

SOUTHEASTER, INC.
SPECIAL BOARD OF DIRECTOR'S MEETING MINUTES
APRIL 8, 2022

The Southeaster, Inc. held a Special Board of Director's meeting on Friday, April 8, 2022 in the recreation room of the Southeaster Condominium, 4841 Saxon Drive, New Smyrna Beach, Florida. Notice of the meeting was duly posted on the Association property at least 3 days in advance. A quorum of the board was established and Skip Jewett, President called the meeting to order at 9:00 a.m. Directors present were Skip Jewett, President; Linda Breum, Vice-President and Keith Ellis, Director. Diane Vinson, Secretary; Tom Smith, Director; Mark Chase, Treasurer; Frank Melton, Director; Blake Thomas, Director and Steve Howard, Director were present via conference call.

Linda Breum moved to approve the February 12, 2022 Board of Director's Special Assessment Meeting Minutes which motion was seconded and unanimously approved.

Skip Jewett, President: Provided a recap summary regarding the Notice of Violation we received from the County of Volusia with regards to our seawall (recap summary attached).

Linda Breum moved to approve the board to explore alternatives to the Notice of Violation which motion was seconded and unanimously approved.

Frank Melton moved to approve retaining Attorney Kenneth Bohannon to move forward with the initial research regarding the Notice of Violation which motion was seconded and unanimously approved.

There was discussion with regards to the Southeaster joining forces with surrounding condominiums to fight this violation as a group. Frank Melton moved to table joining forces with other condominiums until we receive our initial report from Attorney Kenneth Bohannon. The board then discussed potential guardrail options, including cost estimates for each option. The board agreed that no action needed to be taken on this issue at this time.

The next regular Board of Director's meeting is scheduled for May 28, 2022 at 9:00 am in the recreation room.

Linda Breum moved to adjourn which motion was seconded and unanimously approved. The meeting was adjourned at 10:00 a.m.

Diane Vinson
Secretary, Southeaster, Inc.

Dear owners.

The following is a recap of the Board's discussion of the seawall issue at the April 8, 2022 Emergency Board meeting.

The Notice of Violation

We began by discussing the April 1, 2022 Notice of Violation that was hand delivered to Luann on Friday, April 1, 2022 by the Volusia County Code Enforcement officer. The bottom line is that the County contends that Sec. 1015.2 of the Florida Building Code applies to our seawall. Sec. 1015.2 requires that an "open sided walking surface" that is more than 30 inches above the ground requires a "guard" (guardrail or fence) that is at least 42 inches tall.

The County contends that the top of our seawall is an open walking surface that is clearly more than 30 inches above the beach. Depending on the season and the tides, the top of the seawall is anywhere between six and nine feet above the beach surface.

The County also contends that the lack of a guardrail or fence on the seawall is an "imminent danger" pursuant to Sec. 58-84(b)(1) of the Volusia County Code because it is likely to cause injury to a person "entering or occupying" the top of the seawall. That is, a person is likely to be injured if they fall off the seawall onto the beach.

Since the County has declared the seawall an "imminent danger", the County code requires Southeaster to repair or abate the alleged dangerous condition within five days. The Code Enforcement officer told Luann that a temporary fence along the seawall will comply with the five day deadline.

However, in the County's view, the only way for Southeaster to come into compliance is to erect an acceptable guardrail/fence along the entire seawall.

The County also cited the other condos along Saxon, so it was not picking just on us. Surfside, Ocean Club North, and Seaward were also cited. I understand, but have not confirmed, that Ocean Club South was cited.

Recap of response to date

We then discussed our initial actions in response to the Notice of Violation. Luann had Ray and Alan purchase temporary fencing, which they then erected along the seawall. That was completed on Friday, April 8, 2022.

I sent an e-mail to the Code Enforcement Officer stating that Southeaster intended to work with the County in good faith, including the erection of the temporary fencing in order to comply with the five day deadline. I also told the officer that our decision to erect the temporary fencing was not a waiver of our right to contest and/or appeal the alleged violation.

Luann and I also spoke to several attorneys about representing Southeaster in this matter. We feel that outside representation is necessary to objectively analyze our options. As I will discuss below, the Board voted to retain Kenneth Bohannon, an attorney in NSB, to represent us.

