p.m.**  
**Virtual Meeting via GoToMeeting**

Motion by: \_\_\_\_\_ Seconded by: \_\_\_\_\_

PRINTED NAME	VOTE:			
	YES	NO	ABSTAIN	ABSENT
_____ Director				

ATTEST:

\_\_\_\_\_  
Secretary (signature)

\_\_\_\_\_  
Date

**These Guidelines are effective immediately upon adoption.**

CERTIFICATE OF MAILING

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 2021, a copy of the above-referenced Guidelines was mailed (or emailed with consent) to all Owners as reflected in the Association's books and records.

\_\_\_\_\_

**Lenox Place at Sunnyside Homeowners Association, Inc.**  
**Board of Directors Meeting Minutes**  
**Tuesday, July 28, 2021 - 7:00 p.m.**  
**Virtual Meeting via GoToMeeting**

ATTACHMENT B

**ADDITIONAL BACKGROUND INFORMATION FROM COUNSEL RE THE ATTACHED RESOLUTION**

Frank – as requested, attached is our draft Resolution for authorizing and holding electronic Board and Committee meetings – this includes meetings held entirely or partially by either videoconference or traditional telephone conference. Notes regarding the attached Resolution:

1. Section II(A) states that, by default, Board and committee meetings will be 100% virtual (“Virtual-Only Meeting”) but preserves the authority of the Board (or committee) to decide to hold a meeting entirely in-person at a physical meeting place or instead hold a meeting partially through electronic means (“Hybrid Meeting”). For Virtual-Only Meetings, it also addresses the statutory requirement to provide a reasonable alternative for Owners who do not want to (or cannot) conduct business with the Association electronically. Also note that Section II(C) gives the Board ultimate authority to require a committee to change its meeting method if, for instance, the Board gets word that the committee is not following the e-meeting guidelines in the Resolution or there are other problems or circumstances warranting a change of meeting method.
2. Section II(B)(1) describes physical in-person attendance at Hybrid Meetings, including our recommended requirement that at least one Board member (or committee member, as applicable) – preferably the president or chairperson – or management must be physically present at the meeting location. We do not recommend holding a meeting with a physical meeting location without a proper Association representative at that meeting location to help run the meeting, control decorum at the meeting location, and deal with any IT issues that might arise.
3. Section II(D) describes the minimum requirements for the electronic means (the “E-Meeting Platform”) being used for the meeting.
4. The amended POA Act states the Board-adopted guidelines must ensure that persons accessing the meeting are authorized to do so. This is addressed Section II(D)(2)(a) and Section V(A). I note that under the POA Act, only owners have a statutory right to attend, but the Board can choose to allow non-owner residents/tenants to attend if the Board feels it is appropriate (e.g., for receiving additional community input on issues). Certainly, some boards choose to only allow owners to attend formal business meetings as it helps limit how much time is spent during the comment period and the number of persons potentially interjecting and disrupting the meeting (thus avoiding unnecessarily longer meetings).
5. Section V describes certain procedures to use when conducting E-Meetings.

**Lenox Place at Sunnyside Homeowners Association, Inc.**

**Board of Directors Meeting Minutes**

**Tuesday, July 28, 2021 - 7:00 p.m.**

**Virtual Meeting via GoToMeeting**

a. Section V(C) addresses the Owner comment period and, to facilitate it, encourages Owners to sign up in advance to speak (with the presiding officer giving those who sign up first priority for speaking at the designated time).

b. Section V(G) refers to Owners' statutory right to record open meetings but imposing a requirement that the Owner announce they are recording the E-Meeting in advance; it also states that the E-Meeting recordings by Owners are subject to the same rules, if any, as recording of regular in-person meetings. Also, *to help ensure compliance with the new provisions of the POA Act, note that we have also included a reference to the Association itself recording the portions of E-Meetings when there is voting by an electronic show of hands or voice votes over Zoom/etc. so that there is a record of the vote conducted by electronic means. The recording would be retained (and subject to Owner inspection/copying) per the Board's document retention policy.* The way the POA Act is worded, "e-voting" in an E-Meeting would appear to include, for instance, voice votes through the online videoconference system, and the electronic means used for e-voting must create a record of the vote.

If there are any desired revisions or any questions, please do not hesitate to contact me. Please also provide our office with a copy of the adopted Resolution for our records.

Best regards,  
Allen

**Allen Warren, Esq. | Chadwick, Washington, Moriarty, Elmore & Bunn, P.C.**

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[Fellow | College of Community Association Lawyers \(CCAL\)](#)