I have also spoken several times with JT Griffin, the president of the Surfside Board. We discussed “joining forces” with the other condos that were cited, as well as how Surfside plans to respond to the County.

My comments and observations

I then discussed my comments and observations based on the four hours I had spent over the prior weekend digging into the County’s claims, the County’s code and the Florida Building Code.

I first encouraged everyone to be realistic about what I think is the likely outcome: I think Southeaster will probably have to comply by erecting a permanent guardrail/fence along the top of the seawall. The Board will do its due diligence by having an attorney objectively review the matter and give us an objective opinion of Southeaster’s chances of successfully challenging the Notice of Violation. But the Board and the owners will ultimately have to make an objective, non-emotional and economic decision as to whether it is better to fight or to comply.

My next observation was my belief that the deck is stacked against us. It is unlikely that the County’s Code Enforcement Department will back down. That means we will have to contest the violation by appealing. The appeal process under the County code starts with an appeal to the Code Enforcement Board, which is made up of County appointees. I think it is unlikely the Code Enforcement Board would overrule Code Enforcement in this situation.

If the Code Enforcement Board rules against us, then the next step is an appeal to the Volusia County Council. The Council could overrule the Code Enforcement Board, but I think it would be unlikely.

The next step after the County Council would be an appeal to the Circuit Court in its appellate capacity. Again, I think it is unlikely that we would win at this level. The Circuit Court would probably just look to see whether Southeaster was given a fair hearing. It probably would not hear the matter as a new case (otherwise known in legal speak as a de novo review).

Fighting this matter to the bitter end will also be expensive. We will have to pay our own lawyers (\$225 to \$350 an hour). Plus, if we lose, we will probably have to pay the County’s attorneys’ fees and costs, and we will still have to build the fence.

So, as you can see, the objective economic decision that is best for Southeaster could be to comply and build the guardrail/fence on the seawall.

I also discussed Southeaster’s liability in the event a personal injury claim is made against Southeaster if someone falls off the seawall and is injured. The fact that this has not happened in 50 years (as far as we know) will not mean much now that the County has declared the seawall to be an “imminent danger.”

I asked the Board and the owners to not “freelance” this matter by acting on their own. At this point, the Board and our attorney should handle this matter exclusively. We welcome input, comments, and questions from the owners, but those should be routed through Luann. The Board

assures the owners that we will not make major decisions without giving the owners notice ahead of time.

Plan in response to the Notice of Violation

The Board then voted to explore our options with regard to the Notice of Violation, including an appeal/challenge. The key question will be whether there is a realistic chance of successfully challenging the Notice of Violation.

The Board then voted to retain Kenneth Bohannon as Southeaster's attorney. We were referred to Mr. Bohannon by several sources. He has experience in code enforcement matters, and his initial e-mail to Luann showed he already has a grasp on the issues.

The plan is for Mr. Bohannon to research the situation and then generate a written opinion that discusses Southeaster's options and the likelihood of success with each. He estimates that this project will likely cost about \$1800 to \$2000 in fees.

We hope that Mr. Bohannon will get us his report quickly. The Board will then reconvene to discuss Mr. Bohannon's findings and recommendations and to plan the next step.

The Board then discussed whether to join forces with the other condos cited by the County. The Board voted to table this decision until after we hear from Mr. Bohannon. There are pluses and minuses to joining forces. On the plus side, the condos can present a united front to the County. On the minus side, we may not want to be tied to what the other condos choose to do.

Finally, we discussed potential options in the event we decide, or are forced to, comply and build the fence. The Board and the owners need to know this information in order to make an objective economic decision whether it is cheaper and less risky to comply or to fight to the end.

Luann has obtained estimates for aluminum fencing, glass fencing and cable railing. All options would meet the Florida Building Code. The estimates range from \$27,000 for aluminum fencing to over \$100,000 for cable railing. The cost is driven in large part by the length of the seawall, which is over 700 feet long.

The final decision on the guardrail/fence will not be made without notice to, and input from, the owners.

The Board, Luann and I will continue to update you on the seawall matter.

Thank you,

Skip Jewett

President

Southeaster Board of Directors